

CSCAP MEMORANDUM NO. 18

Implementing the Responsibility to Protect (RtoP)



**A Memorandum from the
Council for Security Cooperation in the Asia Pacific (CSCAP)**

September 2011

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INTRODUCTION

Despite past promises, the international community has often failed to prevent the commission of crimes like this or take timely and decisive action to protect the victims. Recognizing this legacy, the largest ever meeting of Heads of State and Government endorsed the Responsibility to Protect (RtoP) concept in 2005. The concept has been unanimously reaffirmed twice by the United Nations Security Council (Resolutions 1674 (2006) and 1894 (2009)) and in 2009 the General Assembly agreed to continue its deliberation on implementing RtoP (Resolution 63/308).

The Responsibility to Protect (RtoP) is animated by a profound belief that humanity can do a better job of living up to its most deeply held common moral beliefs and aspirations and that it can do so whilst preserving and strengthening core institutions such as state sovereignty. RtoP is borne out of a shared ethical belief that innocent civilians should be protected from genocide, war crimes, ethnic cleansing and crimes against humanity in a manner consistent with the principles and purposes of the UN Charter.

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

- i) The responsibility of the state to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement.
- ii) The international community's responsibility to assist the state to fulfill its responsibility to protect.
- iii) In situations where a state has manifestly failed to protect its population from the four crimes, the international community's responsibility to take timely and decisive action through peaceful diplomatic and humanitarian means and, if that fails, other more forceful means in a manner consistent with Chapters VI (peaceful measures), VII (enforcement measures) and VIII (regional arrangements) of the UN Charter.

The present Memorandum examines the scope and meaning of RtoP, presents, twelve recommendations for its implementation in the Asia Pacific region, and identifies some of the next steps towards translating the concept from words to deeds.

The Memorandum concludes that regional arrangements in the Asia Pacific region should play an important role in implementing RtoP. Regional activism in implementing RtoP would enhance regional peace and security as well as strengthening the protection of people. It would also foster regional ownership and ensure that RtoP is implemented in a manner consistent with local norms and interests, strengthen partnership between the region and global institutions, and enhance key national and regional capacities.

MEANING AND SCOPE OF THE RESPONSIBILITY TO PROTECT

The Memorandum concludes that RtoP is consistent with regional norms. In particular, RtoP does not create new legal obligations, but is rooted in existing international law. It represents a commitment to implement existing law in relation to genocide, war crimes, ethnic cleansing and crimes against humanity, to assist states to fulfil their commitments and to work together in a manner consistent with existing law to respond in a timely and decisive manner when the four enumerated crimes are committed. Further, the Memorandum finds that RtoP applies only to the four specified crimes (genocide, war crimes, ethnic cleansing and crimes against humanity) and not to a wider range of human security issues and that it is consistent with the principle of non-interference and the UN Charter.

It is important to distinguish what RtoP is and is not.

RtoP is:

1. ... an internationally agreed concept aimed at protecting populations from genocide, war crimes, ethnic cleansing and crimes against humanity and preventing these crimes.
2. ... defined by paragraphs 138-140 of the 2005 World Summit Outcome Document, unanimously adopted by the UN General Assembly and reaffirmed by the UN Security Council in 2006 and 2009.
3. ... a concept that rests on three equally important and non-sequential pillars.
 - i) The primary responsibility of the state to protect its own population.

- ii) The international community's responsibility to assist the state to fulfil its responsibility to protect.
 - iii) The international community's responsibility to take timely and decisive action, through peaceful diplomatic and humanitarian means and, if that fails, other more forceful means in a manner consistent with the UN Charter, should a state manifestly fail to protect its own population.
4. ... universal and enduring. The state's primary responsibility to protect and the international community's responsibility to assist apply to all states, all of the time. They apply as much to the global North as the global South

RtoP does not...

- 1. ... apply to human security problems other than the four specified crimes (genocide, war crimes, ethnic cleansing, crimes against humanity) which are enumerated by existing international law.
- 2. ... establish, or claim to establish, a new principle of international law. It is embedded in existing international law and demands only that states act in accordance with existing law.
- 3. ... weaken state sovereignty. By affirming the primary responsibility of the state to protect its own populations and promising to help strengthen the state's capacity to protect its population, RtoP contributes to the strengthening of state sovereignty.
- 4. ... permit behaviour that is inconsistent with the UN Charter. Specifically, enforcement measures must be expressly authorised by the UN Security Council and all other measures must be consistent with the Charter.
- 5. ... violate the principle of non-interference. RtoP is consistent with Article 2(7) of the UN Charter and the Treaty of Amity of Cooperation because it does not call for unwanted interference in the domestic affairs of states, with the sole exception of measures adopted by the UN Security Council under Chapter VII of the UN Charter.
- 6. ... constitute a new label for humanitarian intervention. It does not call for the use of force in every situation where one or more of the four crimes are being committed. When timely and decisive action is required, force and

coercion are called for only when peaceful means have proven inadequate and are authorised by the UN Security Council.

IMPLEMENTING THE RESPONSIBILITY TO PROTECT IN THE ASIA PACIFIC REGION

The Memorandum identifies twelve recommendations through which national governments, regional arrangements and the region's global partners might begin to implement the RtoP and build a future free of genocide, war crimes, ethnic cleansing and crimes against humanity.

It is recommended that **national governments**:

1. ***Consider appointing an official to serve as a focal point for RtoP.*** Among other things, national RtoP focal points could provide their own governments with early analysis of emerging situations involving the four RtoP crimes, offer advice directly to the executive about matters relating to the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity genocide and mass atrocities, coordinate national responses to the four RtoP crimes, facilitate cooperation with regional arrangements and the UN, and cooperate with other national focal points. National focal points might also hold an annual informal dialogue with the Joint Office of the United Nations Special Advisers for Genocide Prevention and RtoP. Although a modest first step in itself, the appointment of national focal points would facilitate the implementation of many of the other recommendations proposed by the Study Group.
2. ***Devote resources to raising awareness about RtoP.*** The first step in implementing the RtoP in the Asia Pacific region is to build awareness of the concept through dialogue and training. This can be facilitated on a Track One or Track Two basis and is likely to be most effective when conducted on a national basis. National-based activities are necessary in order to develop a shared understanding of RtoP among stakeholders, and increase the level of awareness and knowledge about RtoP among national elites, decision makers and civil society groups. They also begin to lay the foundations for strengthening the state's capacity to prevent genocide, war crimes, ethnic cleansing and crimes against humanity.
3. ***Use education to inculcate the skills and values needed to resolve disputes peacefully.*** In the long-term, the key to preventing violence in all its manifestations lies in education. Violence is fundamentally grounded in the inability of people to resolve and manage their differences peacefully. The forging of values supporting diversity and interpersonal skills through

inculcating tactics and strategies for the peaceful resolution and management of differences is therefore a crucial component of violence – including mass violence – prevention. The most effective way to educate people to resolve differences in a non-violent fashion is through the education of the young.

The Memorandum recommends that the **ASEAN Regional Forum (ARF)**:

4. *Consider establishing a Risk Reduction Centre to conduct early warning and assessment of the risk of genocide, war crimes, ethnic cleansing and crimes against humanity and cooperate with the UN.* A Risk Reduction Centre could fulfil the following important functions and significantly improve the region's capacity to prevent and respond effectively to genocide, war crimes, ethnic cleansing and crimes against humanity:

- (a) Establish a transparent and reliable method of early warning analysis that includes safeguards against politicisation and utilises local knowledge.
- (b) Conduct risk analysis of genocide, war crimes, ethnic cleansing and crimes against humanity. Applying the agreed framework, the Centre could conduct annual risk analysis. On request, it could provide timely and accurate advice to the ARF Chair, ARF Ministerial Meetings and Inter-sessional Meetings and provide research support to the Eminent and Expert Persons.
- (c) Cooperate with the Joint Office of the Special Advisers to the UN Secretary-General on the Prevention of Genocide and RtoP (hereafter 'Joint Office').
- (d) Share best practices and learn lessons with the UN and other regions.
- (e) Establish small teams of experts on matters such as ceasefires, power sharing arrangements, disarmament, election design and monitoring, human rights protection and promotion and constitutional reform. These teams could assist the ARF Chair and governments on request.
- (f) Facilitate desktop exercises to examine the connections between early warning assessment and response. This might include conducting scenario based games with defence officials to demystify the process of early warning, assessment and response, forge

anticipatory relationships and identify areas in need of further development.

5. ***Consider strengthening its capacity to employ diplomacy to mediate and resolve crises before they escalate.*** Diplomacy is one of the best preventive tools. When used effectively, preventive diplomacy can prevent crises from escalating and forestall the need for other measures. Most cases of genocide, war crimes, ethnic cleansing and crimes against humanity have political roots and therefore require political solutions. Third party mediation is often required to build trust between the parties. It has been used to good effect by regional arrangements in Africa and elsewhere. The ARF could consider adopting a similar role by developing capacities that could be used to mediate and resolve crises early, on a consensual basis, preventing their escalation. In particular, it could consider:
 - (a) The appointment of envoys by the ARF Chair.
 - (b) The establishment and maintenance of a register of high-level and experienced people who are able and willing to serve as envoys. ARF participants might further assist by ensuring that they regularly update their list of Eminent and Expert Persons and ensure that at least one person on that list has experience with diplomacy or mediation. EEPs might then be called upon to fulfil these duties.
 - (c) Utilisation of a 'Friends of the Chair' mechanism by the ARF Chair.
 - (d) Inviting the ARF Chair to cooperate with the Secretary-General of ASEAN in responding to imminent emergencies or crises.
6. ***Consider establishing a standing regional capacity to prevent genocide, war crimes, ethnic cleansing and crimes against humanity and respond to them in a timely and decisive manner.*** Many countries in the Asia Pacific are already major contributors of personnel, finances, and equipment to UN peacekeeping missions. Groups such as the ARF could use this comparative advantage to augment the region's contribution to regional and global security by establishing a standing capacity that could be available for deployment, at the request of the host state or the UN, in order to prevent the four RtoP crimes or respond to their commission in a timely and decisive manner. The ability to rapidly fund, organise, deploy and coordinate operations to prevent or respond to the four RtoP crimes strengthens stability, saves lives and increases the chances of success. Yet rapid deployment is often difficult to achieve. The

ARF could consider working towards the establishment of a regional standing capacity to deploy soldiers, police forces and civilians to prevent the four RtoP crimes or respond to them in the event of either a request from the host government or the authorisation of the UN Security Council. The development of specific proposals in this area will need to be drawn up with a careful eye for detail and should draw on the findings of the CSCAP Study Group on Peacekeeping and Peacebuilding. More work is needed to examine the modalities for working towards the development of such a standing regional capacity but a key starting point is joint and multinational training.

7. ***ARF participants should consider providing voluntary background briefings.*** There is no single template that states can refer to when implementing their primary responsibility to protect. Differences of history, geography, culture, ethnic composition and political disposition may mean that practices and institutional configurations that might work in one country are inappropriate when applied to another. Equally, though, ideas developed in one place might help leaders in another to address their particular issues. Therefore, it is important to recognise that valuable lessons can be learned from all states. The ARF already provides opportunities for governments to provide background briefings. This mechanism could be used to provide states with an opportunity to present reports about their policies, experiences and plans for the implementation of their Pillar I responsibilities and to learn from the experience of others. Background briefings to peers through the ARF could also extend to participating states providing voluntary briefings on their domestic situation, identifying challenges and risk factors, explaining recent developments where appropriate and identifying areas where assistance might be needed. Over time, officials might be encouraged to include information about domestic issues with regional implications in the ARF's Annual Security Outlook.
8. ***Consider establishing an Inter-Sessional Meeting on Small Arms and Light Weapons.*** The management of small arms and light weapons (SALW) is particularly relevant to the capacity of a state to exercise its primary responsibility to protect. The proliferation and trade in illicit SALW is a key catalyst for political instability and for the commission of genocide, war crimes, ethnic cleansing or crimes against humanity by non-state actors. The ARF has established an impressive track record of activism on this issue, ably supported by CSCAP. Given the clear connection between SALW, regional instability and the potential commission of genocide, war crimes, ethnic cleansing and crimes against humanity by non-state actors, the work already undertaken by the ARF on this issue, the establishment

of an ARF Inter-Sessional Meeting on SALW would represent both a natural next step for the ARF and an important element of its contribution to the implementation of RtoP.

9. ***Establish a consultative mechanism to monitor and advise the UN Peacebuilding Commission and support national capacity building to prevent the four RtoP crimes.*** Supporting states to build the capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity is an absolutely critical component of the RtoP. Capacity building in this context refers primarily to the building of effective and legitimate state institutions but also to the achievement of sustainable and equitable economic growth. The most obvious avenue is to augment the peacebuilding activities undertaken by the UN in states under stress. With that in mind, the CSCAP Study Group on RtoP supports the proposal brought forward by the CSCAP Study Group on Peacekeeping and Peacebuilding, for the establishment of a consultative mechanism to monitor and advise the UN Peacebuilding Commission, focusing especially on targeted economic assistance to tackle specific peacebuilding related problems and support for rule of law capacity building. This could be supported by a small Peacebuilding and Reconstruction Program within the ARF Unit.
10. ***Consider strengthening the Eminent and Experts Persons Group so that it may play a role in implementing RtoP.*** The ARF Eminent and Expert Persons Group (EEPs) represents an important source of expertise that has a number of important roles to play in implementing RtoP. Operating within their, the EEPs might contribute to implementing RtoP by, among other things:
 - (a) Providing advice on a regional framework for early warning and assessment and assisting the Risk Reduction Centre.
 - (b) Supporting the ARF Chair's efforts in the fields of diplomacy, mediation, fact-finding and good-will missions.
 - (c) Compiling guidelines relating to best practice mediation and lessons learned from past cases. These guidelines could be regularly updated, presented to mediators, and used as a training guide.
 - (d) Engaging in experts-level dialogue with the UN's Joint Office on Genocide Prevention and RtoP.

For **global institutions** and partnership with the Asia Pacific:

11. ***Anticipatory relationships should be established between the region and the UN to facilitate cooperation in the prevention of the four RtoP crimes and effective responses.*** When genocide, war crimes, ethnic cleansing and crimes against humanity are incited or committed, delays could cost thousands of lives. The utilisation of networks and relationships in the face of a crisis is made much easier if they exist prior to the crisis and easier still if there are pre-established mechanisms for liaison. The Asia Pacific region has already begun to develop national focal points and networks relating to peacekeeping, disaster response and humanitarian operations. There are several possible ways of building these relationships, so that they might be utilised for preventive purposes when the incitement or commission of RtoP crimes is threatened. For instance:
- (a) Annual high-level dialogue between the UN and relevant regional arrangements.
 - (b) Regular officials-level meetings on peace and security.
 - (c) The provision of training in early warning, assessment, conflict analysis and other related areas by the UN's Joint Office.
 - (d) Young leaders dialogue.
12. ***Region-to-region and intra-regional dialogue should be strengthened to facilitate the identification of best practices and lessons learned relating to the implementation of RtoP.*** Each region has something unique to bring to the debate about how best to implement the RtoP. Officials from ARF participating states could engage in annual region-to-region dialogue aimed at identifying best practices and lessons learned relating to the implementation of RtoP. An alternative avenue is Track Two dialogue. There exist a number of bilateral and multilateral Track Two channels for region-to-region dialogue and CSCAP itself provides a potential vehicle for Track Two region-to-region dialogue.

NEXT STEPS FOR THE ASEAN REGIONAL FORUM

The implementation of RtoP within the ARF should proceed carefully and with due consideration for the views of ARF participants. The process should also provide ample opportunity for participants to examine, evaluate and debate the relevant issues. It should begin with modest and sustainable first steps.

STEP 1> ***ARF Experts Meeting to consider the measures recommended here.*** The Experts Meeting, which would ideally include representation from the CSCAP Study Group on RtoP, could examine in detail the feasibility of the specific measures identified in this Memorandum and Study Group's Final Report and consider and offer its own proposals on each of the twelve recommendations contained in this report.

STEP 2 > ***Inter-sessional meeting on implementing RtoP.*** Having scrutinised and modified the implementation agenda, the ARF experts meeting could consider presenting a recommendation that the ARF establish an inter-sessional meeting on implementing RtoP and a detailed assessment of the items for consideration. The inter-sessional meeting may in turn consider bringing specific recommendations to the ARF Ministerial Meeting in a timely fashion.

STEP 3 > ***Consideration of proposals by ARF Ministerial Meeting.*** The Ministerial Meeting might be charged with debating the proposals brought to them, agreeing on which to adopt, and taking the agenda forward from words to deeds by implementing agreed proposals

STEP 4 > ***Implementation***

ABOUT CSCAP

CSCAP is a non-governmental (second track) process for dialogue on security issues in the Asia Pacific. Membership in CSCAP is on an institutional basis and consists of Member Committees. Current membership comprises Australia, Brunei Darussalam, Cambodia, Canada, China, India, Indonesia, Japan, the Democratic People's Republic of Korea, the Republic of Korea, Malaysia, Mongolia, New Zealand, the Philippines, Russia, Singapore, Thailand, Vietnam and the USA.

The functions of CSCAP are as follows:

- a. to provide an informal mechanism by which political and security issues can be discussed by scholars, officials, and others in their private capacities;
- b. to encourage the participants of such individuals from countries and territories in the Asia Pacific on the basis of the principle of inclusiveness;
- c. to organise various working groups to address security issues and challenges facing the region;
- d. to provide policy recommendations to various intergovernmental bodies on political-security issues;
- e. to convene regional and international meetings and other cooperative activities for the purpose of discussing political-security issues;
- f. to establish linkages with institutions and organisations in other parts of the world to exchange information, insights and experiences in the area of regional political-security cooperation; and
- g. to produce and disseminate publications relevant to the other purposes of the organisation.

Study groups are the primary mechanism for CSCAP activity. As of June 2011, there were eight CSCAP Study Groups. These are concerned with: (i) Countering the Proliferation of Weapons of Mass Destruction in the Asia Pacific; (ii) Export Controls; (iii) Significance of the Existence of Regional Transnational Crime Hubs to the Governments of the Asia Pacific Region; (iv) Multilateral Security Governance in Northeast Asia/North Pacific; (v) Naval Enhancement in the Asia Pacific; (vi) Responsibility to Protect; (vii) Water Resources Security; and (viii) Cyber Security.

This memorandum was produced by the CSCAP Study Group on Responsibility to Protect (RtoP) and was approved by the 35th CSCAP Steering Committee Meeting in Kuala Lumpur, Malaysia, on 2 June 2011.

Further information on CSCAP can be obtained from the CSCAP website at www.cscap.org or by contacting the CSCAP Secretariat:

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CSCAP Memoranda

CSCAP Memoranda are the outcome of the work of Study Groups approved by the Steering Committee and submitted for consideration by the ASEAN Regional Forum and other bodies.

Memorandum No.17 - Promoting the Peaceful Use of Nuclear Energy

Author: Study Group on the Security Implications of Climate Change in the Asia Pacific

Date published: June 2011

Memorandum No.16 - Safety and Security of Offshore Oil and Gas Installations

Author: Study Group on Safety and Security of Offshore Oil and Gas Installations

Date published: January 2011

Memorandum No.15 - The Security Implications of Climate Change

Author: Study Group on the Security Implications of Climate Change

Date published: July 2010

Memorandum No.14 - Guidelines for Managing Trade of Strategic Goods

Author: Export Controls Experts Group (XCXG)

Date published: March 2009

Memorandum No.13 - Guidelines for Maritime Cooperation in Enclosed and Semi-Enclosed Seas and Similar Sea Areas of the Asia Pacific

Author: Study Group on Facilitating Maritime Security Cooperation in the Asia Pacific

Date published: June 2008

Memorandum No.12 - Maritime Knowledge and Awareness: Basic Foundations of Maritime Security

Author: Study Group on Facilitating Maritime Security Cooperation in the Asia Pacific

Date published: December 2007

Memorandum No.11 - Human Trafficking

Author: Study Group on Human Trafficking

Date published: June 2007

Memorandum No.10 - Enhancing Efforts to Address the Factors Driving International Terrorism

Author: Study Group on Enhancing the Effectiveness of the Campaign Against International Terrorism with Specific Reference to the Asia Pacific Region

Date published: December 2005

Memorandum No.9 - Trafficking of Firearms in the Asia Pacific Region

Author: Working Group on Transnational Crime

Date published: May 2004

Memorandum No.8 - The Weakest Link? Seaborne Trade and the Maritime Regime in the Asia Pacific

Author: Working Group on Maritime Cooperation

Date published: April 2004

Memorandum No.7 - The Relationship Between Terrorism and Transnational Crime

Author: Working Group on Transnational Crime

Date published: July 2003

Memorandum No.6 - The Practice of the Law of the Sea in the Asia Pacific

Author: Working Group on Maritime Cooperation

Date published: December 2002

Memorandum No.5 - Cooperation for Law and Order at Sea

Author: Working Group on Maritime Cooperation

Date published: February 2001

Memorandum No.4 - Guidelines for Regional Maritime Cooperation

Author: Working Group on Maritime Cooperation

Date published: December 1997

Memorandum No.3 - The Concepts of Comprehensive Security and Cooperative Security

Author: Working Group on Comprehensive and Cooperative Security

Date published: December 1995

Memorandum No.2 - Asia Pacific Confidence and Security Building Measures

Author: Working Group on Confidence and Security Building Measures

Date published: June 1995

Memorandum No.1 - The Security of the Asia Pacific Region

Author: CSCAP

Date published: April 1994