



CSCAP Study Group on the Responsibility to Protect (RtoP)

**First Meeting, February 26-27, 2010
Jakarta, Indonesia
Final Report**

EXECUTIVE SUMMARY

Background: Adopted unanimously by Heads of State and Government in 2005, the Responsibility to Protect (RtoP) is an internationally agreed concept for jointly dealing with four egregious crimes: genocide, war crimes, ethnic cleansing, and crimes against humanity. Regions are widely viewed as an indispensable partner in translating the global commitment to RtoP into actual policy, yet Asia-Pacific regional organizations have been largely silent in global-level discussions. Without a deeper level of engagement, implementation may proceed without the benefit of input from important regional bodies. As the region's leading track two (non-official) security organization, CSCAP is uniquely suited to explore what forms regional contributions could take.

The Study Group's tasks are thus four-fold:

1. to clarify the scope and intent of RtoP, including recent clarifications and refinements;
2. to assess regional organizations' capacity for actively contributing to implementation;
3. to identify areas of overlapping concern between the four RtoP crimes and sources of regional insecurity; and;
4. to generate a set of specific recommendations that advance the RtoP agenda while at the same time taking into account regional norms and sensitivities.

The regional organizations that could be instrumental in RtoP implementation include:

The ASEAN Regional Forum (ARF): The ARF is in many ways the most appropriate node for introducing RtoP into the region. Although its mandate is self-limited, it has expanded its focus to include non-traditional transnational security issues. How could the ARF be activated to play a more proactive part in peace-building and conflict prevention efforts in a manner that is consistent with RtoP aims? The Friends of the Chair (FoC) group and the Eminent and Experts Persons (EEP) group were proposed as two groups that could be activated for this purpose.

The Association of Southeast Asian Nations (ASEAN): ASEAN's evolving practice, as well as the blueprints for its own future development, suggests that there may be also scope for an ASEAN role in RtoP implementation. The Political and Security Community Blueprint, for example, contains several objectives that dovetail with the RtoP agenda. Directing these activities toward an RtoP focus may require a flexible interpretation of particular words and concepts. The most promising means for advancing the RtoP agenda may be to focus on implementation in 'bits and pieces' rather than RtoP as an inseparable collection of initiatives.

Some specific capabilities related to preventing the four atrocity crimes include:

Early Warning (EW) and Response: The World Summit Outcome Document commits the international community to encourage and help States to exercise the responsibility

and support the UN in establishing early warning capability.” There have been proposals within the ARF and ASEAN for establishing EW capability for inter-state conflicts, but no corresponding proposal for intra-state concerns. However, the ASEAN Secretariat has developed research capacity for analyzing various types of security situations. Could this be expanded to include the four RtoP crimes? How could the ARF complement this with its own EW system? Could the EEP and FoC play a more active role? Could regional NGOs play a role similar to African NGOs in that region’s early warning capability?

Protection of Civilians: While RtoP refers to “populations,” rather than “civilians,” there are areas of common concern with the civilian protection agenda, namely the protection of women, children, and internally displaced persons (IDPs). There are three possible entry points for strengthening civilian protection mechanisms in line with RtoP goals: using the terms of reference in relevant ASEAN documents, expanding on regional organizations’ demonstrated commitment to protecting civilians in humanitarian emergencies, and capitalizing on the growing practice of engaging civil society actors.

Regional Peacekeeping and Other Peace Support Arrangements: The UN Charter supports a role for regional arrangements in maintaining international peace and security, yet it is still uncertain what form that role should take. The focus should be on peaceful approaches such as dialogue, consultation, and attention to judicial matters, but the region should also buttress its ability to respond to worst-case scenarios by coordinating and enhancing where necessary its regional peacekeeping capabilities. A rapid reaction force is one possibility, particularly if it could be used for natural disaster response and relief.

Proposals for further ARF consideration include:

1. Establishing an open-ended Inter-sessional Meeting to examine ways of strengthening regional control of small arms and light weapons (SALW).
2. Establishing a regular dialogue with the United Nations.
3. Establishing region-to-region dialogue on both the track one and track two levels in order to identify best practices and lessons learned relating to RtoP implementation.
4. Establishing a voluntary peer review mechanism to assist states with implementing their primary responsibility to protect.
5. Utilizing diplomacy as a core element of its implementation of the RtoP.
6. Establishing a Risk Reduction Centre, housed within the ARF Unit.
7. Using the EEP to assist with early warning and diplomacy and to oversee the establishment of a framework for early warning that should be configured to conduct fact-finding and goodwill missions when requested by the ARF Chair.
8. Establishing a process of inter-sessional meetings to consider the development of regional capacity to deploy, at short notice, humanitarian aid, civilian support and/or peacekeepers when requested by the host state or UN Security Council.

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

Background: The Focus and Parameters of the Responsibility to Protect

Adopted unanimously by Heads of State and Government in 2005, the Responsibility to Protect (RtoP) is an internationally agreed concept for jointly dealing with four egregious crimes: genocide, war crimes, ethnic cleansing, and crimes against humanity. The concept is based on three non-sequential and equally weighted 'pillars'. First, states have the primary responsibility for protecting their populations against these crimes, as well as for preventing their occurrence. Second, the international community has a duty to assist states to develop the capacities necessary for protecting their populations from these crimes. Finally, the international community is also responsible for taking timely and decisive action to prevent and halt these crimes in the event that a state is manifestly failing to do so either because it is unwilling or unable.

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 two 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.*ⁱ

The RtoP was reaffirmed in 2006 by UN Security Council Resolution 1674 and again by Resolution 1894 in 2009. In 2009, the UN General Assembly noted its commitment to RtoP and began its consideration of the policies needed to implement it.

In all of these endorsements, global actors have agreed that regions are an indispensable partner in translating the global commitment to RtoP into actual policy. However, regional organizations in the Asia-Pacific region have been largely silent in global-level RtoP discussions. Without a deeper level of engagement, implementation may proceed without the benefit of input from important regional bodies such as the Association of Southeast Asian Nations (ASEAN) and the ASEAN Regional Forum (ARF). As the region's leading track two (non-official) security organization, the Council for Security Cooperation in the Asia Pacific (CSCAP) is uniquely suited to explore what forms regional contributions could take. To that end, the CSCAP Steering Committee approved a two-year Study Group focused on regional implementation of the RtoP. What follows is a summary of points raised in this group's first meeting.

As a starting point, the Study Group's co-chairs recognized four 'clusters' of activity that are identified in the World Summit agreement as areas where regional organizations have a particular role to play.ⁱⁱ

- 1) Regional arrangements can assist states in building their capacity to prevent genocide and mass atrocities.
- 2) These arrangements can also be used to develop early warning systems that galvanize a timely and appropriate response.
- 3) Regions can offer support to states verging on the type of crises that may give rise to mass atrocities.
- 4) Regional arrangements can facilitate stronger cooperation between the UN and regional organizations in applying both peaceful measures, as well as Chapter VII measures when peaceful means prove inadequate.

There was no dissension within the Study Group about these four areas and no concerns were raised by group members about the direction of the Co-Chair's concept paper on this matter. The Study Group's initial tasks were thus determined to be four-fold: first, to clarify the scope and intent of RtoP, including recent clarifications and refinements; second, to assess regional organizations' capacity for actively contributing to implementation of RtoP; third, to identify areas of overlapping concern between the four RtoP crimes and sources of regional insecurity; and; finally, to generate a set of specific recommendations that advance the RtoP agenda while at the same time taking into account regional norms and sensitivities.

The Study Group's first meeting succeeded in clarifying the scope and meaning of the RtoP and a range of principles and concrete areas in which regional arrangements in the Asia-Pacific might contribute. Towards the end of the meeting, one of the Co-Chairs

proposed that consensus had emerged within the group on ten key propositions. Group members were asked to identify propositions that could not be taken as consensus views, but no members demurred. Those ten propositions are:

1. The nature and scope of the RtoP is set out in paragraphs 138-140 of the World Summit Outcome Document and the primary RtoP rests with the state.
2. The RtoP is consistent with existing international law and especially with the UN Charter.
3. Regional arrangements, including those in the Asia-Pacific region, have a role to play in implementing the RtoP.
4. The ARF should play a role in implementing the RtoP.
5. This role should include fostering dialogue between the Asia-Pacific region and the UN, and between the Asia-Pacific region and other regions.
6. Given the development of the UN Office for the Prevention of Genocide, the Asia-Pacific should develop an early warning capacity to cooperate with the UN office.
7. Regional arrangements should support national capacity building, especially in areas relating to peacebuilding and the rule of law.
8. There should be enhanced cooperation between regional arrangements in the Asia-Pacific and the UN Security Council in matters relating to international peace and security and RtoP.
9. Regional arrangements are well placed to resolve local disputes as provided for by the UN Charter.
10. There is another important proposition, that the primary responsibility to protect resides with the state, which was not widely discussed in the first meeting. This relates to Pillar One of the RtoP and will be discussed in detail at the Study Group's second meeting. This second meeting will canvas the group's support for incorporating the state's primary responsibility to protect into a list of agreed propositions and will focus on the measures that states might adopt to implement their primary responsibility, emphasizing that regional activities under RtoP's Pillar Two are primarily concerned with assisting the state.

Reflecting a consensus of the Study Group, these ten propositions will inform more detailed analysis of specific policy recommendations in Meetings 2 and 3.

Evolution and Maturation of the RtoP Concept

(The following section, “Evolution and Maturation of the RtoP Concept,” was contributed primarily by Dr. Edward Luck, the UN Secretary-General’s Special Adviser on the Responsibility to Protect.)

The development of RtoP was prompted by recognition of the international community’s failures to act decisively in the 1990s to end the mass atrocity crimes in Rwanda and the former Yugoslavia, as well as the emergence of other concepts such as ‘sovereignty as responsibility’ (developed by the UN’s Special Representative on Internal Displacement, Francis Deng, now the Secretary-General’s Special Adviser on the Prevention of Genocide) and ‘human security’. However, UN Secretary-General Kofi Annan’s 1999 notion of “humanitarian intervention” as the appropriate policy response was resisted by many in the developing world who openly suspected that this framework would be used as a pretext by some states to interfere in the internal affairs of another.

The International Commission on Intervention and State Sovereignty’s (ICISS) 2001 report provided the first corrective to these charges and coined the term “the responsibility to protect.” Its authors emphasized the need to focus not only on reacting to the commission of mass atrocity crimes, but also on preventing their occurrence in the first place.ⁱⁱⁱ Moreover, the ICISS report marked the first step away from the international community’s perception of its ‘right’ to intervene, and toward the consensus (which was later solidified in the 2005 Outcome Document) that it is the ‘responsibility’ of states to fulfill the duties inherent in state sovereignty. Though these conceptual adjustments helped to reframe the international debate in important ways, they failed to fully dispel lingering concerns in some quarters about RtoP possibly being used as a tool for intervention by the powerful into the domestic affairs of weaker and poorer states.

The 2005 UN World Summit marked an important breakthrough in finding broad international consensus on the RtoP, as captured in paragraphs 138-140 of the Outcome Document. Although some observers initially viewed the wording of these paragraphs as a dilution of the principle’s core intent, it in fact constituted a substantively stronger and more operational version of RtoP. The improvement comes from the emphasis on several new elements.

- Paragraphs 138 and 139 specify the scope of application to *only* the four crimes of genocide, war crimes, ethnic cleansing, and crimes against humanity. This commits the international community to taking a “narrow but deep” approach. In other words, although the definition excludes many other types of humanitarian situations such as natural disasters, it also allows for more sustained and targeted attention to those cases that fall clearly within the scope of the four crimes.
- By their endorsement of these two paragraphs, heads of state and government committed to preventing the incitement, as well as the commission, of these four crimes.
- Whereas earlier articulations of RtoP noted states’ responsibility to protect their “citizens,” paragraphs 138 and 139 clearly state that protection should be

extended to “populations,” an important clarification that state responsibility extends to *all* persons residing within their territory.

- Paragraph 139 stresses the need for enhanced UN-regional cooperation, including for the purpose of assisting states to build their capacity to prevent and protect. It also stresses that actors should make use of the full range of tools available under Chapters VI, VII, and VIII of the Charter, with the provision that these activities must fall clearly within the parameters of what is permitted under the Charter.

In his 2009 report, the UN Secretary-General underscored the international community’s primary role in *preventing* mass atrocity crimes, rather than waiting to respond to crises only once the situation has escalated. He also clarified that the principle should apply not only to states operating within their own territories, but also to those states that may be occupying territory other than their own, as well as to non-state groups that control territory. Finally, he reiterated the need for strong partnerships between the UN and regional arrangements. From the UN’s perspective, a constructive regional role would be one in which implementation is carried out in accordance with local norms, and one that uses the region’s advantage in building trust with local actors. This regional role could be informal, as tends to be the practice in the Asia-Pacific. Moreover, policies that contribute to the ultimate goal of mass atrocity prevention do not necessarily need to bear the formal RtoP label.

Following on this final point, some possible regional contributions include:

- 1) providing RtoP-relevant information and assessment for decision makers at the global (UN) level;
- 2) supporting operations under Chapters VI and VIII of the UN Charter, such as mediation, fact-finding, and preventive peacekeeping deployments, including those with robust police and civilian components;
- 3) conducting peer review exercises - the African Union (AU) and UN Human Rights Council (HRC) are two possible models, but by no means the only options, as such assessments can also be conducted by informal agreement among neighbors;
- 4) responding to emergencies in accordance with Chapters VII or VIII, including diplomatic activities, economic or other types of sanctions, or military measures; and
- 5) assisting states in enacting legislative or institutional change, building political and public support for the RtoP, and enhancing overall peacebuilding capacity, as consistent with RtoP’s aims.

How well are the ARF and ASEAN equipped to carry out these responsibilities? Are there specific points of convergence between the stated goals of these (and other) regional bodies, and the RtoP agenda?

The ASEAN Regional Forum (ARF)

As the Asia Pacific's most inclusive security-oriented body, the ARF is in many ways the most appropriate node for introducing RtoP into the region.^{iv} However, its mandate is also self-limited. The ARF was originally created in 1994, within the context of post-Cold War uncertainties, as a mechanism for boosting cooperative security between states. Its founders envisioned that it would eventually transition from a focus on confidence building to a deeper level of regional cooperation - preventive diplomacy (PD). However, translating this general agreement into practical cooperation has proven difficult. Furthermore, the ARF defines PD in a way that generally precludes a regional role in containing and resolving member states' internal conflicts. Given these constraints, can the ARF play a role in RtoP implementation that is both constructive *and* concordant with existing norms and preferences? What forms might this role take?

There are encouraging, though modest, signs that the ARF is willing to look beyond the realm of traditional inter-state security matters. In recent years, it has expanded its focus to include non-traditional transnational security issues such as maritime security, counter-terrorism, and natural disaster relief and response. In fact, the ARF conducted its first ever joint field exercise for disaster relief in 2009. There have also been some suggestions of eventually developing an early warning capability, albeit with two provisions: that it would be enacted only once the ARF transitions to the PD stage, and that it would apply only to cases in which inter-state conflict might threaten wider regional stability, despite the evidence to suggest that intra-state conflict currently poses the greater threat.

Can these initiatives serve as building blocks for more robust regional participation in preventing and responding to the four mass atrocity crimes? Given that the ARF has not explicitly engaged with the RtoP concept (even though all of its members have endorsed it at the global level), how could it be activated to play a more proactive part in peace-building and conflict prevention efforts in a manner that is consistent with RtoP aims? Currently, there are two such groups which could be utilized for this purpose:

- 1) The *Eminent and Experts Persons group (EEP)*, whose role is to present “non-binding and professional views or recommendations to the ARF participants, when they are requested to undertake in-depth studies and researches or serve as resource persons in ARF meetings on issues of relevance to their expertise”^v; and
- 2) The *Friends of the Chair (FoC)* group, comprised of the incoming ARF chairing country's foreign minister, the foreign minister of a non-ASEAN ARF country, and the foreign minister of the immediate past ARF chairing country, and whose role is to advise the Chair when the ARF is not in session . (Unlike the EEP, the FoC has yet to be invoked.)

The ARF's Inter-sessional Support Group on Confidence Building Measures and Preventive Diplomacy (ISG on CBMs and PD) may be a suitable venue for deliberating over whether or how best to mobilize the EEP and FoC. As noted above, if either of these groups were to be invoked for RtoP-related activities, this would not require the ARF to

adopt RtoP language. In fact, it may be advisable to proceed using modified language in order to allow members to first establish a comfort level with this enhanced role. Furthermore, given the ARF's past reluctance to take on an active security cooperation role, it may be wise to begin with relatively low-commitment initiatives. For example, it could also build on the growing practice of member states (Indonesia being one recent example) providing background briefings on domestic security conditions. This practice could be expanded on a voluntary basis into a peer review exercise akin to what is envisioned for RtoP.

Finally, in response to the UN's call for stronger partnerships with regional organizations, the ARF could strengthen its relationship not only with the Security Council, but also with the Peacebuilding Commission (PBC) and General Assembly (see Regional Peacekeeping and Other Peace Support Arrangements section below). From the perspective of many Asian states, the General Assembly is far more representative of the region than the Security Council. Moreover, the General Assembly has engaged in some fact-finding missions that could be gradually introduced into ARF practice.

The Association for Southeast Asian Nations (ASEAN)

Like the ARF, the Association of Southeast Asian Nations (ASEAN) is also potentially self-limited in playing an active role in RtoP implementation. Although the organization has recently created the ASEAN Intergovernmental Commission on Human Rights (AICHR), much of the language used in this and other ASEAN documents appears to be incongruent with RtoP, as these documents continue to emphasize "respect for sovereignty" and "non-interference in the internal affairs of states" as paramount values. In addition, ASEAN documents make almost no reference to the four crimes that constitute RtoP's focus: genocide, war crimes, ethnic cleansing, and crimes against humanity.

However, a closer examination of ASEAN's evolving practice, as well as the blueprints for its own future development, tell a somewhat different story. The ASEAN Political and Security Community Blueprint contains several objectives that in fact dovetail with the RtoP agenda. These include

- 1) The promotion and protection of human rights in accordance with the ASEAN Charter, the UN Charter, the Universal Declaration of Human Rights, and the Vienna Declaration and Programme of Action.
- 2) The promotion of peace and stability through:
 - tolerance and respect for diversity;
 - conducting dialogue among different groups; and
 - pursuing poverty alleviation and narrowing development gaps.

- 3) The promotion of norms that enhance ASEAN defense and security cooperation by
 - developing and publishing an ASEAN Security Outlook;
 - holding voluntary briefings on regional political and security developments; and
 - developing an ASEAN early warning system (based on existing mechanisms) to prevent the occurrence and/or escalation of conflicts.
- 4) Support for conflict resolution and the pacific settlement of disputes through
 - promoting the ASEAN Treaty of Amity and Cooperation (TAC);
 - strengthening existing modes of pacific settlement of disputes;
 - undertaking conflict management and conflict resolution research studies; and
 - developing ASEAN modalities for good offices, conciliation and mediation.
- 5) The strengthening of research activities on peace, conflict management, and conflict resolution by identifying priority research topics, with a view to
 - providing recommendations on promoting peace, conflict management and conflict resolution;
 - enhancing existing cooperation among ASEAN think tanks to study peace, conflict management and conflict resolution;
 - undertaking studies to promote gender mainstreaming in peace-building, peace process, and conflict resolution; and
 - developing a pool of experts from ASEAN Member States as resource persons to assist in conflict management and conflict resolution activities.^{vi}

Directing these activities toward an RtoP focus may require a flexible interpretation of particular words and concepts. In addition, because the ASEAN Political and Security Community Blueprint is not written explicitly with RtoP in mind, it may prove challenging to advance the RtoP agenda in its entirety. The most promising method of making progress may therefore be to focus on implementation in ‘bits and pieces’ rather than as an inseparable collection of initiatives.

In addition to noting the relative capacities of regional arrangements, there are at least three issues areas that provide entry points for more determined regional support for RtoP: early warning and response, civilian protection, and peacekeeping and other peace-support operations.

Early Warning and Assessment (EW)

Early warning and assessment (EW) capability is a tool for alerting governments, inter-governmental organizations, and (sometimes) NGOs to situations of escalating violence and instability. It is based on high-quality data that is collected systematically and analyzed in ways that enable informed policy on how to avert threats to human life. EW can be used not just to react to near-term crises, but also to detect longer-term ‘structural’ trends that may require more of a preventive focus.

Paragraph 138 of the World Summit Outcome Document commits the international community to “encourage and help States to exercise the responsibility and support the United Nations in establishing early warning capability.” Several bodies within the UN system already collect data for EW purposes, including the UN Development Programme (UNDP), the Office for the Coordination of Humanitarian Affairs (OCHA), the Department of Political Affairs (DPA), and the United Nations Children’s Fund (UNICEF). At the regional level, however, neither the ARF nor ASEAN has its own security-focused EW system.^{vii} There have been proposals within both bodies for establishing EW capability for inter-state conflicts, but there has been no corresponding proposal for addressing intra-state concerns, even though several countries in the region remain prone to the type of tension and instability that could evolve into mass atrocity situations.

This is not to say that there is no regional EW capacity. The Asian Development Bank (ADB) and several individual governments have such systems that are tailored to their own set of concerns. In addition, the ASEAN Secretariat has developed research capacity for analyzing various types of security situations, including those of a longer-term and more structural nature. Could the latter in particular be expanded to include the four RtoP crimes? How could the ARF complement this with its own early warning system? For example, could the EEP and FoC play a more active and constructive role in this regard? Could there also be a role for regional NGOs, similar to the vital role that African NGOs have played in that region’s early warning capability?

The Protection of Civilians

While RtoP refers to “populations,” rather than “civilians,” there are nonetheless areas of common concern with the civilian protection agenda, namely the protection of women, children, and internally displaced persons (IDPs). The Asia-Pacific region is the site of several intractable intra-state conflicts that leave these groups potentially vulnerable to RtoP crimes. There is thus a need for the region to develop stronger civilian protection mechanisms that would apply not only to state actors, but also to non-state armed groups, national and international NGOs, humanitarian organizations, and the private sector. All of these actors (particularly states) have at their disposal several frameworks for strengthening civilian protection measures. This includes domestic human rights law, international humanitarian law (IHL), and general international law. But despite some

notable progress – namely, in Indonesia and the Philippines - there are still significant region-wide gaps in implementing these frameworks.

Nonetheless, there are three possible entry points for strengthening civilian protection mechanisms in line with RtoP goals. First, supporters might consider the terms of reference contained in two ASEAN documents: the Commission for the Protection and Promotion of the Rights of Women and Children, and the Declaration on the Protection and Promotion of the Rights of Migrant Workers. In addition, the ASEAN Political and Security Community Blueprint could also incorporate the types of legal institutions and information exchange practices that would bolster civilian protection efforts.

Second, Asia-Pacific regional organizations have in recent years demonstrated a commitment to protecting civilians in humanitarian emergencies. For example, the ASEAN Agreement on Disaster Management and Emergency Relief (AADMER), which works with global actors such as UN OCHA and the International Committee of the Red Cross (ICRC), is now a legal agreement. Some of the elements contained in AADMER, such as training in human rights practices, could developed so as to be consistent with RtoP concerns.

Finally, the region should capitalize on the growing practice of civil society engagement. In Southeast Asia, there is an encouraging precedent, albeit one that is limited and imperfect, of ad hoc, back-channel mediation. The International Monitoring Team’s (IMT) work in Mindanao, and the fairly direct involvement of non-state groups such as the Centre for Humanitarian Dialogue (CHD) are positive examples of regional states’ receptiveness to this type of mediation and support. As a regional track two organization, CSCAP itself might be in a position to play a similar type of role.

Regional Peacekeeping and Other Peace Support Arrangements

Although Articles 52 – 54 of the UN Charter clearly support a role for regional arrangements in maintaining international peace and security (for the precise wording, see Annex A), there is still some question as to what forms that role should take. To help frame the discussion, China put forth during its January 2010 presidency of the Security Council a concept paper that contained several relevant points. While not specifically invoking the RtoP, these suggestions are still useful for RtoP purposes.

- 1) Member States should identify and make effective use of their respective “comparative advantages” in the maintenance of peace and security, in particular the prevention, management and resolution of conflicts;
- 2) Regional organizations are advantaged in devising “early warning mechanisms,” that can enable “early responses to disputes and emerging crises,” and can “encourage the countries concerned in the region to resolve differences and problems peacefully through dialogue, reconciliation, negotiation, good offices and mediation”; and

- 3) The UN and regional organizations should “respond collaboratively” to the increasing demand for deployment of UN peacekeeping missions.^{viii}

How can these ideas be further operationalized? As emphasized above, the focus should be on peaceful approaches such as dialogue, consultation, and attention to judicial matters. But the region should also buttress its ability to respond to worst-case scenarios by coordinating and enhancing where necessary its regional peacekeeping capabilities. Many countries in the Asia Pacific are major contributors – of personnel, finances, and equipment - to UN peacekeeping missions. Groups such as the ARF should also begin discussions on how to use this “comparative advantage” to augment the region’s contribution to its own and other regions’ security. One specific idea for further consideration is the establishment of a stand-by force that could be available for deployment at the UN’s request to crises both inside and outside the region. More specifically, this could take the form of a Rapid Reaction Force for dealing with natural disaster response and relief. Such proposals may be raised for discussion in the General Assembly rather than the Security Council, since there are far more major troop contributing nations in the General Assembly than there in the Security Council.

UN Charter Articles 34 and 54 may provide an interesting regional-global bridge. Article 34 (see Annex B), for example, authorizes the Security Council to “investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.” This Article does not preclude the necessity of including in its realm of concerns some cases of internal disputes, particularly as these can sometimes engulf outside actors. Article 54 states that the Security Council should be kept informed in an on-going manner on what regional organizations and regional arrangements are doing. Combining these two articles creates opportunities for the type of regional-global and organization-to-organization interface that has been regularized, in the case of the African Union, with positive results.

Proposals for the Regional Implementation of RtoP

(Note: The section is excerpted from Co-Chair Alex Bellamy’s paper entitled “Implementing the Responsibility to Protect: The Role of the ASEAN Regional Forum.” Interested readers are strongly encouraged to see the full paper, found at <http://www.cscap.org/index.php?page=responsibility-to-protect>, for elaboration on the main points presented here.)

Advancing the RtoP in the Asia-Pacific should be carried out in ways that have already received some degree of regional endorsement, whether as suggestions emerging out of ARF discussions, proposals by regional governments, or CSCAP Study Group recommendations. The following proposals have not only received such endorsement, but are also consistent with existing international law and the principle of non-interference. They are also predicated either on the voluntary consent of states or on the assumption of an authorizing mandate by the UN Security Council. The list is by no means exhaustive,

either in terms of operational areas or in terms of which regional or sub-regional organization should be involved. Rather, these proposals are meant to stimulate discussion on the concrete ways in which the Asia-Pacific can contribute to regional implementation of the RtoP.

- 1) **The ARF should establish an open-ended Inter-sessional Meeting to examine ways of strengthening the control of small arms and light weapons (SALW) in the Asia-Pacific.** The establishment of an open-ended Inter-sessional Meeting on SALW would represent both a natural next step for the ARF and a key cornerstone of its contribution to the implementation of RtoP, particularly given a) the clear connection between SALW, regional instability, and the potential commission of genocide, war crimes, ethnic cleansing, and crimes against humanity, including by non-state actors, and b) the work already undertaken by the ARF on this issue and the strong declaratory support for the UN Programme of Action on SALW.
- 2) **The ARF should establish a regular dialogue with the UN,** including a) an annual dialogue with the Security Council, b) a consultative mechanism to monitor and advise the Peacebuilding Commission, and c) official-level desk-to-desk dialogue between the ASEAN Secretariat/ARF Unit and UN Secretariat, Funds and Programs, and Specialized Agencies.
- 3) **Region-to-region dialogue should be established on both the track one and track two levels in order to identify best practices and lessons learned relating to RtoP implementation.** The African Union (AU) and Organization of American States (OAS), for example, are developing their own sophisticated regional architectures replete with early warning mechanisms, and in the case of the AU, a stand-by force for peacekeeping operations.
- 4) **The ARF should establish a voluntary peer review mechanism to assist states with implementing their primary responsibility to protect.** Such a mechanism would provide states with a forum to present relevant reports and plans, and to learn from the experiences of other states. As the UN Secretary-General has noted, there is no single template for implementing RtoP; however, some valuable recent examples include the decision by the Philippines to become an observer at the Organization of Islamic Conferences (OIC) in order to learn and seek its assistance with conflict resolution in Mindanao, and the establishment of a body in Kazakhstan to manage potential ethnic tensions resulting from the local effects of the global economic downturn.
- 5) **The ARF should utilize diplomacy as a core element of its implementation of the RtoP.** With assistance from the ARF Unit, the ARF Chair should appoint high-level figures to serve as ARF envoys when requested. It is worth noting that the use of diplomacy by regional arrangements and the UN for the purpose of preventing genocide, war crimes, ethnic cleansing and crimes against humanity was *explicitly* agreed to by Heads of State and Governments (including all ARF

participants) at the 2005 UN World Summit. Should the ARF and other regional bodies choose not to utilize diplomacy to prevent the four crimes, it will greatly reduce the likelihood that the region will be able to work consensually with the relevant parties to resolve crises before they escalate and increase the need for direct Security Council involvement. The region could consider positive examples from the AU's recent success in mediating and resolving crises relatively early in their inception.

- 6) **The ARF should establish a Risk Reduction Centre, housed within the ARF Unit.** In addition to tasks already identified by the ARF Concept Paper and by CSCAP, the Risk Reduction Centre should do the following: a) establish a transparent and reliable method of early warning analysis that includes safeguards against politicization and makes use of local knowledge; b) conduct risk analysis of genocide, war crimes, ethnic cleansing, and crimes against humanity; c) provide timely advice to the ARF Chair, ARF Ministerial Meetings and Inter-sessional Meetings as requested; d) cooperate with the Office of the Special Adviser to the UN Secretary-General on the Prevention of Genocide; and e) Share best practices and lessons learned with the UN and other regions. If the ARF is unwilling to establish such a Centre, then CSCAP should mandate a Study Group to explore the potential for establishing a Risk Reduction Centre as a track two initiative under CSCAP auspices.
- 7) **The ARF should utilize the EEP to assist with early warning and diplomacy. The EEP should assist and oversee the establishment of a framework for early warning and should be configured to conduct fact-finding and goodwill missions when requested by the ARF Chair.** In particular, the EEP could play two roles: first, it could assist the Risk Reduction Centre in developing a framework for early warning, ensuring its reliability and transparency, and overseeing its implementation, including recommending revisions where appropriate; and second, it could assist the ARF Chair by conducting fact-finding and goodwill missions at the Chair's request.
- 8) **The ARF should establish a process of inter-sessional meetings to consider the development of regional capacity to deploy, at short notice, humanitarian aid, civilian support and/or peacekeepers when requested by the host state or UN Security Council.** This process should be supported by the establishment of an open-ended CSCAP Study Group to provide detailed advice and recommendations about each step.

The implementation of any or all of these proposals would foster regional ownership of RtoP and would ensure that it is localized in a manner consistent with regional norms. These recommendations also help to establish formal pathways for cooperation between the UN and regional institutions, and provide ways of leveraging additional investment and technical support. It awards the region a stronger voice at the UN and a greater capacity to shape the direction of RtoP. Finally, regional engagement enhances key national and regional capacities and therefore enables states to build the capacity they

need to exercise and fulfill their primary responsibility to protect and increases the potential for ‘Asia-Pacific solutions to Asia-Pacific problems’.

By way of a summary, the following resources would be required to implement the aforementioned recommendations:

- 1) **Funding for additional meetings and travel** (to cover an inter-sessional group on SALW; UN dialogue; region-to-region dialogue; a voluntary peer review mechanism; EEP fact-finding and goodwill missions; an open-ended experts group and study group on humanitarian aid, civilian support and peacekeeping).
- 2) **Modest enhancements to the capacity of the ARF Unit** (establishment of the Risk Reduction Centre, based on the UN model, would require up to four full-time staff and associated costs; a single additional appointment to support the voluntary peer review process; a single additional appointment to develop, maintain and administer the register of ‘elders’; a single additional appointment to manage ARF-UN and region-to-region dialogue).
- 3) **Additional investment in CSCAP** (support for track two region-to-region dialogue; an open-ended study group on humanitarian aid, civilian support and peacekeeping; and support for a Track Two Risk Reduction Centre and the establishment of an exploratory Study Group if necessary).
- 4) **Modest expansion of the multinational activities undertaken by peacekeeping, policing and peacebuilding training centres.** Additional future investment in regional deployable capacity will be offset by efficiency gains accrued through coordination.

Conclusion

The first meeting of the CSCAP Study Group on the Responsibility to Protect succeeded in accomplishing its aim of clarifying the nature and scope of the RtoP, identifying areas in which regional arrangements in the Asia-Pacific can make a positive contribution to implementing this principle, and finding points of consensus on key principles and ideas that should guide the process of implementation. The challenge for the Study Group’s second meeting, to be held in Manila in September 2010, will be to develop more detailed proposals relating to the four critical areas identified in the Co-Chairs’ report. These are:

- 1) Assisting states to build their capacity to prevent genocide, war crimes, ethnic cleansing and crimes against humanity.
- 2) Developing a regional early warning system and supporting the efforts of the UN’s Office of the Special Representative for Genocide Prevention
- 3) Providing support to states in crisis.
- 4) Facilitating stronger cooperation between the UN and regional organizations in applying peaceful measures and measures under Chapter VII of the UN Charter.

Proposals will be developed in a manner that is consistent with the ten principles and ideas agreed by the Study Group and will focus especially on the role of the ARF, ASEAN and CSCAP itself, but will also include other arrangements where suitable.

ⁱ See <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement>, p. 30.

ⁱⁱ The Co-Chairs of the CSCAP Study Group on the Responsibility to Protect (RtoP) are CSCAP Australia, CSCAP Canada, CSCAP Indonesia, and CSCAP Philippines.

ⁱⁱⁱ The ICISS report can be accessed at <http://www.iciss.ca/report-en.asp>.

^{iv} ARF members include: Australia, Bangladesh, Brunei Darussalam, Cambodia, Canada, China, European Union, India, Indonesia, Japan, Democratic Peoples' Republic of Korea, Republic of Korea, Laos, Malaysia, Myanmar, Mongolia, New Zealand, Pakistan, Papua New Guinea, Philippines, Russian Federation, Singapore, Sri Lanka, Thailand, Timor Leste, United States, and Vietnam.

^v See Co-Chairs Paper on the Terms of Reference for the ARF Experts/Eminent Person (EEPs) <http://www.aseansec.org/3656.htm>.

^{vi} For the full text of the ASEAN Political and Security Community Blueprint, see <http://www.aseansec.org/22337.pdf>.

^{vii} The Pacific Islands Forum (PIF) does not have an early warning capability, but it does have a Research Programme on Conflict.

^{viii} See "Letter dated 4 January from the Permanent Representative of China to the United Nations addressed to the Secretary-General," <http://www.china-un.org/eng/zt/scchina201001/P020100112268106189187.pdf>.

Annex A: UN Charter Chapter VIII, Articles 52 – 54 – Regional Arrangements

Article 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.
2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.
3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.
4. This Article in no way impairs the application of Articles 34 and 35.

Article 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, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.
2. The term enemy state as used in paragraph 1 of this Article applies to any state which during the Second World War has been an enemy of any signatory of the present Charter.

Article 54

The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.

Annex B: UN Charter Chapter VI, Articles 33 – 38, Pacific Settlement of Disputes

Article 33

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.
2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

Article 34

The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

Article 35

1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.
2. A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.
3. The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.

Article 36

1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.
2. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.

3. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the [Statute of the Court](#).

Article 37

1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.
2. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

Article 38

Without prejudice to the provisions of Articles 33 to 37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute.

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