



CSCAP Study Group on the Responsibility to Protect (RtoP)

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Final Report**

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CSCAP STUDY GROUP ON THE RESPONSIBILITY TO PROTECT (RtoP) SECOND MEETING FULL REPORT

Background: At the 2005 World Summit, Heads of State and Government unanimously adopted the Responsibility to Protect (RtoP) concept for jointly dealing with four egregious crimes: genocide, war crimes, ethnic cleansing and crimes against humanity. Although regions are widely seen as an indispensable partner in translating this global commitment into actual policy, Asia Pacific regional organizations have been largely silent on what forms this partnership might take. Without a deeper level of engagement in these discussions, RtoP implementation will be hampered by the lack of regional input.

As the Asia Pacific's leading track two (non-official) security organization, CSCAP is uniquely suited to explore these issues and to propose ways in which the region can constructively fulfill its RtoP commitments. To that end, the CSCAP Study Group on the Responsibility to Protect was broadly mandated to clarify RtoP's scope and intent, to assess regional organizations' capacity to actively contribute to its implementation, to identify areas in which the four RtoP crimes overlap with sources of regional insecurity, and to generate a set of specific recommendations that advance the RtoP agenda while also reflecting regional norms and sensitivities.

The Study Group takes note of other RtoP discussions taking place within the region, including by the Singapore-based Consortium of Non-Traditional Security Studies in Asia (NTS-Asia). Whereas the NTS-Asia process focused on the role civil society and other bottom-up processes, the CSCAP process is distinct in its focus on RtoP capacities at state, international, and regional levels, with particular emphasis on the latter. It also explores ways in which track two efforts can undergird RtoP commitment and capabilities at each level.

In its first meeting, the Study Group proposed six (non-mutually exclusive) pathways to a more robust regional RtoP capacity:

1. devising effective and appropriate early warning and assessment mechanisms and empowering regional actors to act upon these warnings;
2. developing more regularized and defined channels of UN-regional dialogue around RtoP-related matters;
3. recognizing the importance of Pillar One (the state's primary responsibility to protect) and highlighting the steps that some regional states are taking to strengthen their Pillar One responsibility;
4. combining forces with the UN Peacebuilding Commission (PBC) to ensure that post-conflict environments do not become breeding grounds for the four RtoP crimes;
5. reviewing regional organizations' existing definitions of preventive diplomacy and examining ways of making this definition consistent with a more proactive RtoP role; and
6. exploring different forms that regional stand-by and standing arrangements might take, particularly with respect to policing and other civilian capacities.

These six issues formed the agenda for the Study Group's second meeting, whose discussions are summarized below.

Early Warning and Assessment

Early warning and assessment (EWA) is an exercise in collecting and analyzing reliable and verifiable information in order to provide early assessment of risk. This assessment can then be used to prevent existing tensions from escalating. At the United Nations, the information is derived from several sources, including the UN system itself, the media, NGOs, think tanks, Member States, and, if necessary, specific fact-finding missions. The UN Special Adviser on the Prevention of Genocide (SAPG) has been tasked with advising the Secretary-General and sounding the alarm whenever he assesses that there is a credible risk of a mass atrocity situation developing, and advocating for preventive measures to be taken at an early stage. His ability to perform this duty is enhanced by developing strong working relationships with regional and sub-regional partners. As members of both the Office of the Special Adviser (OSAPG) and the Special Adviser on the Responsibility Protect have noted, regional and sub-regional organizations have the greatest capacity to address a situation of concern as a result of both their proximity to and their familiarity with the context and key actors. Furthermore, they can and should be involved in shaping any international approach to ensure that it reflects regional norms and preferences.

Currently, many Asia Pacific states and regional organizations are reluctant to engage, either independently or in partnership with the UN, in RtoP-related early warning processes. In part, this stems from persistent concerns about Pillar Three of the RtoP principal, which refers to the possibility of external intervention in domestic affairs if a state is "manifestly failing" to protect its people. It is also attributable, however, to a widespread allergy among states to any reference to "genocide." One of the SAPG's first objectives has thus been to demystify genocide by presenting it as an extreme form of identity-based conflict. Prevention of genocide then becomes a question of constructive management of diversity. Given that all states have diverse populations, it is possible to identify risk factors and trigger events in a surprising number of states. Although some of these factors lend themselves to more precise definition than others, they nonetheless provide a workable framework for detecting and understanding situations in which there could be a risk of genocide or other mass atrocity crimes rises. These factors include (but are not limited to):

- 1) Inter-group relations characterized by patterns of discrimination and/or other human rights violations committed against a particular group;
- 2) Circumstances that impede the capacity to prevent genocide, such as a lack of legislative protection or the absence of an independent judiciary;
- 3) The presence of illegal armed and armed elements;
- 4) The motivation of leading actors in a state or region that results in encouraging divisions between national, ethnic, racial or religious groups;
- 5) Circumstances that facilitate the perpetration of genocide, such as the sudden or gradual strengthening of the military or security apparatus or the creation or increased support for militia groups;
- 6) Genocidal acts, defined as including killings, abductions, disappearances rape, ethnic cleansing, among others;

- 7) Evidence of intent “to destroy in whole or in part” another group; and
- 8) Other types of triggers, including (but not limited to) upcoming elections or the postponement or cancellation of those elections, and changes of government outside a normal electoral or constitutionally sanctioned process.¹

It should be noted that one or more of these factors are present in several Asia Pacific states (or localities within states). However, whether these states are willing to share information for early warning purposes remains an open question. Furthermore, regional organizations such as the ARF are ambivalent with respect to their own warning and response roles. On the one hand, the ARF’s Experts and Eminent Persons (EEPs) group could be more active in this regard. On the other hand, the EEP’s ability to fill this role is undercut by the ARF’s own internal documents which limit the EEP to providing non-binding views only. By contrast, regional and sub-regional organizations in Africa and Europe have gone much further in demonstrating their commitment to closing the gap between early warning and early and effective response, including by setting up early warning and assessment mechanisms linked to policy makers within their organizations. As a starting point, Asia Pacific track two organizations or civil societies could learn from their counterparts in these other regions and encourage their track one counterparts to follow suit.

UN-Asia Pacific Dialogue

Dialogue between the UN and the Asia Pacific region should be developed with a clear understanding of a mutually beneficial division of responsibility. The former is a source of universal laws and agreements, global perspectives, resources, institutional capacity, and global networks, whereas the latter contributes regional norms and expertise, leadership within regional networks, and understanding of regionally-based conflicts and their key actors. It is worth emphasizing that RtoP was not a concept ‘given’ to the South by Northern countries: indeed, many global-level RtoP discussions have benefited from insights and clarifications made by members of Southern states and societies, including from the Asia Pacific. Moreover, despite their distinct roles and interests, the UN and regions share concerns and have complementary capabilities with respect to gathering and assessing information, making and implementing decisions, mobilizing resources, and working with key actors.

An early precedent for UN-regional dialogue and cooperation began to coalesce during the humanitarian response to Cyclone Nargis in 2008. Although Nargis was clearly not an RtoP situation, the successes of joint UN-ASEAN cooperation may still offer lessons that could be replicated and adapted for preventing and responding to mass atrocities. At present, UN-regional cooperation in the Asia Pacific is still ad hoc and under-institutionalized and there is no bureaucratic entity within the region that maintains regular contact with the office of the Special Adviser on the Prevention of Genocide or the Special Adviser on the Responsibility to Protect. This important linkage should be made at both the track one and track two levels, through

¹ For the full description of these factors, see Office of the Special Adviser to the Secretary-General on the Prevention of Genocide Analysis Framework, <http://www.un.org/preventgenocide/adviser/pdf/OSAPG%20AnalysisFrameworkExternalVersion.pdf>.

- 1) **The appointment of national focal points.** Regional governments should identify a national focal point to engage in ongoing and informal dialogue with the RtoP Special Adviser. The focal point would be a mechanism for establishing desk-to-desk cooperation, and would also help streamline the relationship and ensure that national perspectives are presented in a timely and comprehensive fashion.
- 2) **Holding an annual dialogue.** National focal points and the Office of the RtoP Special Adviser could hold an annual informal dialogue to review progress, discuss and resolve challenges, evaluate and share information about strategic priorities, plan and instigate capacity-building, share and discuss research, and identify and implement lessons learned.
- 3) **Utilizing the ARF's Eminent and Experts Persons (EEPs):** The EEPs could provide specialist information and analysis to the Office of the RtoP Special Adviser through a regular program of meetings between the Office and the EEPs. EEPs might also be invited to provide advice on specific issues or to review the RtoP Special Adviser's assessments as the need arises. ARF participants could be asked to nominate a single EEP as the national focal point for cooperation with the Office of the RtoP Special Adviser. Alternatively, the number of EEPs could be expanded to include one additional EEP per participant for this purpose.
- 4) **Utilizing CSCAP expertise:** As the region's preeminent network of security experts, CSCAP expertise could be used for this purpose through some kind of commitment to a longer-term focus on early warning and assessment and RtoP, including genocide prevention. The activities could be managed in the same manner as CSCAP study groups, but be funded by external voluntary donations so as not to drain CSCAP resources. This group could provide specialist information and analysis to the Office of the RtoP Special Adviser through a regular program of meetings, and might also be invited to provide advice on specific issues or to review and assess methods and frameworks for early warning.

More generally, the region should begin building "anticipatory relationships" so that the necessary expert and personnel networks are in place *prior to* the outbreak of an RtoP crisis. The Asia Pacific has already begun to develop national focal points and networks around peacekeeping, disaster response, and humanitarian operations. These relationships could be augmented for the purpose of also preventing the commission or incitement of RtoP crimes. Some examples of what this might look like include the following:

- 1) Holding an annual informal high-level leaders' dialogue that would involve the Secretaries-General of the UN, ASEAN, and the Pacific Islands Forum, the ARF chairs, and representatives of regional governments currently represented on the UN Security Council;
- 2) Encouraging the UN Asia-Pacific Regional Office (ESCAP) to organize regular meetings with government officials and members of the ASEAN Secretariat and ARF Unit working on areas connected to peace and security;
- 3) Requesting that ESCAP offer training in fields such as early warning and assessment, conflict analysis and assessment, mediation (preventive diplomacy), and inter-faith dialogue to government officials and members of the ASEAN Secretariat and ARF Unit;

- 4) Considering ASEAN Secretariat (and possibly ARF Unit) collaboration with the UN Department of Political Affairs in creating a ‘young leaders dialogue’; and
- 5) Proposing desk-to-desk exchanges among the UN, the ASEAN Secretariat, and the ARF Unit to build shared understanding.

Finally, regional organizations and experts should revisit the recommendation of the CSCAP Study Group on Regional Peacekeeping and Peacebuilding to establish a consultative mechanism to monitor and advise the UN Peacebuilding Commission, particularly on its targeted economic assistance for efforts such as rule of law capacity building in the region. This could be supported by a smaller Peacebuilding and Reconstruction Program within the ASEAN Secretariat to “provide regional actors with guidance on matters such as humanitarian assistance in cases of conflict, conflict resolution initiatives, and post-conflict development frameworks.”²

Pillar One: The State’s Primary Responsibility to Protect

The primacy and centrality of Pillar One – the state’s primary responsibility to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity - must not be lost in the wider discussions about repertoires and formulas of international assistance. While outside assistance can stabilize an RtoP situation in the short-term, long-term stability is contingent upon states’ willingness and ability to bolster their own RtoP capacities through the following types of measures:

- 1) Political and diplomatic: building democratic institutions, enlisting regional actors for good offices mediation purposes, and other types of political and diplomatic problem-solving initiatives;
- 2) Economic: promoting economic growth, engaging in structural reform for poverty eradication, and boosting technical assistance for strengthening regulatory instruments and institutions;
- 3) Legal: strengthening the rule of law, protecting the integrity and independence of the judiciary, enhancing protections for vulnerable groups (especially minorities), and expanding the scope of universal jurisdiction over respective crimes under international law; and
- 4) Military and security: enhancing education and training for military forces, strengthening civilian control mechanisms over security agency actions, and occasionally deploying a consensual military, police, or civilian contingent for preventive purposes.³

It should be noted that there are some impressive Pillar One initiatives taking place within the Asia Pacific in the form of Country Action Plans. For example, the Philippines recently held a national RtoP workshop with representatives from five key sectors: state/government, academe/research, civil society, media, and local government units. The resulting country action plan aims to raise awareness among each of these sectors by supplying them with basic knowledge of the RtoP concept, and

² To read the final report of the CSCAP Study Group on Regional Peacekeeping and Peacebuilding, see <http://www.cscap.org/uploads/docs/Peacekeeping/3PKMtg%20Dec%202006%20Exe%20Summary.pdf?phpMyAdmin=jBX72H9Re0blXKb%2CZ50SBIWGwq1>.

³ Study Group members emphasized that non-state actors should be similarly expected to uphold the gamut of RtoP principles, particularly if they expect to be treated as legitimate negotiating partners.

to develop constituencies who can advocate for RtoP in the domestic sphere. Cambodia is also moving very quickly toward developing its own Country Action Plan.⁴

Peacebuilding and the Peacebuilding Commission (PBC)

RtoP supporters find common purpose with the UN Peacebuilding Commission (PBC) in that the latter's agenda is aimed at ensuring that societies emerging from violent conflict do not become breeding grounds for mass atrocities. Moreover, the PBC's approach is consistent with RtoP Pillars One and Two; it takes a medium-to-long term country-specific approach to building state and societal capacity, and it enlists and coordinates assistance from a wide range of international political and financial bodies.

The PBC's mandate is currently limited to states emerging from severe violent conflict only. However, the Study Group and other RtoP advocates should consider how this mandate could be expanded so that the PBC could take a more proactive role at an earlier stage of a conflict cycle. For example, within the Asia Pacific, there are several states that could benefit from early PBC involvement. The region could also consider forming a regional-level peacebuilding commission that would work in partnership with the larger UN PBC. At a minimum, the Asia Pacific region can assist the PBC's work by devoting greater resources, perhaps at the track two level, to improving diagnosis and analysis of the causes and dynamics of violent conflict, including for specific conflicts in the region.

Preventive Diplomacy (PD)

Many parts of the world are embracing preventive diplomacy (PD) as a tool for preventing costly and prolonged international commitments in troubled areas. For the ARF to play such a role would require its members to reach a new consensus on – as well as a new definition of – PD so that it would be activated in instances where internal tensions could escalate into large-scale violence. Regional PD efforts by groups such as ASEAN or the ARF are probably more likely to enjoy a greater degree of trust and legitimacy than will international mediation efforts by extra-regional actors. In addition, PD is conceptualized in a way that allows for mediation options at all stages of a conflict. Going forward, the ARF should consider setting up a small team of recognized and esteemed experts who can be deployed on short notice to assist envoys to inter- and intra-state conflicts. It would be useful, moreover, to develop standard guidance, for example, by learning from how Africa and Europe have utilized PD to defuse or manage conflicts brewing in their own or other regions.

Since 2007, groups such as CSCAP have encouraged the ARF to be more proactive in relation to PD. Some of their suggestions include drafting a New Concept Paper, writing an ARF vision statement, discussing the creation of a future Risk Reduction Center, and creating an early warning role for the ARF Unit and the EEPs.⁵ However, it was not until their fourth meeting in December 2009 that the EEPs discussed these matters seriously. Having received a mandate from the ARF foreign ministers, the EEPs

⁴ For more information on RtoP processes at the country level, please see the Asia-Pacific Centre for the Responsibility to Protect country programs, at http://r2pasiapacific.org/index.php?option=com_content&task=view&id=80&Itemid=95.

⁵ See, for example, the final report of the 2007 CSCAP Study Group on Preventive Diplomacy, available at <http://www.cscap.org/index.php?page=preventive-diplomacy>.

identified possible roles for themselves, the Friends of the Chair (FoC), and the ASEAN Secretary-General. In terms of the program of work, the measures that were proposed were designed to do the following: build on existing Confidence Building Measures (CBMs); lead to the implementation of PD activities such as good offices, mediation, early warning, and fact-finding missions; and result in the establishment of PD mechanisms such as strengthening the ARF Unit, enhancing the role of the EEPs, applying the FoC, and enhancing the role of the ASEAN Secretary-General. Based on these proposals, the foreign ministers agreed at the 17th ARF in July 2010 that Senior Officials should develop an ARF work plan on PD, which taking into account ARF documents and recommendations from both track one and track two levels. There does appear to be an overall trend of moving in a more action-oriented direction, at least with respect to non-traditional security concerns.

But despite all of this, there is still a significant amount of political resistance to PD within the ARF. RtoP supporters should thus pursue smaller ways of promoting PD. For example, the ARF's Annual Security Outlook could be standardized to include internal security challenges, especially if these challenges are seen as having wider regional implications. For this, participants could be encouraged to provide regular briefings on domestic political situations in order to enable the appropriate type of discussion, perhaps in the Inter-Sessional Group on CBMs and PD. Some ARF participants might also want to sponsor expert seminars on RtoP under ARF auspices. The Study Group and others should explore the other modes of supporting RtoP, such as setting up small mediation teams or other initiatives located at the 'softer' end of the prevention-intervention spectrum.

Standby and Standing Response Capabilities

There have been calls at various times and from various quarters for a more robust rapid-response capability, both internationally and within the region. To be sure, there are cases in which a UN peacekeeping deployment may not be the best or only option; although such deployments enjoy broad-based legitimacy, they are also hamstrung by the long lead times (approximately 90 days) between finalizing a mandate and getting the mission on the ground. More often than not, by the time a UN peacekeeping mission arrives, the conflict will have evolved (making the original mandate somewhat obsolete), and conflict-related violence will have taken a serious toll on the local population.

There is therefore great value in being able to deploy a leaner force more rapidly, at least to manage the situation before a larger deployment arrives. Given the sensitivities in the Asia Pacific regarding military deployments, it may be more advisable to create a standing capability of civilian police and other humanitarian personnel. To be sure, such smaller-sized, rapidly deployable civilian missions have already found success in the region. These include, for example, the Aceh Monitoring Mission (AMM) and the Regional Assistance Mission to Solomon Islands (RAMSI). In addition, there is growing institutional capacity to support such an initiative, such as China's Civilian Peacekeeping Police Training Center (which also provides international training), Australia's International Deployment Group (IDG), the India-based International Association of Peacekeeping Training Centres (IAPTC), and the many nationally-based peacekeeping training centers throughout the Asia Pacific.

To move this idea forward, the region might consider initially creating a civilian standing capacity to respond to natural disaster situations. Once the capacity is operational, the region could revisit the question of whether its scope of operation could be expanded to also include response to RtoP crimes or other types of humanitarian situations.

Next Steps

The Study Group agreed to present the insights and suggestions made during its two meetings into a draft final report. At its third and final meeting, Study Group members will work toward a consensus on the report's precise wording, and will then submit a draft Memo for consideration at the June 2011 CSCAP Steering Committee meeting.

Annex A: World Summit Outcome Document, Paragraphs 138-140

In 2005, United Nations Member States endorsed the RtoP through their unanimous support for paragraphs 138-140 of the World Summit Outcome Document. The text of these three paragraphs reads 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 the responsibility and support the United Nations in establishing 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 of the United Nations, to help protect populations from 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 adequate and national authorities manifestly fail 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.

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