

§4.3 Regional Organizations

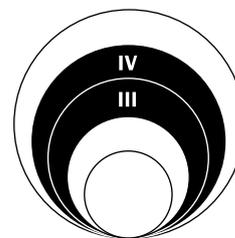
REGIONAL SOUTH EAST ASIA		
INSTITUTIONAL STRUCTURES	R2P	POC
ASEAN	✓	✓
ARF	✓	✓
AICHR	✓	✓
ADMM	✓	✓
ASEAN Committee on Women		✓
AHRC	✓	✓
AFRICA		
ECOWAS	✓	✓
AU	✓	✓
OSCE	✓	✓
LATIN AMERICA		
OAS	✓	✓
Inter-American Commission on Human Rights	✓	✓
CARICOM	✓	✓

§4.4 Commentary: Regional Organizations

Regional Organizations: R2P

Regional Organizations play their key roles in protection through Mode III Dedicated Protection Activities and Mode IV Mainstreaming Protection. In each of these Modes both operational protection and structural prevention is pursued.

§1 REGIONAL ORGANIZATIONS' NORMATIVE ROLE IN ADVANCING R2P



Regional Organizations played a significant role in setting the normative groundwork for the development of the R2P principle. Oft-noted in the gradual shift of the international climate from one of non-intervention to one of non-indifference is the 2000 Constitutive Act of the African Union. Responding in part to the meagre international effort to prevent the genocide in Rwanda (though regional concerns for gross domestic violations of human rights had been in evidence in Africa at least since the 1991 *Kampala Document*), the Union's Article 4(h), provides for "the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect to grave circumstances, namely: war crimes, genocide, and crimes against humanity". Article 4(h) is important both in regard to the importance of regional organizations to the development of R2P, and to the non-Western roots of the principle. Recently, the Secretary-General observed that bodies such as the *Economic Community of West African States (ECOWAS)*, the *African Union*, and the *Organization for Security and Cooperation in Europe (OSCE)*, "were in the vanguard of international efforts to develop both the principles of protection and the practical tools

UN Secretary-General's 2011 R2P Report: R2P's implementation

“should respect institutional and cultural differences from region to region. Each region will operationalize this principle at its own pace and in its own way... But make no mistake: each region must move forward, step by step, to ensure that populations are more protected and that the risk of mass atrocity crimes recedes with each passing year.”

for achieving them. The United Nations followed their lead.”¹⁴¹

On a normative level, the work of regional organizations with respect to R2P is ongoing. To draw an analogy to POC, while the origins of the Geneva Conventions may be traced to Switzerland in the 19th Century, the idea that there are moral limits on what may be done in war is neither a particularly modern nor particularly Western idea. Almost all cultures have developed principles of protection for civilians during war, and have cultivated their own ways of understanding and motivating those principles – through human rights, honour, chivalry, religion, taboos and so on. So too, the principle that States should be run for the wellbeing of the citizenry may be found in countless cultures across the globe. But each region will fashion this universal idea in different ways, according to its own beliefs and traditions. As well as the more tangible roles described below, regional organizations need to play their part in developing local ownership of R2P, and in mediating between the universal global principle and local traditions and moral frameworks.

141 Secretary-General, *The Role of Regional and Sub-Regional Arrangements in Implementing the Responsibility to Protect* ¶4. Indeed, African regional organizations have over a long period of time been sufficiently interventionist with respect to deploying peacekeepers (and more direct military action in some cases) that it is arguable they have effectively become the primary institutions for maintaining peace in their regions. See Suyash Paliwal, “The Primacy of Regional Organizations in International Peacekeeping: The African Example,” *Virginia Journal of International Law* 51.1 (2010): 185-230.

§2 THE R2P PILLAR TWO ROLE OF REGIONAL ORGANIZATIONS IN ENCOURAGING STATE'S PILLAR ONE DUTIES.

Reflecting the pre-eminent place of sovereign States in international relations and law, R2P's Pillar One places the primary responsibility for protection onto States themselves. Regional organizations (or their sub-organs, such as regional human rights commissions) can undertake a variety of activities in order to encourage States to live up to these Pillar One responsibilities to their citizens. These include:

- » Encouraging member-state ratification of treaties on human rights and international humanitarian law – especially the Genocide Convention;
- » Encouraging States to become signatories to the International Criminal Court, which then would in future have jurisdiction to respond legally to atrocity crimes;
- » Engaging in regional education activities and exchanges, and raising awareness of human rights, international humanitarian law, and R2P itself;
- » Recommending tangible and appropriate reform proposals to member States, especially security sector reform;
- » Motivating R2P compliance by assessing the status of member States with respect to R2P-related triggers within that State – for instance, the State's compliance with human rights instruments, the presence of hate-speech, and so on;
- » Liaising with civil society organizations from each State, so vulnerable minorities have a voice;
- » Investigating specific situations that have the potential to become R2P flash-points;
- » Instituting policies whereby member-states can be suspended from the organization (or subsidiary organs of the organization) for being a party to atrocity crimes.

§3 THE R2P PILLAR TWO ROLE OF REGIONAL ORGANIZATIONS IN OPERATIONAL PREVENTION

The significance of regional organizations in terms of operational prevention is well-known. Regional organizations provide forums for conflict resolution, broker peace talks and encourage diplomatic solutions. As the UN Secretary-General recently observed: “For the United Nations, the global-regional-sub-regional partnerships on operational prevention are forged week after week, in crisis after crisis.”¹⁴² At the behest of States, regional organizations can engage in preventive deployment through peacekeeping operations; key African regional organizations in particular have treaties that authorize (and have in fact been grounds for deploying) local peacekeeping operations.¹⁴³ They can mediate between the State and other, global, organizations such as the United Nations. Regional organizations are often well placed to perform these tasks because, in many cases, they have enough distance from a conflict to be considered by both parties to that conflict to be impartial and trustworthy, and yet are close enough to it to have awareness of its nature, the capacity to act, and the motivation to stabilize the region.

142 Secretary-General, *The Role of Regional and Sub-Regional Arrangements in Implementing the Responsibility to Protect*, ¶21.

143 Paliwal, “The Primacy of Regional Organizations.”

§4 THE R2P PILLAR TWO ROLE OF REGIONAL ORGANIZATIONS IN STRUCTURAL PREVENTION

In his 2011 R2P Report on the role of regional and sub-regional organizations, the Secretary-General emphasized the role that such organizations can play in structural prevention, and the subsequent General Assembly debate expanded on this theme.¹⁴⁴ Structural prevention R2P activities of regional organizations may include:

1. The development and support of regional principles, standards, institutions and civil society organizations that promote tolerance, transparency, accountability, diplomacy and the constructive management of diversity;
2. Preparedness and contingency planning for humanitarian action in future emergency situations;
3. Strategies for confronting transnational problems that are known to foment internal conflicts, such as armed groups, arms dealing, terrorism, drug cartels and organized crime;
4. Preventive deployments of peacekeeping operations at the invitation of the host State;
5. Providing a forum for dialogue and conflict resolution between – for instance – majority and minority groups in States.
6. Providing a space for dialogue within and amongst regional organizations on lessons learned and best practices (for instance, on development of early warning structures).

§5 REGIONAL ORGANIZATION ROLES IN DEVELOPING EARLY WARNING CAPACITY AND MECHANISMS

In both its Pillar Two and Pillar Three, R2P requires early warning capacities – that is, the ability to acquire and analyze information from around the globe in order to know where R2P atrocity crimes may be at risk of erupting. Ideally, such knowledge will be acquired sufficiently early that preventive actions can be set in train – rather than the more coercive Pillar Three activities that may be necessary when atrocities are imminent. The more effective the early warning capacity, the more R2P will be able to concern itself with Pillars One and Two, rather than Pillar Three. Many regional organizations (AU, ECOWAS, SADC, OSCE, EU) already have early warning mechanisms with respect to conflict prevention more generally, and these are well-placed to include atrocity crimes within their ambit.

Regional organizations have the capacity to act as a conduit between local affairs and global organizations – especially the United Nations. Such organizations, especially if they are in contact with civil society organizations or have subsidiary human rights commissions, will usually be aware of a potential flashpoint long before it has caught the attention of international organizations or global media. Regional organizations can thus play a key role in gathering, analyzing and transmitting such knowledge to other R2P actors.

§6 THE ROLE OF REGIONAL ORGANIZATIONS IN PILLAR THREE SITUATIONS

Both the UN Charter and the World Summit Outcome Document deal explicitly with the role that regional organizations should play when situations within their purview escalate into threats of atrocity crimes and threats to international peace.

In recent history, perhaps the most important and certainly the most visible role that Regional Organizations have played with respect to R2P Pillar Three

UN Charter, Art. 52(1): Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.

Art. 53(1): The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council...

is in contributing to Security Council decision-making by calling for or arguing against certain responses. It was in this application that the WSOD expressly envisaged regional input.

There are four ways regional organizations play an R2P role in Pillar Three situations:

1. **Providing accurate information and analysis:** paralleling their role in early warning systems, regional organizations can be well-placed to communicate to global audiences – and to the UN Secretariat and Security Council in particular – the state of affairs on the ground in member-states, the nature of the conflict in question, and the likelihood of atrocity. Regional organizations can also serve as a counterpoint to the orthodox presentation of a conflict in the global media, which may only reflect the priorities and agendas of Western governments.
2. **Advocating particular solutions:** regional organizations are an important, in some respects almost authoritative, source of strategic advice with respect to viable

144 UN Department of Public Information (DPI), *Sixty-Fifth GA Informal Thematic Debate, GA/11112*, 12 July 2011.

WSOD, Para. 139: 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.

responses to a particular incident. More significant again, the voice of regional organizations has come to be respected as an integral part of the view of the “international community”, and for this reason as conferring greater legitimacy on certain courses of action. [See Example Case box in §5.3.a below on Libya.] The Security Council’s composition, as is oft-noted, is not representative of the membership of the United Nations. When the Security Council’s decision takes into account, and ultimately aligns with, calls for action by the major regional organizations in the area, then the R2P vision of a truly international community acting in unison to stop atrocities is approached. Regional organizations are coming to have what one commentator goes so far as to term a “gatekeeper” role in terms of the authorization of Pillar Three action by the Security Council.¹⁴⁵ With the Council increasingly looking to regional organizations for their judgments in specific cases, the degree of consensus among and between such organizations, and any perceptions of bias (for instance on sectarian lines) in their decisions, become material.

145 Alex Bellamy and Paul Williams, “The New Politics of Protection? Côte D’Ivoire, Libya and the Responsibility to Protect,” *International Affairs* 87.4 (2011): 825-50.

These factors help account for the very different international responses to Libya in 2011 as compared with Syria in 2012.

3. Material and political support for

Pillar Three action: When the Security Council decides to undertake Pillar Three R2P action under Ch. VII of the UN Charter, the political and tangible support of regional organizations can be crucial. This is so not only with respect to direct military action – such as conducted by NATO in Libya in 2011 – but also with respect to measures that do not involve the use of military force. In particular, the success of travel bans, targeted sanctions and arms embargoes is highly dependent on the support of neighbouring nations, and regional organizations can be lynchpin in mobilizing this support.

4. Executive Decision-making:

A small number of regional organizations have a mandate allowing for the organization to itself authorize and deploy forces to protect populations in member-states – the African Union’s Art. 4(h) noted above is a prime example of this. In this Mode II Direct protection action, the position and responsibilities of such regional organizations emulate those of the Security Council itself, albeit at a lower level of authority. With the multiplying of responsibilities at this level however, a new obligation emerges between the Security Council and the regional authority to ensure that whoever takes responsibility for a crisis only does so when they have the means and will to genuinely impact upon it. In the context of the Darfur region of the Sudan, it is arguable that both executives failed in this respect.

With respect to items (1) and (2), the credibility and impartiality of the regional organization is crucial. As the Secretary-General recently observed, it cannot simply be assumed that calls made by regional organizations are always right:

Secretary-General, 2011 R2P Report (S/2011/393):

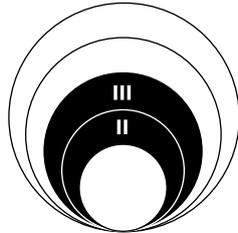
“Politically, it has become increasingly evident that the views of neighbouring States and regional bodies may be taken into account by members of the Security Council when determining which course of action to take in particular situations. This is as it should be. States and civil society groups that are closer to the events on the ground may have access to more detailed information, may have a more nuanced understanding of the history and culture, may be more directly affected by the consequences of action taken or not taken, and may be critical to the implementation of decisions taken in New York.”

Sometimes more distant observers have a broader or more balanced perspective. Politics, profits, and national interests come into play at the regional and sub-regional levels, just as they do in the deliberations of inter-governmental bodies at the United Nations. It is, most often, through the interplay of ideas, perspectives, and preferences among local, national, and international stakeholders that the best policies and most sustainable strategies are identified.¹⁴⁶

In this connection, regional organizations need to be aware that the stance they take, the factual claims they make, and the strategies they recommend on a particular issue will impact on the weight their views are accorded in future cases. For instance, a regional organization’s confident assertions in one situation that atrocities are not occurring – assertions that are later found to be false and

146 Secretary-General, *The Role of Regional and Sub-Regional Arrangements in Implementing the Responsibility to Protect*, ¶24.

Regional Organizations: POC



perhaps even deliberately deceitful – will make it easier in future cases for global media, States and organizations to side-line that organizations' claims and recommendations. Conversely, the Security Council may find it politically very costly to act in direct contradiction of the clear position of a regional organization with a record for impartiality and truthfulness.

It is possible that regional organizations could themselves come to formalize their responses to regional crises. Participants at a 2011 regional workshop on R2P and POC in South-East Asia raised the question of whether it would be appropriate for a regional organization – such as ASEAN – to come up with their own legitimacy criteria for intervention, perhaps along the lines suggested by the original ICISS report to guide the Security Council's decision-making in such contexts, rather than having decisions about local interventions being made without their input.¹⁴⁷

In several ways the role of Regional Organizations with respect to POC parallels that of the Security Council. Similar to the Council, Regional Organizations can mandate peacekeeping missions – including those with a directive to protect civilians. Similarly too, Regional Organizations have other resources to contribute **structurally** and **operationally** to POC.

The Security Council: “Recognizes the increasingly valuable role that regional organizations and other intergovernmental institutions play in the protection of civilians, and encourages the Secretary-General and the heads of regional and other intergovernmental organizations to continue their efforts to strengthen their partnership in this regard.” (S/RES/1674 (2006)).

DEDICATED PROTECTION ACTIVITIES (MODE III): STRUCTURAL POC

Regional organizations are important actors in building an environment conducive to the protection of civilians. Their tasks include:

- » Encouraging State members to ratify IHL treaties, and to enact the peacetime requirements of them. IHL may also be explicitly incorporated into the Organization's Charter (as, e.g. ASEAN);
- » Prioritizing human-centered-ness and human rights mainstreaming in their own constitutions and organs, rather than State-centeredness;

- » Developing regional Human Rights Instruments and Treaties, such as the European Convention on Human Rights (ECHR) (and its modality: the European Court of Human Rights) and the ASEAN Intergovernmental Commission on Human Rights (AICHR);
- » Enacting measures to enhance judicial and rule of law capacity in member-states;
- » Incorporating institutions, instruments and principles for the protection of women and children with POC institutions and instruments, and vice versa;
- » Gathering lessons learned on POC – be they regarding the protection activities of peacekeeping operations, successful acts of self-protection by local actors, or from other sources;
- » Controlling the proliferation of weapons, especially small arms, drug and human trafficking, and the illegal exploitation of a State's natural resources.

Working in partnership with the UN on such matters as structural and operational protection is desirable. The ideal result – spelled out by the UN Secretary-General in his 2006 Report on the Regional-Global Security Partnership – would be “a consultative network with interested partner organizations to identify options for a common framework on protection of civilians in armed conflict, based on agreed core policies and legal elements”.¹⁴⁸

¹⁴⁸ UN Secretary-General, *A Regional-Global Security Partnership: Challenges and Opportunities Report of the Secretary-General*,

¹⁴⁷ Angus Francis, *Summary Report: Capacity Building Workshops on the R2P and POC: Manila, Kuala Lumpur, Jakarta*, June 2011 (Document on file with authors).

Historically, the major role of Regional Organizations in POC has been conflict prevention at the operational, rather than the structural level. This role is pursued centrally through dialogue and mediation.

DEDICATED PROTECTION ACTIVITIES (MODE III): OPERATIONAL POC

Operational prevention activities of regional organizations include:

- » Condemning violation of IHL by parties to a regional conflict;
- » Facilitating diplomatic efforts, conflict resolution and brokering peace agreements designed (inter alia) to further POC;
- » Playing a mediating role between a higher (e.g. UN) level and the nation-state in question. The Regional Organization may be more trusted by the State in question, and more aware of their specific situation and needs, making it a key conduit between global humanitarian concerns and the State's sovereignty sensitivities.

DIRECT PROTECTION (MODE II): POC THROUGH REGIONAL PEACEKEEPING

The most visible contribution regional organizations can make to POC is through the authorization and creation of regional peacekeeping operations with conflict-prevention and humanitarian objectives – often including explicit POC mandates. So active have key African regional organizations in Africa been in this regard – with the AU in Darfur, Burundi and Somalia and ECOWAS in Côte d'Ivoire, Guinea, Liberia and Sierra Leone – they have effectively

become the first-instance institutions for responding to peace, security and humanitarian crises in their regions. Regional organization peacekeeping can offer decisive advantages over Security Council-mandated missions: they often have greater proximity to and knowledge of local conflicts, and a capacity to act more quickly. While legally the Security Council remains the exclusive authority for legitimizing the use of transnational military force, past practice, *opinion juris*, post hoc Council approval, and the treaty-based constitutions of, for example, the AU and ECOWAS (which both explicitly allow for intervention in cases of atrocity crimes) combine to legitimize the deployment of robust peacekeeping operations by regional organizations.¹⁴⁹ As well as intermittently approving the authorization and deployment of particular peacekeeping missions in Africa by these regional organizations, as a more general matter, the Security Council has approvingly noted the increasing significance and the desire of heads of State for the further expansion of regional organizations in peacekeeping and POC roles.¹⁵⁰

As well as acting on their own to authorize and deploy PKOs into troubled areas within their region, it is also common for Regional Organizations to play a role in contributing to or partnering with UN organs and UN PKOs. Regional and UN PKOs can operate separately and side-by-side (e.g. Kosovo, DRC). There may be a transition from a regional organization PKO to a joint or UN operation (e.g. Liberia).

Alternatively the regional organization or the UN may provide key personnel or resources to a mission led by the other (e.g. DRC, Haiti, Darfur).

Operational POC measures taken by Regional Organizations through Peacekeeping Operations can also include:

- » Ensuring member states undertake in peacetime the specialized training of troops and police, and the development of POC military doctrine, required for security actors to fulfill POC tasks as part of a PKO mission;
- » Mandating PKOs with protection capacities and authority, and preventive deployments that have POC objectives;
- » Developing peacekeeping policies and modalities;
- » Promoting the inter-operability of PKOs – allowing them to be deployed either independently or as part of larger missions;
- » Negotiating with member-states embroiled in a conflict for humanitarian access or other measures designed to help protect civilians (such as the placement of a PKO mandated to create safe-zones).

149 See Paliwal, "The Primacy of Regional Organizations."

150 E.g. S/RES/1631; S/RES/1674.