



CSCAP Study Group on the Responsibility to Protect (RtoP)

Scoping Meeting November 15, 2009

In attendance: Rizal Sukma, Carolina Hernandez, Pierre Lizee, Brian Job, Mely C. Anthony, Yang Yi, Xing Yi, Jim Veitch, Ron Rabel, Peter Cozens, Carl Baker, Dilhip Lahiri, Garry Ibrahim, Tang Siew Mun, Lina Alexandra, See Meng Cheng, Dk Noor Aquilah Pg Hj Mohd Ali Hanfiah, Ralph Cossa, Herman Kraft, Alan Chong, Jolene Anne Jerard, Tsutomu Kikuchi

Overview: The purpose of the scoping meeting is to settle key issues prior to the convening of the first full study group meeting. These issues include those related to participation, audience, and outstanding issues to be addressed at future meetings. A concept paper, which was circulated to all CSCAP member committees in advance of the present meeting, emphasizes three points that form the starting point for discussion.

- 1) The Responsibility to Protect has received universal endorsement by governments, most notably in the 2005 United Nations World Summit Outcome Document. However, much work remains to be done in terms of identifying the practical modalities for implementing it.
- 2) The RtoP has been defined in different ways, and has been seen by some as controversial. However, a global consensus has begun to emerge based on the work of the United Nations Secretary-General. The Secretary-General emphasizes prevention before intervention and maintains that RtoP involves three equally important pillars: the responsibility of the state to protect its own population from genocide, war crimes, ethnic cleansing and crimes against humanity, the duty of the international community to assist the state with its consent, and the international community's responsibility to take timely and decisive action, in accordance with international law and the UN Charter, when a state is 'manifestly failing' to protect its population.
- 3) Regional organizations have an important role to play in implementing the RtoP. To that end, the UN establishes different frameworks for regions to be engaged in sustained dialogue and debate on this matter. This final point constitutes a key rationale for the present study group.

As first orders of business, the group must address the following questions:

- 1) Who are the most suitable participants for the study group? Which types of voices should be included in its discussions?
- 2) What is the appropriate audience for this study group's work? How will the audience determine the type of report the study group produces, and what issues should these reports underscore?
- 3) What questions need to be directed to the UN Secretary-General's Special Adviser on issues related to RtoP, Mr. Edward Luck, who has been invited to attend the study group's first meeting?

On the issue of participation, three considerations were noted.

- The study group's work will benefit considerably from continuity of participation. All CSCAP member committees should therefore nominate suitable individuals who can commit to attending all three meetings. This continuity will ensure that discussion time in the second and third meetings is consumed by reviewing or re-hashing issues that have been covered in previous meetings. In addition, it will help to avoid a situation in which skeptics participate in the final meeting only, with the effect of turning the study group's work 'back to zero'.
- The study group should encourage the participation of experts who hold a diversity of opinions on RtoP. It is neither necessary nor particularly desirable to have a group comprised of only the like-minded. Rather, the key criteria for participation should be engagement in issues related to the concept or implementation of RtoP.
- The study group should exercise its option to invite experts beyond the immediate CSCAP membership. This could also include NGO and civil society representatives whose work pertains to RtoP-related issues.

On the issue of audience, the group noted that

- In accordance with CSCAP's mandate, the ARF should be the primary target of this study group's recommendations. The ARF foreign ministers' meeting is one possible starting point.
- However, the study group should not limit itself to only the ARF audience. Other bodies that may have an interest in this study group's work include the Asia-Pacific Economic Cooperation (APEC), the East Asia Summit, the ASEAN Intergovernmental Commission on Human Rights (AICHR), the broad community of CSCAP-affiliated experts (such as the CSCAP General Conference), and interested NGOs and members of civil society.

- For the ARF, the study group should aim for a CSCAP memorandum that receives approval from all member committees. If the draft memorandum falls short of full approval, the study group could consider proceeding with the '80% rule'. In this case, the co-chairs should ensure that the process for producing the memorandum remains transparent and inclusive by asking non-approving member committees to at least provide comments on the memorandum's wording. The study group might also consider producing its own memorandum, which is permissible under CSCAP rules.
- For other audiences, the study group should avail itself of the wide array of communication vehicles. One possibility is to follow the lead established by other CSCAP study groups in producing a "Chairman's Key Findings" report. This report could be distributed to official-level bodies like the ARF, not as a consensus document, but rather as a means of raising important points of discussion.

Outstanding questions for Mr. Edward Luck to address included:

- What are the key points regarding Chapter VIII (of the UN Charter), namely, the proper role for regional organizations in the RtoP? What is the UN's view on how regional organizations can contribute?
- In light of the RtoP's focus on crimes against humanity, will the study group need to consider how military doctrines may have to be re-shaped in relation to RtoP? (If yes, then the study group may want to think about including military representatives among its participants.)
- In terms of the recent UN General Assembly debate on RtoP, were there certain issues that were especially contentious? In the interest of having forward-looking discussions, can the study group safely navigate around some of those issues?

Meeting participants also **raised several substantive points for future consideration.**

- The study group will not re-visit debates about RtoP that were settled by the 2005 World Summit Outcome Document. However, it will acknowledge that there are still lingering issues relating to RtoP and the crimes it addresses (genocide, ethnic cleansing, war crimes, and crimes against humanity) are defined. Within the parameters of what was established by the 2005 document, there are of course some ambiguities. The study group could devote some time to addressing these ambiguities.

- The study group should focus on the full spectrum of issues (as reflected in the three pillars) related to RtoP implementation. However, the study group should acknowledge that taking the steps necessary for prevention can be challenging, and that the group's recommendations should not over-step CSCAP's mandate.
- The study group should be careful about framing the issue in a way that does not simply set the stage for future government-civil society confrontation and contestation. It should ensure that its language is as neutral and encouraging as possible.
- One of the first issues that the group should focus on is Pillar One.¹ At the simplest level, there are many states in the Asia Pacific which have not signed relevant human rights principles, such as that on racial discrimination. This seems relevant to discussions about RtoP.
- The study group should bear in mind that it is not beyond the realm of possibility that the types of crimes mentioned in the framework of RtoP could still happen within the Asia Pacific. Does the capacity for addressing these crimes already exist within the region? The study group should focus on issues such as how the ARF can be of assistance in carrying out this capacity under Pillars One and Two.

¹ The three pillars, in brief, are as follows: (Pillar One) that states have the primary responsibility to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity, and to prevent the occurrence of such crimes; (Pillar Two) that the international community has a duty to assist states in developing the capacity to protect their populations from these crimes; and (Pillar Three) that the international community has a responsibility to take timely and decisive action to prevent and halt these crimes when a state is manifestly failing to do so.