



# **Council for Security Cooperation in the Asia Pacific (CSCAP)**

## **Study Group on the Responsibility to Protect (RtoP)**

### **Final Report**

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## Executive Summary

The twentieth century was marked by immense human progress but was also punctuated by episodes of grave inhumanity. At the conclusion of its third and final meeting, held in Phnom Penh, the CSCAP Study Group on the Responsibility to Protect (RtoP) visited the Tuol Sleng genocide museum, site of one of the century's worst crimes. During the Khmer Rouge's reign of terror in Cambodia, up to 17,000 people were tortured and killed at Tuol Sleng. 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. Recognising this legacy, the largest ever meeting of heads of state and government endorsed the Responsibility to Protect (RtoP) concept in 2005.

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 purpose 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 (para. 138).

II: The international community's responsibility to assist the state to fulfil its responsibility to protect (para. 139).

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 (para. 139).

The CSCAP Study Group on RtoP was mandated by the CSCAP Steering Committee in Kuala Lumpur in June 2009 to examine the concept and 'explore the implications of this new norm for regional actors and organisations'. The Group was also tasked with 'providing policy recommendations regarding possible regional contributions to the global debate surrounding the implementation of RtoP'. In fulfillment of this mandate, the present report 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 Group concluded 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. The Group also concluded 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 Group found 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.

The Group identified 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 the crimes witnessed at Tuol Sleng. In particular, the Group recommends:

- ***Enhanced partnership between the United Nations and the Asia Pacific region***, including strengthened high-level dialogue, officials-level cooperation, and joint training.
- ***The establishment of a regional risk reduction centre*** to provide early warning and assessment of situations likely to result in the commission of genocide, war crimes, ethnic cleansing and crimes against humanity.
- ***The strengthening of regional capacity to employ diplomacy, mediation and other consensual measures*** to prevent the escalation of crises into situations that might give rise to the four RtoP crimes.
- ***Working towards the establishment of a regional standing capacity for preventing and responding to genocide, war crimes, ethnic cleansing and crimes against humanity.***
- ***The provision of voluntary background briefings by states and the establishment of regional mechanisms to support national capacity building*** aimed at strengthening the capacity of states to fulfil their responsibility to protect.

The protection of future generations from genocide, war crimes, ethnic cleansing and crimes against humanity depends on the extent to which progress is made to deliver on the commitment to RtoP. As such, the final part of the report identifies practical pathways for beginning to translate RtoP from words to deeds. In particular, it calls for the convening of an ARF Experts Meeting to consider the recommendations made in this report and prepare proposals for implementing RtoP in the Asia Pacific region that would help guide the region's ministerial-level discussions. It also calls for action by the UN, individual governments and Track Two groupings.

The CSCAP Study Group on RtoP has identified a meaningful regional consensus on RtoP, practical steps for strengthening the region's capacity to prevent and respond to

genocide, war crimes, ethnic cleansing and crimes against humanity, and pathways for implementation. The challenge now is to deliver on the commitment and ensure that the region never again hosts the inhumanity witnessed at Tuol Sleng.

### **Box 1: List of Recommendations**

*For national governments:*

1. National governments should consider appointing an official to serve as a focal point for RtoP.
2. Resources should be devoted to raising awareness about RtoP among states and societies.
3. Governments should use education to inculcate the skills and values needed to resolve disputes peacefully.

*For regional arrangements in the Asia Pacific:*

4. The ARF should 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.
5. The ARF could consider strengthening its capacity to employ diplomacy to mediate and resolve crises before they escalate.
6. The ARF should 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.
7. ARF participants should consider providing voluntary background briefings.
8. The ARF should consider establishing an Inter-Sessional Meeting on Small Arms and Light Weapons.
9. The ARF should establish a consultative mechanism to monitor and advise the UN Peacebuilding Commission and support national capacity building to prevent the four RtoP crimes.
10. The ARF could consider strengthening the Eminent and Experts Persons Group so that it may play a role in implementing 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.
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.

# Introduction

1. In the aftermath of the Second World War and the horrors of the Holocaust and the commission of war crimes on an unprecedented scale, the international community came together to declare 'never again'. Governments agreed that they would cooperate to prevent the commission of genocide and punish the perpetrators. They agreed to new laws governing the use of force and protection of civilian populations, stating that the deliberate killing, displacement or mistreatment of non-combatants in international and domestic armed conflict and in peace time was criminally prohibited. They also pledged to encourage compliance with the law. These modern legal innovations reflected deep seated shared ethical beliefs.

2. Sadly, states and societies have sometimes failed to live up to their noble aspirations and ethical expectations. Genocide, war crimes, ethnic cleansing and crimes against humanity recurred with disturbing frequency after 1945 and despite voicing horror at the crimes, the international community often failed to prevent them or to adequately protect the victims. These crimes were not limited to one part of the world. They affected West and East, South and North. The Asia Pacific region witnessed conscience shocking inhumanity in its own neighbourhood when the Khmer Rouge seized power in Cambodia in 1975 and unleashed unspeakable horrors on the people of that country.

3. The Responsibility to Protect was unanimously adopted by world leaders at the 2005 World Summit. Governments recognised their primary responsibility to protect their own populations from genocide, war crimes, ethnic cleansing and crimes against humanity and promised to assist each other to fulfil this responsibility and to protect populations when governments manifestly failed to do so. This report, produced by the Council for Security Cooperation in the Asia Pacific (CSCAP) Study Group on the Responsibility to Protect sets out practical ways in which regional arrangements in the Asia Pacific and the United Nations can work together to translate this shared commitment to protect populations from acts of conscience-shocking inhumanity into practice, in a manner consistent with the priorities, values and principles that are cherished by the governments and peoples of the Asia Pacific region.

4. The Responsibility to Protect (RtoP) principle 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 purpose of the UN Charter.

5. The RtoP was unanimously agreed by the entire membership of the United Nations at the largest ever gathering of Heads of State and Government, the 2005 World Summit. As agreed by UN Member States, the RtoP concept 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 (para. 138).

II: The international community's responsibility to assist the state to fulfil its responsibility to protect (para. 139).

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 (para. 139).<sup>1</sup>

6. This concept had its roots in a number of initiatives. These include the rights and duties enumerated in the 2000 Constitutive Act of the African Union (Articles 4(h) and 4(g)); the concepts of 'human security', 'comprehensive security' and 'cooperative security' pioneered in the Asia Pacific region; the notion of 'sovereignty as responsibility' developed in the 1990s by Francis Deng, then the Special Representative of the UN Secretary-General on internally displaced persons and subsequently articulated by Secretaries-General Kofi Annan and Ban Ki-moon; and the 2001 report of the International Commission on Intervention and State Sovereignty (ICISS).<sup>2</sup> One of the primary initiatives that led to the adoption of the World Summit Outcome Document in 2005 was the report of the UN Secretary-General's High-Level Panel on Threats, Challenges and Change released a year earlier. The Asia Pacific region was strongly represented in the Panel. It was chaired by former Prime Minister of Thailand, Anand Panyarachun, and six of its fifteen members were from the Asia Pacific region (Gareth Evans (Australia), Satish Nambiar (India), Sadako Ogata (Japan), Yevgeny Primakov (Russia) Qian Qichen (China), Nafis Sadik (Pakistan)). The Panel emphatically declared that: 'We endorse the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent'.<sup>3</sup> The High-Level Panel's recommendations on RtoP were included in revised form in the submissions made to the Heads of State and Government prior to the 2005 World Summit by UN Secretary-General Kofi Annan in his report *In Larger Freedom*.<sup>4</sup> Although RtoP draws on these sources, it is distinct from them all. The responsibility to protect

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<sup>1</sup> A/60/L.1, 20 September 2005, paras. 138-140. See *Report of the Secretary-General on Implementing the Responsibility to Protect* A/63/677, 12 January 2009 (hereafter *Implementing the Responsibility to Protect*)

<sup>2</sup> See Francis Deng et al, *Sovereignty as Responsibility: Conflict Management in Africa* (Washington DC: The Brookings Institution Press, 1996); Pranee Thiparat (ed.), *The Quest for Human Security: The Next Phase of ASEAN?* (Bangkok: Institute of Security and International Studies, 2001), Sorpong Peou (ed.), *Human Security in East Asia: Challenges for Collaborative Action* (London: Routledge, 2009), International Commission on Intervention and State Sovereignty, *Responsibility to Protect* (Ottawa: IDRC, 2001).

<sup>3</sup> High Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, A/59/565, 2 December 2004, para. 203.

<sup>4</sup> Kofi Annan, *In Larger Freedom: Towards Development, Security and Human Rights for All*, A/59/2005, 21 March 2005.

agreed by world leaders in 2005 is the only authoritative account of the concept.

7. The report begins by clarifying the meaning and scope of the Responsibility to Protect (RtoP), focusing especially on the 2005 World Summit Outcome Document, the nature of the four classes of crime to which RtoP (genocide, war crimes, ethnic cleansing and crimes against humanity), and the concept's position in international law. The second substantive section outlines the capacities that might be developed to translate the commitment to RtoP from words to deeds in the Asia Pacific region and offers twelve detailed recommendations.<sup>5</sup> The third section examines the next steps and presents some practical pathways for implementing this agenda, including detailed analysis of potential first steps. A closing note details the Study Group's working practices.

## **The Responsibility to Protect: Meaning and Scope**

8. After several months of detailed consultation and negotiation carried out at the highest levels of government and the UN, world leaders unanimously adopted the RtoP at the UN World Summit in 2005. Paragraphs 138-140 of the Summit's Outcome Document declared that:

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 this responsibility and support the United Nations in establishing an 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 organisations as appropriate, should peaceful means be inadequate 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

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<sup>5</sup> This report understands the Asia Pacific region to comprise the membership of the ASEAN Regional Forum with the exception of the European Union. 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.

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.<sup>6</sup>

The following year, the UN Security Council unanimously reaffirmed ‘the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity’ in Resolution 1674 (2006) (para. 4). The Security Council also recalled its earlier reaffirmation of these provisions in the preamble of Resolution 1706 (2006) on the situation in Darfur (Sudan) and unanimously affirmed RtoP once again in Resolution 1894 (2009).

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

- First, the responsibility of the state to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement (para. 138).
- Second, the international community’s responsibility to assist the state to fulfil its responsibility to protect (para. 139).
- Third, 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 (para. 139).<sup>7</sup>

No single pillar is more important than the others. The RtoP is equally dependant on each.

10. In 2009, the UN Secretary-General submitted a report on ‘implementing the responsibility to protect’.<sup>8</sup> The Secretary-General’s report was subsequently discussed by the General Assembly in a plenary debate held in July 2009. Fifteen of the region’s governments participated in the debate by making statements to the General Assembly (Australia, China, Democratic People’s Republic of Korea, Indonesia, Japan, Malaysia, New Zealand, Myanmar, Philippines, Papua New Guinea, Republic of Korea, Singapore, Solomon Islands, Timor-Leste, Vietnam). With the exception of only one government (Democratic People’s Republic of Korea), the region’s governments welcomed the Secretary-General’s report, reaffirmed their commitment to the 2005 agreement and endorsed the three pillars of RtoP.

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<sup>6</sup> A/60/L.1, 20 September 2005, paras. 138-140.

<sup>7</sup> A/60/L.1, 20 September 2005, paras. 138-140. See *Report of the Secretary-General on Implementing the Responsibility to Protect A/63/677*, 12 January 2009.

<sup>8</sup> *Report of the Secretary-General on Implementing the Responsibility to Protect A/63/677*, 12 January 2009

Subsequently, the General Assembly adopted a unanimous resolution noting with appreciation the Secretary-General's report and deciding to continue its consideration of the RtoP.<sup>9</sup> The General Assembly held a subsequent discussion on RtoP in 2010, focusing on the question of early warning. Once again, a large majority of states, including all of those from Asia Pacific region who spoke, affirmed the concept.

11. The 2005 World Summit Outcome Document and the agreement reached by the General Assembly in 2009 signify the extent of international agreement about the RtoP. It is important to distinguish between the RtoP that governments have agreed to adopt and the ideas that helped shape it, some of which were noted above. These earlier ideas and proposals may have contributed insights that helped governments reach their consensus in 2005, but they are not authoritative statements in terms of reflecting what governments have agreed to. It is important to distinguish between that to which governments have, and have not, consented. The CSCAP Study Group on the RtoP based its study and dialogue exclusively on the 2005 World Summit Outcome Document's definitive statement about the meaning of RtoP.

### **Defining the RtoP Crimes**

12. RtoP applies only to the four crimes enumerated in the 2005 World Summit Outcome Document and their prevention. Those crimes are: genocide, war crimes, ethnic cleansing and crimes against humanity. These crimes are well embedded in existing international law. It is for governments and appropriate international institutions authorised by States to determine the risk, existence and extent of these crimes as a basis for their action in individual cases. The following definitions of genocide, war crimes, and crimes against humanity reflect a broad consensus about the scale and extent of planning necessary for acts to be so defined.<sup>10</sup> These laws apply to states and non-state actors alike. Although ethnic cleansing has no formal legal definition, the definition presented here is based on the explanation of the term developed by a UN Commission of Experts established pursuant to Security Council Resolution 780 (1992).

13. **Genocide.** Genocide is defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. It refers to any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a. Killing members of the group;
- b. Causing serious bodily or mental harm to members of the group;
- c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d. Imposing measures intended to prevent births within the group;
- e. Forcibly transferring children of the group to another group.

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<sup>9</sup> A/63/L.80, 14 September 2009.

<sup>10</sup> Lawrence Wocher, 'Developing a Strategy, Methods and Tools for Genocide Early Warning', report prepared for the Office of the Special Adviser to the UN Secretary-General on the Prevention of Genocide, 26 September 2006, p. 9 and n. 30.

**14. War Crimes.** War crimes are defined by International Humanitarian Law (IHL) and set out principally in the four Geneva Conventions (1949) (art. 50/51/130/147 of the respective Conventions) and subsequent Protocol I (1977) to them (art. 11 (4), 85, 86). War crimes refer to acts committed during international armed conflicts and include, among other things:

- a. wilful killing;
- b. torture or inhuman treatment, including biological experiments;
- c. willfully causing great suffering or serious injury to body or health;
- d. extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- e. compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
- f. willfully depriving a prisoner of war or other protected person of the right of a fair and regular trial;
- g. unlawful deportation or transfer;
- h. unlawful confinement;
- i. taking of hostages;
- j. extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- k. making the civilian population or individual civilians, not taking a direct part in hostilities, the object of attack.

Some war crimes are determined by the norms of the customary IHL. Formally, according to the Geneva Conventions and subsequent Protocols to them, the notion of war crimes is not applicable in non-international armed conflicts. Nevertheless, there is an increasing tendency in international documents, judgments and doctrines to include serious violations of IHL which have occurred during non-international armed conflicts into the wider notion of war crimes. Therefore such violations, in certain circumstances, can be defined as war crimes as well.

**15. Crimes against Humanity.** The legal definition of Crimes against Humanity is contained in contemporary International Criminal Law. Article 7 (1) of the Rome Statute of the International Criminal Court (1998) defines these crimes as any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- a. Murder;
- b. Extermination;

- c. Enslavement;
- d. Deportation or forcible transfer of population;
- e. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- f. Torture;
- g. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity;
- h. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognised as impermissible under international law;
- i. Enforced disappearance of persons;
- j. The crime of apartheid;
- k. Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

For acts to be considered crimes against humanity they must be more than isolated or sporadic abuses. Acts constitute crimes against humanity only when they are part of an established pattern of cruelty. Although crimes against humanity overlap with genocide and war crimes, crimes against humanity differ from genocide in that they do not require an intent to ‘destroy in whole or in part’ a group, and they differ from war crimes in that they may occur outside a context of international armed conflict. Although most episodes of crimes against humanity take place within the context of armed conflict, the two are not synonymous.<sup>11</sup>

**16. Ethnic Cleansing.** The phrase ethnic cleansing refers to the policy of a particular group to systematically displace or deport another group from a territory on the basis of religious, ethnic or national origin. Ethnic cleansing differs from genocide in that the intent of the perpetrator may not be to ‘destroy in whole or in part a group’, but to create an ethnically homogenous territory. Ethnic cleansing can be regarded as either a war crime or a crime against humanity depending on the circumstances in which it is committed. In most cases, the systematic displacement of a group from its territory occurs during armed conflict, and thus can be regarded as ‘ordering the displacement of the civilian population for reasons related to the conflict’ (see war crimes, above). It is a crime against humanity when it involves the ‘deportations or forcible transfer of population’ as well as ‘persecution against any identifiable group’ (see crimes against humanity, above). Moreover, ethnic cleansing is normally accompanied by other crimes such as murder, torture, and mass rape.

**17. RtoP applies only to a relatively narrow field of human security. It did not apply in the case of Cyclone Nargis in 2008** despite the fleeting arguments made by the government of France and some Western commentators. As the UN Secretary-General’s Special Adviser, Edward Luck explained, the French position represented a

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<sup>11</sup> Alex J. Bellamy, ‘Mass Atrocities and Armed Conflict: Links, Distinctions and Implications for the Responsibility to Protect’, Policy Analysis Brief for the Stanley Foundation, January 2011.

‘misapplication of the responsibility to protect principle’ in a situation where there were other, more appropriate, avenues for engagement. This view was echoed by many in the Asia Pacific region including the Asia Pacific Centre for the Responsibility to Protect.<sup>12</sup> Luck advised that to count as a crime against humanity and therefore a matter of concern for RtoP, crimes such as murder, extermination and forced expulsion would have had to have been committed as part of a widespread and systematic attack on the civilian population. This was patently not the case in the aftermath of Cyclone Nargis. Among many other things, RtoP does not apply to natural disasters, generalised human rights questions, any use of force that falls short of the aforementioned crimes, and human security problems stemming from HIV/AIDS, climate change, economic deprivation or energy shortages.

## **International Law**

**18. RtoP is based on well established principles of existing international law.** The crimes to which the concept relates are crimes that are already enumerated in international law. Under existing international law, states already have obligations to prevent and punish genocide, war crimes and crimes against humanity; assist states to fulfil their obligations under International Humanitarian Law; and promote compliance with the law. In addition, the mechanisms through which the RtoP can be implemented are consistent with existing international law. Paragraphs 138 and 139 of the World Summit Outcome Document identify four principal ways in which RtoP can be implemented, each of which is consistent with existing international law: (a) the primary responsibility rests with the State itself. This is the cornerstone of sovereignty; (b) the international community may provide assistance, such as capacity-building, mediation and diplomacy. Such assistance may only be provided at the request and with the express consent of the state concerned and is consistent with the state’s sovereign right to make bilateral and multilateral agreements; (c) the UN Security Council might take measures in a manner consistent with Chapters VI, VII and VIII of the UN Charter, the General Assembly might make recommendations on the basis of Article 11 of the Charter, and other Organs of the UN might act in accordance with the Charter; (d) paragraph 139 of the World Summit Outcome Document explicitly envisages a role for regional arrangements. Such roles must be consistent with the charters, constitutions or guiding principles of the regional arrangement concerned and with the UN Charter. Any other mechanisms that may be called upon in relation to the implementation of the RtoP (such as, for instance, the International Criminal Court) are guided by their own constitutions and statutes which are voluntarily accepted by participating states and their scope and jurisdiction are limited by these agreements and general principles of international law.

**19. RtoP is consistent with the principle of non-interference enumerated in the UN Charter (Article 2(7)) and the ASEAN Treaty of Amity and Cooperation (TAC).** Article 2(7) of the UN Charter states that: ‘Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII’. Article

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<sup>12</sup> Edward Luck, Statement to the US Senate Foreign Relations Committee, 17 June 2008 and Asia Pacific Centre for the Responsibility to Protect, ‘Cyclone Nargis and the Responsibility to Protect’, report, 16 May 2008.

2(7) affirms that the principle of non-interference ‘shall not prejudice’ the application of enforcement measures by the UN Security Council acting under Chapter VII of the Charter. Thus, measures relating to RtoP must enjoy the consent of the state concerned except when they are mandated by the UN Security Council acting under Chapter VII of the Charter. The ASEAN Treaty of Amity and Cooperation amplifies but does not alter this basic principle of non-interference. The Treaty’s Preamble affirms its consistency with the ‘spirit and principles’ of the UN Charter.

**20. RtoP does not, therefore, impose any new legal obligations upon states or widen the legal scope for interference in the domestic affairs of states.** Instead, the RtoP calls upon states only to implement existing legal commitments and requires that the international community act in conformity with international law, principally the UN Charter.

### **The Centrality of Prevention**

21. RtoP emphasises the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity. **Prevention is the single most important element of the RtoP.** In the World Summit Outcome Document, Member States explicitly agreed that ‘[t]his responsibility [to protect] entails the prevention of such crimes’ (para. 138) and identified four specific elements of prevention: (a) preventing the incitement of the four crimes (para. 138); (b) supporting the UN in establishing an early warning capability (para. 138); (c) assisting states under stress before crises and conflicts break out (para. 139); (d) supporting the mission of the Special Adviser to the Secretary-General on the Prevention of Genocide (para. 140).

### **The Primacy of Non-Violence**

22. Although the use of force, properly authorised by the UN Security Council, to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity is a component of RtoP and is sometimes necessary and legitimate, the international community should pursue peaceful solutions wherever possible. As agreed by world leaders in 2005, the use of force for RtoP purposes is acceptable only when the state is manifestly failing to protect its population from the four crimes and peaceful means are proving inadequate (para. 139). Although the use of force might protect victims in the short-term, in the long-term only peaceful measures will prevent the occurrence of the four crimes and provide comprehensive protection.

### **Pillar One: The State’s Primary Responsibility**

23. Pillar One of the RtoP refers to the state’s primary responsibility to protect its own population from the four crimes. The primary responsibility to protect rests with the state and applies to all populations under a state’s care, and not just citizens (para. 138). At the 2005 World Summit, states unambiguously declared that ‘[w]e accept that responsibility and will act in accordance with it’ (para. 138). This responsibility includes the responsibility to prevent the commission of the four crimes and their incitement. The principle of the state’s primary responsibility to protect was reaffirmed by the UN Security Council and has been widely endorsed in the Asia Pacific region. This view was ably expressed, for example, by China in the UN

Security Council when it noted that: '[t]he primary responsibility for the protection of civilians lies with national Governments. The international community and external forces can provide constructive help and support. However, they should provide this in compliance with the provisions of the Charter of the United Nations...'.<sup>13</sup> This view was also expressed in the Security Council by Viet Nam. 'Viet Nam's view', its Permanent Representative to the UN told the Council in 2008, is 'that it is States that bear primary responsibility to protect their own civilians and to deal with violence against civilians as well as violations of international humanitarian law. In order to help States fulfil their responsibilities, the United Nations can help improve their national capacity, provide technical assistance and work with them to conduct other awareness-raising activities, for instance through training courses'.<sup>14</sup> Although the international community should assist the state in a manner consistent with the UN Charter when called upon to do so, the state's role in protecting its own population is the conceptual centre of the RtoP concept. States voluntarily accepted this political obligation and should be expected to fulfil it.

24. In his 2009 report on implementing the RtoP, the UN Secretary-General noted that 'no single part of the world has a monopoly on good ideas or successful practices' when it comes to implementing Pillar One of the RtoP. He identified a wide range of measures that states might take to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity, drawing on a range of experiences from around the world. He also called for more research to be undertaken on why some societies plunge into mass violence whilst their neighbours remain relatively stable and why some armed conflicts descend into genocide, war crimes, ethnic cleansing and/or crimes against humanity whilst others do not. Important in this regard are processes of state-to-state and region-to-region learning through which states and societies learn from one another's experience. There is no single template that states can use to implement their primary responsibility to protect and the approach taken must be sensitive to the needs, interests and preferences of each community.

### **Pillar Two: International Assistance and Capacity-Building**

25. The second pillar of the RtoP refers to the international community's duty to assist states in meeting their commitment to RtoP through a combination of persuasion and partnership.<sup>15</sup> It also shares with Pillar One an emphasis on preventive measures.<sup>16</sup> According to the 2005 World Summit Outcome Document, assistance under Pillar Two of the RtoP could take one of four forms: (a) encouraging States to meet their responsibilities under Pillar One (para. 138); (b) helping them to exercise this responsibility (para. 138); (c) helping them to build their capacity to protect (para 139); (d) assisting States 'under stress before crises and conflicts break out'.<sup>17</sup> Measures designed to strengthen sovereignty by helping states to prevent state failure, strengthen national resilience and resolve internal conflicts significantly reduce the likelihood that the RtoP related crimes will be committed in the future. The primary role of Pillar Two is to galvanise the international community into assisting states to

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<sup>13</sup> S/PV.5898, 27 May 2008.

<sup>14</sup> S/PV.5898, 27 May 2008.

<sup>15</sup> *Implementing the Responsibility to Protect*, para. 28.

<sup>16</sup> *Implementing the Responsibility to Protect*, p. 9.

<sup>17</sup> *Implementing the Responsibility to Protect*, p. 15.

build and maintain the capacity necessary to address potential problems well before they become manifest in the commission of one or more of the four crimes.

26. Measures undertaken under Pillar Two are done so with the express consent of the state involved, usually in the form of an invitation or agreement. Among a range of relevant measures, the UN Secretary-General's recommendations for implementing Pillar Two included the use of the UN and regional arrangements to support states where requested. This may involve the provision of technical and financial support to states that are enacting preventive measures; the use of education on human rights to prevent future crimes; assistance with combating sexual violence; a special emphasis on women and children in conflict; a focus on building learning processes between regional organisations and the UN; building civilian capacities to prevent the four crimes; the provision of military assistance to states as necessary; assistance with establishing impartial and effective security and judicial systems within states; targeted development assistance; support for the establishment of safe and secure dialogue within states; and post conflict peacebuilding measures to prevent future crimes.<sup>18</sup> Regional arrangements can play a particularly important role in marshalling the resources, technical capacity and political will necessary to provide appropriate and effective assistance to states. It should be emphasised that the precise composition of relevant regional arrangements and activities will be different in each region, taking account of regional circumstances and norms.

### **Pillar Three: Timely and Decisive Response**

27. Pillar Three, which is set out in detail in paragraph 139 of the World Summit Outcome Document, is an integral part of the RtoP and is as important as pillars one and two.<sup>19</sup> Responding to the failure to protect Rwandans from the 1994 genocide, Pillar Three establishes a political commitment that the international community will on occasion assume the responsibility to protect. There are two stages to this responsibility. First, as the opening line of paragraph 139 makes clear, '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, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity' (para. 139). There are a range of peaceful activities that the UN may undertake which may not be specifically enumerated in Chapters VI and VIII of the Charter, but as these two Chapters are identified it is worth mentioning their content. Chapter VI relates to the 'Pacific Settlement of Disputes' and its provisions include: (a) parties to conflicts likely to have an impact on international peace and security should 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 (Article 33(1)); (b) the UN Security Council may investigate any matter it thinks will infringe on international peace and security and may call on the parties to settle their disputes by peaceful means (Article 33(2) and 34); (c) any Member State may bring a dispute to the attention of the UN General Assembly or Security Council (Article 35). Chapter VIII of the UN Charter relates to the role of regional arrangements and permits Member States to enter into such arrangements. Regional arrangements may

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<sup>18</sup> *Implementing the Responsibility to Protect*, paras 28-48.

<sup>19</sup> *Implementing the Responsibility to Protect*, para. 49.

be engaged in the full range of activities short of enforcement action without UN Security Council authorisation. As the Secretary-General explained, the wording of paragraph 139 suggests that the intent is for this to be an ongoing responsibility employing peaceful means.<sup>20</sup>

28. The second stage of Pillar Three refers to the use of a wider range of collective measures, both peaceful and non-peaceful, by the international community in the event that two conditions are satisfied: (a) peaceful means should prove inadequate (para. 139) and (b) national authorities are ‘manifestly failing’ to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In these situations, paragraph 139 affirms that the UN Security Council, acting in accordance with the UN Charter, including Chapter VII, is prepared to take collective action ‘on a case-by-case basis and in cooperation with relevant regional organisations as appropriate’ (para. 139). It is for the members of the UN Security Council, acting under the authority that was bestowed upon it by the UN Charter in 1945, to determine whether the two conditions have been met and to decide upon appropriate measures. As such, and it is important to underline this point, **RtoP’s capacity to legitimise coercive interference in the domestic affairs of states is circumscribed by the UN Charter.** RtoP does not imply any alteration to the Charter’s provisions in this field.

### **The Role of Regional Arrangements**

29. **Regional arrangements in the Asia Pacific have an important role to play in implementing the RtoP.** First, the unanimous commitment to RtoP made by Heads of State and Government in 2005 and reaffirmed by the UN Security Council in 2006 and 2009 includes specific and general roles for regional arrangements. The World Summit Outcome Document specifies at least seven distinct roles for regional arrangements. They should: (a) encourage and help states to fulfil their primary responsibility to protect (para. 138); (b) support the UN in establishing an early warning capability (para. 138); (c) help states build the capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity (para. 139); (d) assist states under stress before a crisis breaks out (para. 139); (e) support the mission of the Special Adviser of the UN Secretary-General on the Prevention of Genocide (para. 140); (f) utilise peaceful measures under Chapter VIII of the UN Charter to respond to crises involving genocide, war crimes, ethnic cleansing and crimes against humanity (para. 139); (g) cooperate with the Security Council in the application of measures, including Chapter VII measures, when peaceful means are inadequate and national authorities are manifestly failing to protect their populations (para. 139).

30. In addition to their generic commitment to the principle, many states in the region have repeated their view that regional arrangements should play a role in implementing RtoP. Since 2005, many governments and civil society actors in the Asia Pacific region have called for a stronger focus on the role of regional arrangements. At the 2009 General Assembly debate, several governments (especially, but not exclusively, Indonesia, the Philippines and the Republic of Korea) reiterated the importance of engaging regional arrangements. In addition, five specific

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<sup>20</sup> *Implementing the Responsibility to Protect*, para. 49.

areas of work were identified by governments from the Asia Pacific region: (1) regional arrangements might establish peer review mechanisms to assist states (with their cooperation) in identifying and implementing their Pillar One responsibilities; (2) with assistance from the UN, regional arrangements could provide assistance and support for national capacity-building; (3) regional arrangements could develop civilian capacities to assist states under stress when such assistance is requested; (4) regional arrangements could work with the UN on strengthening early warning and assessment; and (5) regional arrangements could provide a useful vehicle for region-to-region learning about the practices and capacities needed to implement the RtoP and for deepening regional partnership with the UN.<sup>21</sup> These proposals mark a useful starting point for more detailed thinking about the role of regional arrangements. Significantly, no government in this region has argued that it is inappropriate for regional arrangements to play a role in implementing RtoP.

31. It is also important to stress the benefits that accrue from engaging regional arrangements in the process of implementing the RtoP. In particular, it:

1. Fosters regional ownership of RtoP and ensures that it is localised in a manner consistent with existing regional norms.
2. Establishes formal pathways for cooperation between the UN and regional institutions and provides ways of leveraging additional investment and technical support.
3. Awards the region a voice in relation to RtoP and a greater capacity to learn from the experiences of others.
4. Enhances key national and regional capacities and therefore enables states to build the capacity they need to exercise their primary responsibility to protect. It also increases the potential for 'Asia Pacific solutions to Asia Pacific problems'.

Regional arrangements in the Asia Pacific therefore have an important role in implementing the RtoP. In addition, engaging regional arrangements helps the region's states by fostering national and regional capacity, strengthening ownership, and generating a stronger Asia Pacific voice in global debates. It assists populations by boosting the region's capacity to prevent genocide, war crimes, ethnic cleansing and crimes against humanity and to address crises before they escalate. All of this, it should be stressed, is consistent with the region's existing norms and is based exclusively on what governments themselves have already com

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<sup>21</sup> See Asia Pacific Centre for the Responsibility to Protect, 'Asia Pacific in the UN General Assembly Dialogue', October 2009.

## Box 2: What RtoP is...and is not

RtoP is...	RtoP does not...
<p>1. ...an internationally agreed concept aimed at protecting populations from genocide, war crimes, ethnic cleansing and crimes against humanity and preventing these crimes.</p> <p>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.</p> <p>3. ...a concept that rests on three equally important and non-sequential pillars:</p> <ul style="list-style-type: none"> <li>• The primary responsibility of the state to protect its own population.</li> <li>• The international community's responsibility to assist the state to fulfil its responsibility to protect.</li> <li>• 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.</li> </ul> <p>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</p>	<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>6. ...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 authorised by the UN Security Council.</p>

## **Recommendations: Implementing the Responsibility to Protect in the Asia Pacific Region**

32. This section outlines the measures that the CSCAP Study Group on RtoP believe ought to be adopted by national governments, regional arrangements in the Asia Pacific and global institutions in order to implement the RtoP in the Asia Pacific region. Clearly, some measures are more ambitious than others and are likely to take longer to realise. For that reason, this section is presented as an examination of the key implementation issues that governments, regional arrangements and Track Two bodies ought to consider. The following section maps out a pathway to implementation recognising the need for confidence building and the appropriate sequencing of activities. If implemented in their totality, the measures outlined here would significantly improve the region's:

- capacity to help states reduce the risk of genocide, war crimes, ethnic cleansing and crimes against humanity;
- capacity to assist states under stress;
- capacity to facilitate the UN's assessment of situations in the Asia Pacific;
- capacity to cooperate with the UN to prevent genocide, war crimes, ethnic cleansing and crimes against humanity and to respond in a timely and decisive manner when needed.

As such, implementation of these recommendations would mark a decisive step towards building a regional community that protects its governments and its peoples from the threat of future Khmer Rouge-style crimes.

33. What is presented here is the shared product of the group's work – proposals brought forward by different participants, scrutinised and revised by the group as a whole and organised in a manner agreed by the whole group at its final meeting. Not all of the proposals made and measures suggested commanded sufficient support to make it into the final report and the form of many others was revised to take account of comments by participants and ensuing discussions within the group. Group members were keenly aware of their duty to ensure that proposed measures were consistent with the principles and purposes of both the UN and regional arrangements and realistic in terms of the resources that would be required to implement them.

34. The remainder of this section proceeds in three parts. First, it outlines recommendations for national governments to consider. Second, it outlines recommendations for regional arrangements, principally the ASEAN Regional Forum (ARF). Its principal focus is on the ARF because of the Forum's institutional relationship with CSCAP. Third, it outlines recommendations for strengthening the partnership between the region and other actors. The order and organisation of what follows does not imply a judgment about priorities or about the most appropriate way in which they might be employed.

## National Governments

### **Box 3: Recommendations for national governments**

- 1. National governments should consider appointing an official to serve as a focal point for RtoP.**
- 2. Resources should be devoted to raising awareness about RtoP among states and societies.**
- 3. Governments should use education to inculcate the skills and values needed to resolve disputes peacefully.**

35. This section identifies three modest steps that governments might consider taking in order to facilitate the implementation of RtoP. These steps aim to facilitate the mainstreaming of RtoP in national policy by establishing focal points and raising awareness and to inculcate the values and skills that societies need to resolve disputes peacefully.

***Recommendation 1: National governments should consider appointing an official to serve as a focal point for RtoP.***

36. As a first step, governments could be encouraged to identify an official as a national focal point for RtoP. Among other things, national RtoP focal points could provide their own governments with early analysis of emerging situations, 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.<sup>22</sup> 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 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. Although a modest first step, the appointment of national focal points would facilitate the implementation of many of the other recommendations proposed in this report.

***Recommendation 2: Resources should be devoted to raising awareness about RtoP among states and societies.***

37. It is widely recognised that 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

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<sup>22</sup> Global Centre for the Responsibility to Protect, 'Fulfilling the Responsibility to Protect: Strengthening Our Capacities to Prevent and Halt Mass Atrocities', meeting summary, 24 September 2010.

effective when conducted on a national basis. Although each country's circumstances are different, meaning that there is no 'one-size-fits-all' approach, useful examples include national-based programs in the Philippines and Cambodia facilitated by the Asia Pacific Centre for the Responsibility to Protect. Through these programs, government officials, parliamentarians, and civil society groups worked together to develop shared understandings of RtoP and consider how it relates to national circumstances. These national-based activities are necessary in order to develop a shared understanding of RtoP among stakeholders, increase the level of awareness and knowledge about RtoP among national elites, decision makers and civil society groups, and expose common myths and fallacies about the nature and scope of RtoP and its relationship to core principles of international law. They also begin to lay the foundations for strengthening the state's capacity to prevent genocide, war crimes, ethnic cleansing and crimes against humanity. For instance, the programs in the Philippines and Cambodia are exploring avenues for facilitating community-based early warning to ensure that relevant information about impending crimes reach the appropriate authorities in a timely fashion so that authorities can act to prevent the commission of RtoP crimes. This dialogue is a two-way process that reflects on the lessons from the past and has the potential to make a profound difference in the future. For example, the lack of information sharing between civil society and the army in Mindanao was identified as a key reason why the Maguindanao massacre in 2009 was not prevented. Because of the centrality of national based dialogue, we urge the Australian government to continue its support for the Asia Pacific Centre for the Responsibility to Protect and encourage other governments and civil society groups to consider fostering national based dialogue about RtoP. Governments themselves might consider identifying the measures that they already take to protect their populations from the threat of genocide, war crimes, ethnic cleansing, and crimes against humanity and developing action plans to strengthen that protection in the future.

***Recommendation 3: Governments should use education to inculcate the skills and values needed to resolve disputes peacefully.***

38. 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. In educating their young to have these skills, states perform a vital service for future humanity.

## Regional Arrangements

### **Box 4: Recommendations for Regional Arrangements**

- 4. The ARF should 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.**
- 5. The ARF could consider strengthening its capacity to employ diplomacy to mediate and resolve crises before they escalate.**
- 6. The ARF should 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.**
- 7. ARF participants should consider providing voluntary background briefings.**
- 8. The ARF should consider establishing an Inter-Sessional Meeting on Small Arms and Light Weapons.**
- 9. The ARF should establish a consultative mechanism to monitor and advise the UN Peacebuilding Commission and support national capacity building to prevent the four RtoP crimes.**
- 10. The ARF could consider strengthening the Eminent and Experts Persons Group so that it may play a role in implementing RtoP.**

39. This section identifies seven measures that regional arrangements in the Asia Pacific might consider adopting in order to implement RtoP. Although there are several regional arrangements that are well-placed to play a role in implementation, especially ASEAN, this report focuses on the ASEAN Regional Forum (ARF). As the Asia Pacific's most inclusive security-oriented body, the ARF is in many ways the most appropriate arrangement for leading the implementation of RtoP in the region.<sup>23</sup> Moreover, owing to the institutional ties between CSCAP and the ARF, it is appropriate that the Study Group identify pathways for utilising the ARF in the implementation of RtoP. The ARF was established in 1994 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 - but translating this general agreement into practical cooperation has proven difficult. Furthermore, the ARF has traditionally understood preventive diplomacy in a way that limits its role in preventing conflicts and instability that might increase the risk of genocide, war crimes, ethnic cleansing and crimes against humanity. However, there are encouraging signs that the ARF and its participants are recognising the need to make the Forum more relevant to

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<sup>23</sup> 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.

contemporary security matters. There have also been some suggestions that the ARF should work towards developing an early warning capability, focusing specifically on armed conflicts between states that might threaten wider regional stability. As we noted earlier, however, the commission of genocide, war crimes, ethnic cleansing and crimes against humanity, also has a critical impact on regional stability and their prevention and de-escalation should therefore be incorporated into the ARF's work.

40. There are other reasons for thinking that it is legitimate to expect the ARF to play a leading role in the implementation of RtoP in the Asia Pacific region. First, all ARF participants have expressly endorsed the RtoP principle and the notion that regional arrangements have a role to play in implementing it. Second, the ARF's agenda has expanded since 1994 to cover what might be considered core areas of RtoP implementation identified by this Study Group, namely: preventive diplomacy and mediation, background briefings, disaster relief and humanitarian operations, and peacekeeping. ARF participants have also proposed and discussed initiatives relating to risk reduction and early warning and CSCAP has presented recommendations to the ARF in the past on preventive diplomacy, risk reduction, peacekeeping, peacebuilding and the trafficking of small arms. Much of the RtoP implementation agenda builds on work already under way within the ARF or gives new impetus to proposals advanced in the past by ARF participants or CSCAP.

***Recommendation 4: The ARF should 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.***

41. One of the central themes to emerge from the work of the group was agreement on the need to strengthen the partnership between the region and the UN to reverse the problem of there being 'little of the UN in Asia, and little of Asia at the UN', which was identified by Special Adviser to the UN Secretary-General, Edward Luck. The need to strengthen the partnership between the UN and regional arrangements is also widely recognised by governments in the region and has been reiterated on many occasions by ARF participants.<sup>24</sup>

42. In his presentation to the first meeting of the Study Group, Dr. Luck reiterated the need for strong partnerships between the UN and regional arrangements and insisted that dialogue and partnership between regions and the UN was an essential component of implementing the RtoP. In particular, he stressed that regional arrangements played an important role in ensuring that concepts like the RtoP are implemented in a manner consistent with local norms and that regional arrangements were particularly effective in the early prevention of crisis because they enjoyed the trust of local actors. The Special Adviser identified three areas in particular where relations between the region and UN might be productively strengthened through dialogue: (1) the provision of RtoP relevant information and assessment to decision-

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<sup>24</sup> In early 2010, for example, China issued a Concept Paper on 'Cooperation between the United Nations and regional and sub-regional organizations in maintaining international peace and security'. According to the Chinese Concept Paper, 'in a rapidly changing world, strengthening cooperation between the United Nations and regional organizations will both promote multilateralism and boost the international collective security mechanism'. Permanent Mission of the People's Republic of China to the UN, 'Concept Paper: Cooperation Between the United Nations and Regional and Sub-Regional Organizations in Maintaining International Peace and Security', 8 January 2010.

makers in the UN; (2) responding to emergencies in a manner consistent with the UN Charter and regional norms; (3) facilitating cooperation between the region and UN in supporting operations authorised by the UN Security Council. On the basis of this advice, the Study Group identified a pressing need to strengthen partnership between the UN and regional arrangements in the Asia Pacific.

43. The most obvious – and pressing – reason for strengthening RtoP relevant partnerships between the region and the UN is to ensure that decisions made at UN headquarters in New York about emerging or actual RtoP related crises in the Asia Pacific region are informed by information and advice from within the region. In 2004, the UN Secretary-General appointed a Special Adviser for the Prevention of Genocide with a mandate:

- (1) to collect existing information, in particular from within the United Nations system, on massive and serious violations of human rights and international humanitarian law of ethnic and racial origin that, if not prevented or halted, might lead to genocide;
- (2) to act as a mechanism of early warning to the Secretary-General, and through him to the Security Council, by bringing to their attention situations that could potentially result in genocide;
- (3) to make recommendations to the Security Council, through the Secretary-General, on actions to prevent or halt genocide;
- (4) to liaise with the United Nations system on activities for the prevention of genocide and work to enhance the United Nations' capacity to analyse and manage information regarding genocide or related crimes.<sup>25</sup>

With this mandate in mind, the Office of the Special Adviser (now the Joint Office) developed a framework for early warning assessment. There remain, however, significant problems relating to implementation. Not least, there are problems associated with the absence of regional expertise in New York and time-lags associated with acquisition and analysis of relevant information. As a result, it is generally recognised within the UN secretariat that partnership with regional bodies is an essential component of this endeavour.

44. In 2010, the UN established a Joint Office for Genocide prevention and RtoP to extend this early warning function to cover the other three RtoP crimes (war crimes, ethnic cleansing and crimes against humanity). The Secretary-General argued that 'information and assessments are shared by the United Nations and its regional and subregional partners in a common effort to prevent both conflicts and the incitement and commission of genocide, war crimes, ethnic cleansing or crimes against humanity'. He also reiterated his belief that 'United Nations decision-making concerning the responsibility to protect should be informed and enriched, wherever possible, by local knowledge and perspectives, as well as by the input of regional and subregional organisations'. He concluded, 'this puts a premium on regularizing and facilitating the two-way flow of information, ideas and insights between the United

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<sup>25</sup> S/2004/567

Nations and its regional and subregional partners'.<sup>26</sup> The new joint office of Genocide Prevention and RtoP is the focal point for the UN's efforts in this area.

It is clear that some form of regularised partnership between this UN office and the region is required in order to: (1) ensure the most efficient, effective and accurate early warning and assessment and therefore maximise the chances of preventing the incitement or commission of the RtoP crimes; (2) guarantee that regional perspectives and information are fully incorporated into UN assessments and decision-making; and (3) ensure that the region is capable of shaping every stage of information gathering, assessment and decision-making.

45. A critical problem is that the Asia Pacific region has no corresponding bureaucratic entity to engage in dialogue with the UN's Joint Office. It was with this in mind that the Study Group concluded that the time was right to establish a Risk Reduction Centre in the Asia Pacific.

46. There is significant support in the region for strengthening capacity in this area. In a 2010 Concept Note submitted to the UN Security Council, China argued that 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. Furthermore, it argued that regional organisations 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'.<sup>27</sup> Similar views have been expressed by many governments in the region. The Philippines argued in the Security Council that it was imperative for the UN to recognise and strengthen the primacy of regional bodies in dealing with peace and security matters.<sup>28</sup> In 2007, Indonesia noted that there might be occasions where regional arrangements are likely to prove more effective than the UN and that in such cases the UN might task regional bodies to adopt conflict resolution roles.<sup>29</sup> The following year, it stated that 'the United Nations is surely not in a position to tackle all of the issues related to the protection of civilians. Regional organisations have an important role to play in the protection of civilians. It is important to remember that the best preventative medicine for war is fruitful negotiation and dialogue, which is often achieved by inviting the participation of regionally relevant players'.<sup>30</sup> Cambodia has also advocated a stronger regional capacity to deal with common security threats, arguing that this might strengthen the UN's capacity.<sup>31</sup> The CSCAP Study Group on RtoP agreed with these assessments. To give practical meaning to these important views, it recommends that ARF participants consider establishing a Risk Reduction Centre within the ARF Unit.

47. The idea of establishing a Risk Reduction Centre was first mooted in the ARF Concept Paper which called for participants to 'explore' the idea as put forward by

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<sup>26</sup> Report of the Secretary-General, 'Early Warning, Assessment and the Responsibility to Protect', A/64/864, 14 July 2010, para. 11.

<sup>27</sup> S/2010/9, 7 January 2010.

<sup>28</sup> S/PV.5776, 6 November 2007.

<sup>29</sup> S/PV.5649, 28 March 2007.

<sup>30</sup> S/PV.5898, 27 May 2008.

<sup>31</sup> A/C.4/61/SR.16, 29 November 2006.

then UN Secretary-General Boutros Boutros-Ghali and commended by UN General Assembly Resolution 47/120 (para. 4).<sup>32</sup> The Concept Paper suggested that the Centre could serve as ‘a data base for the exchange of information’ but neither the Concept Paper, UN Secretary-General or General Assembly provided much insight on how such a Centre might be constituted or what its functions might be.<sup>33</sup> In 1996, the ARF held a seminar on preventive diplomacy at which some participants expressed the desirability for the ARF Chair to consider proposals for an ARF Risk Reduction Centre as a longer-term measure along with proposals for an ARF Unit.<sup>34</sup> Given the lack of clarity as to the role of a Risk Reduction Centre, it is not surprising that this issue has not progressed. The proposal was not revisited or carried forward into the ARF’s concept and principles of preventive diplomacy. However, in 2007 the CSCAP Study Group on Preventive Diplomacy and the Future of the ARF revised calls for a Risk Reduction Centre, suggesting that the Centre be given a role in early warning in support of the ARF’s anticipated preventive diplomacy function.<sup>35</sup> In addition to its other duties, the Risk Reduction Centre could support the diplomatic work of the ARF and perform an important early warning function dealing with imminent crises that have the potential for regional implications. This is in line with the ARF Vision Statement which suggested that the ARF should work towards establishing an early warning mechanism.<sup>36</sup> Over time, the Centre could become the regional focal point for cooperation with the UN, including the Office of the Special Adviser for the Prevention of Genocide, ensuring that regional voices, concerns and viewpoints are given due attention within the UN framework. With this in mind, in addition to any other tasks that might be given to the Centre, the Centre might assume six functions in relation to RtoP which are set out in Box 5.

### **Box 5: Risk Reduction Centre: Proposed Functions**

**1) Establish a transparent and reliable method of early warning analysis that includes safeguards against politicisation and utilises local knowledge.**

The first role for the Centre could be to establish a framework for conducting early warning analysis. In line with the work being conducted by the Special Adviser to the UN Secretary-General on the Prevention of Genocide, this framework would involve two stages. The first stage would involve risk analysis to identify countries at-risk and the second would involve more detailed analysis. A draft framework would need to be approved by ARF participants before being operationalised and would be reviewed by participants on an on-going basis. Moreover, the framework would be limited to using only information that is publicly available. The ARF Eminent and Experts Persons group (EEP) and CSCAP could also play important roles in this regard, possibly in advance of the establishment of a Risk Reduction Centre (see below).

**2) Conduct risk analysis of genocide, war crimes, ethnic cleansing and crimes**

<sup>32</sup> Boutros Boutros-Ghali, *An Agenda for Peace*, 1992, para. 24.

<sup>33</sup> *The ASEAN Regional Forum: A Concept Paper*, Annex B, II(2).

<sup>34</sup> ARF Seminar on Preventive Diplomacy, Paris, 7-8 November 1996.

<sup>35</sup> CSCAP Study Group on Preventive Diplomacy and the Future of the ASEAN Regional Forum, Bander Seri Begawan, Brunei, 30-31 October 2007, Chairmen’s Report (final), pp. 7-8.

<sup>36</sup> ASEAN Regional Forum Vision Statement, p. 2

**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 EEPs. The Centre could provide timely and accurate advice on risks and on potential measures to reduce those risks when requested by the ARF Chair or ARF Ministerial Meetings. It might also assist the work on the EEPs where appropriate.

**3) Cooperate with the Joint Office of the Special Advisers to the UN Secretary-General on the Prevention of Genocide and RtoP (hereafter 'Joint Office').**

The Centre could consider sharing its risk analysis with the Joint Office and receive risk analysis produced by the UN. The modalities for this arrangement would need to be agreed in advance but may involve specific authorisation by the ARF Chair on a case-by-case basis. The Centre and UN Office could also consult on risk analysis, learn lessons from one another and cooperate wherever possible. This would ensure a stronger regional voice within the UN process.

**4) Share best practices and learn lessons with the UN and other regions.**

The Centre might share information about methodologies, frameworks, analysis and assessment practices with both the UN and other similar regional bodies and in turn learn from these other bodies. This would be an important vehicle for region-to-region learning.

**5) 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. If a Risk Reduction Centre is not established, the EEPs might consider establishing such teams to support their work and offer these services to ARF participants. Failing that, CSCAP might create and maintain a register of Track Two teams that could provide expert advice when requested.

**6) Conduct 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.

***Recommendation 5: The ARF could consider strengthening its capacity to employ diplomacy to mediate and resolve crises before they escalate.***

48. When it comes to implementing RtoP, diplomacy is one of the most significant preventive tools. When used effectively, preventive diplomacy can prevent crises from escalating and forestall the need for the UN Security Council to become involved. Most cases of genocide, war crimes, ethnic cleansing and crimes against humanity have political roots and therefore require political solutions. Moreover, third party mediation is often required to build trust between the parties. A good example of preventive diplomacy in action was its use by the African Union envoy, Kofi Annan, in response to post-election violence in Kenya in 2008. Dispatched at the behest of the African Union, Annan brokered an agreement between the parties in Kenya that brought the violence to an end, prevented the escalation of crimes against humanity, and forestalled the need for the Security Council to adopt more intrusive and coercive measures. The African Union was able to accomplish this because it had established a framework for preventive diplomacy and a capacity to deploy distinguished and trusted mediators.<sup>37</sup> Similarly, rapid diplomatic engagement by ECOWAS and the African Union in 2009 prevented instability in Guinea from escalating into mass violence. It is clear, then, that regional arrangements are particularly well suited to using diplomacy to resolve crises before they escalate. Timely and effective diplomacy requires speed, proximity, trust and knowledge of the context and regional bodies are best placed to achieve this. 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.<sup>38</sup> Potential capacities and mechanisms are outlined in the box below.

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<sup>37</sup> See Elizabeth Lindenmayer and Josie Lianna Kaye, 'A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya', International Peace Institute, August 2009.

<sup>38</sup> There is good reason to think that a regional consensus is possible on this issue. In July 2010, for example, China told the UN Security Council that 'we support a greater role for the United Nations and the AU and other regional organizations in preventive diplomacy', S/PV.6360, 16 July 2010, p. 15.

## **Box 6: Pathways for Regional Diplomacy**

- 1. The appointment of envoys by the ARF Chair.**
- 2. The establishment and maintenance of a register of high-level and experienced people who are able and willing to serve as envoys.** The ARF Unit might assist by establishing such a register. 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.
- 3. The ARF Chair might utilise the ‘Friends of the Chair’ mechanism.<sup>39</sup>**
- 4. The ARF Chair could cooperate with the Secretary-General of ASEAN in responding to imminent emergencies or crises.<sup>40</sup>**

49. An initial question is the issue of whether this would require a revision to the ARF’s definition of preventive diplomacy. If the current definition is used to block the development of a diplomatic role for the ARF, then a revision might become necessary. But the Study Group believes that no revision is immediately necessary for a number of reasons. First, it is appropriate that preventive diplomacy be limited to cases thought likely to have regional implications. The threat and commission of genocide, war crimes, ethnic cleansing and crimes against humanity, however, almost always have regional implications. The Khmer Rouge genocide in Cambodia, for example, was accompanied by armed incursions into Vietnam and Thailand, the massive displacement of people to Thailand, Malaysia, Indonesia and the Philippines, and diplomatic tensions across the region. It is for this reason that the UN Security Council has adopted numerous resolutions in which it has declared that genocide, war crimes, ethnic cleansing or crimes against humanity constitute threats to *international* peace and security. For these reasons, the ARF may proceed to develop a modest diplomatic capacity for assisting states to prevent and resolve crises that may result in the commission of one or more of the four RtoP crimes without revising its definition of preventive diplomacy. Finally, it is important to stress that by its very nature, diplomacy is a consensual activity that may only be undertaken with the express consent of the state involved. The voluntary utilisation of diplomacy cannot therefore constitute interference in a state’s domestic affairs.

50. It is important to stress that the use of diplomacy by regional arrangements and the UN to prevent of genocide, war crimes, ethnic cleansing and crimes against humanity, was *explicitly* agreed by Heads of State and Government (including by all ARF participants) at the 2005 World Summit. Paragraph 139 of the World Summit stated that, ‘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

<sup>39</sup> See ARF Vision Statement, p. 2

<sup>40</sup> An idea that draws on the ARF Vision Statement, p. 2.

populations from war crimes, ethnic cleansing and crimes against humanity’. Diplomacy provides ARF participants with the tools to work consensually with parties to resolve crises before they escalate.

51. In terms of the specific requirements needed to develop a capacity for the ARF to utilise diplomacy, the needs would be exceptionally modest. First, a diplomatic role would be predicated on a request or the consent of the state concerned submitted to the ARF Chair. Second, upon receiving a request or consent, the ARF Chair would appoint an envoy or group of envoys to act on its behalf as a mediator.

***Recommendation 6: The ARF should 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.***

52. Articles 52-54 of the UN Charter clearly support a role for regional arrangements in maintaining international peace and security, but there remains some question as to what forms that role should take. To help frame the discussion, during its January 2010 presidency of the UN Security Council, China presented a concept paper in which it argued that the UN and regional organisations should ‘respond collaboratively’ to the increasing demand for deployment of UN peacekeeping missions.<sup>41</sup> How can this idea be translated in practice? The Asia Pacific could buttress its ability to prevent the four RtoP crimes and respond to worst-case scenarios by establishing a regional standing capacity. 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 consider how to use this ‘comparative advantage’ to augment the region’s contribution to its own and other regions’ security. One specific idea for consideration is the establishment of a standing capacity that could be available for deployment, at the request of the host state and the UN, in order to prevent the four RtoP crimes or respond to their commission in a timely and decisive manner. This capacity could be employed within the region and made available to the UN Security Council for operations outside the region.

53. 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. Practitioners and academics agree that the success of such operations, which might include peacekeepers, police, and civilian workers is dependant on rapid deployment. It is not surprising, therefore, that several ARF Participants are members of the UN group of friends of rapid deployment, including Australia, Canada, Indonesia, Japan, Malaysia, Republic of Korea, and New Zealand. Yet rapid deployment is often difficult to achieve. The UN, for example, considers a ninety day gap between a mission being mandated and deployed to be acceptable, yet in that space of time thousands of lives might be lost, the political context might be changed and the credibility of the UN and its peacekeepers irrevocably undermined. Moreover, in practice, very few UN operations are deployed within ninety days, further compounding the problems. These facts highlight the problems associated

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<sup>41</sup> 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>.

with the standby arrangements that are currently employed. Although an improvement on an entirely ad hoc approach to force generation and responsible for a shortening of deployment times, the UN's Standby Arrangements System has to date failed to meet its own, very modest, ninety days deployment target for all but the smallest missions.

54. The need for regional capacity to rapidly deploy was demonstrated in 2006 when Timor-Leste was saved from descending into anarchy only by the exceptionally rapid deployment of international police and peacekeepers at the request of the government. Given this experience, it is not surprising that there have been many proposals for establishing a regional capacity to deploy and coordinate humanitarian aid, civilian assistance and peacekeepers. In addition, both the government of Indonesia and the CSCAP Study Group on Peacekeeping and Peacebuilding proposed the establishment of a regional standing peacekeeping capacity. More recently, in 2009 ARF Member States sent participants on a peacekeeping course provided by the Centre for United Nations Peacekeeping in India.<sup>42</sup>

55. The first meeting of the ARF (Thailand, 1994), identified cooperation on peacekeeping and disaster relief as important ways of building confidence between militaries. The Chair suggested that peacekeeping be explored as a key mechanism for strengthening cooperation and that ARF participants examine the possibility of establishing a regional peacekeeping training centre. Since then, relatively little progress has been made despite the holding of an inter-sessional meeting on peacekeeping (2007) and four experts level meetings. Most of these meetings have addressed themselves to UN matters and ongoing discussion of cooperation between training centres has thus far yielded an agreement to develop a training template and establish a network of training centres. Despite the wide regional consensus on the need to strengthen capacity in this area, the lack of a sense of urgency, political sensitivities and concerns about economic costs have stymied tangible progress. It is time to act on the need to develop a regional standing capacity to prevent genocide, war crimes, ethnic cleansing and crimes against humanity and respond in a timely and decisive manner.

56. The Study Group supported the view that 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.<sup>43</sup> More work is needed to examine the modalities for working towards the development of such a standing regional capacity.

57. A key area to begin with is joint and multinational training. An effective way to begin to develop multinational training is to simply expand the delivery of courses already on offer in the region and to utilise existing facilities for multinational training. Regionally, there is already an extensive network of training facilities. In this regard, existing peacekeeping training centres in India and Malaysia, the international policing training centres in China and Australia, and the peacebuilding centre in Japan

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<sup>42</sup> UN Peacekeeping Course for ARF Member States, New Delhi, India, 18-22 May 2009.

<sup>43</sup> See Third Meeting of the CSCAP Study Group on Regional Peacekeeping and Peacebuilding, New Delhi, India, December 8-9, 2006, Executive Summary.

have immense capacity and carry with them the potential for a significant degree of joint training and education on civilian and humanitarian aid, international policing and peacekeeping. As a first step towards regional joint training these centres could increase the proportion of students they draw from the region. This might be augmented by other forms of cooperation among the region's peacekeeping training centres, including sharing information concerning syllabus, work towards common elements within the training syllabus, exchange of students/instructors, joint training exercises and seminars. At a more formal level, the heads of these and other training centres should consider the establishment of a regional chapter of the International Association of Peacekeeping Training Centres. Alternatively, given that the development of a standing capacity requires policing and civilian skills as well as military skills and that the region already hosts training centres that focus on these wider skill sets, the ARF experts meeting on peacekeeping might be enjoined to consider recommending the establishment of an ARF Network of Training Centres, encompassing peacekeeping and other military training centres, policing training centres, and a range of relevant civilian and humanitarian training centres. The ARF could also host desktop and field exercises to simulate regional responses to requests for assistance from governments. Over time cooperation in the field of training could build support for the establishment of a multinational ARF peacekeeping training centre.

58. Another initial starting point for developing a regional standing capacity to prevent the four RtoP crimes and respond to them in a timely and decisive manner is through the establishment of a Civil-Military Coordination Cell within the ARF unit, to conduct joint planning and prepare to coordinate responses to humanitarian crises. Such a cell would have three primary functions: (1) provision of advice to the ASEAN Secretary-General and ARF Chair; (2) serve as a node between the UN's Office for the Coordination of Humanitarian Affairs, the UN Office in Bangkok and (where necessary) the UN Department of Peacekeeping Operations, the ARF Unit and participating states; (3) provide a capacity to administer standby arrangements if developed and (4) provide the foundations for a rapidly deployable mission headquarters. The cell could be staffed with civilian humanitarian experts, police and military personnel from participating states.

59. Dialogue on this issue might also be fostered through the Track Two Network of ASEAN Defence and Security Institutions (NADI).

***Recommendation 7: ARF participants should consider providing voluntary background briefings to their peers.***

60. As the UN Secretary-General noted in his 2009 report on RtoP, 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. Some good examples include the recent decision by the Philippines government to attach a human rights officer to each police station in order to

strengthen human rights, build community trust and improve the flow of information from the local community and the use of civilian peace monitors by Indonesia (Aceh) and Papua New Guinea (Bougainville). These are just two examples of innovative good practice developed by governments in the Asia Pacific. Other governments, as well as regional and global institutions, could learn from these experiences.

61. The ARF already provides opportunities for governments to provide background briefings. Background briefings are informal briefings offered usually by officials to their peers on a voluntary and confidential basis, though they may also be offered by ministers. 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 One responsibilities and to learn from the experience of other states. Although background briefings are informal and confidential, we would encourage governments to share their ideas and experiences openly so that as many others as possible might learn from them.

62. 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. These briefings might be provided in an informal manner by defence officials to their peers but may also be utilised in other forums. For example, Indonesian officials have already presented background briefings to their peers on domestic security conditions inside Indonesia. Although it is appropriate that briefings remain voluntary, the ARF might consider working towards creating shared expectations that participants facing actual or imminent crises that are thought likely to have regional implications provide background briefings.

63. Over time, officials might be encouraged to include information about domestic issues with regional implications in the ARF's *Annual Security Outlook* and shared expectations about the inclusion of such information might be fostered.

***Recommendation 8: The ARF should consider establishing an Inter-Sessional Meeting on Small Arms and Light Weapons.***

64. 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. In 2001, ARF participants expressed their support for the results of the UN Conference on the Illicit Trade in SALW and their belief that 'ARF participants would promote the regional cooperation pursuant to the UN Programme of Action on SALW'.<sup>44</sup> The statement also noted an Australian proposal for an ARF Declaration on Small Arms. The commitment of ARF participants to implementing the UN Programme of Action on SALW was reiterated in the 2002 Chairman's Statement that noted 'the importance of ARF participants to implement the UN Programme of Action'.<sup>45</sup> In 2004, the CSCAP Working Group on

<sup>44</sup> Chairman's Statement, Eighth Meeting of the ARF, Hanoi, 25 July 2001, p. 7.

<sup>45</sup> Chairman's Statement, Ninth Meeting of the ARF, Bander Seri Begawan, 31 July 2002.

Transnational Crime issued a memorandum calling for the standardisation of definitions, the regulation of licit arms transfers, the adoption of measures against illicit arms transfers, and law enforcement and judicial cooperation.<sup>46</sup> In 2006, the ARF Chair again referred to SALW and ‘recognised’ that the illegal use of SALW still constituted a serious threat to human security ‘in every part of the world’.<sup>47</sup> The following year, the ARF held a workshop on the management and security of SALW in Phnom Penh. Several participating states have also called for additional measures to ensure the full implementation of the Program of Action on SALW.

65. 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 and the strong declaratory support for the UN Program of Action on SALW, consideration of 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. Because of the work already done in this area and the contributions to the debate made by governments in the region, the inter-sessional meeting would have a full agenda from the outset. This agenda might include: (1) Discussing lessons learned from implementing the UN Program of Action on the Illicit Trade in Small Arms and Light Weapons and identifying areas where a regional approach might strengthen implementation; (2) Considering the recommendations brought forward by CSCAP Memorandum No. 9 (2004) – ‘Trafficking of Firearms in the Asia Pacific Region’; (3) Discussing strengthening assistance to governments in the area of demining; and (4) Considering other proposals for strengthening the control of SALW.

***Recommendation 9: The ARF should establish a consultative mechanism to monitor and advise the UN Peacebuilding Commission and support national capacity building to prevent the four RtoP crimes.***

66. It is commonly agreed that 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 and fundamental to its long term success. 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. After all, underdevelopment and economic inequality are generally recognised as two of the most significant sources of heightened risk of future instability and violence. Addressing these issues is therefore fundamental for the implementation of RtoP. Although engagement with crises may have positive short-term effects in terms of preventing the commission of genocide, war crimes, ethnic cleansing and crimes against humanity and protecting populations from harm, in the long run it is the development of national capacity that is crucial to reducing the risk of these crimes being committed. Whilst there is broad agreement on the centrality of capacity building and of economic development to reducing the risk of

<sup>46</sup> CSCAP, ‘Trafficking of Firearms in the Asia Pacific’, Memorandum No. 9, 2004.

<sup>47</sup> Jurgen Haacke, ‘The ASEAN Regional Forum and Transnational Challenges: Little Collective Securitization, some Practical Cooperation’, in Jurgen Haacke and Noel M. Morada (eds.), *Cooperative Security in the Asia Pacific: The ASEAN Regional Forum* (London: Routledge, 2010), p. 134.

genocide, war crimes, ethnic cleansing and crimes against humanity, there are few concrete ideas about what role regional arrangements might play in offering assistance to states when they request it.

67. 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, which recommended 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, which ‘would provide regional actors with guidance on matters such as humanitarian assistance in cases of conflict, conflict resolution initiatives, and post-conflict development frameworks. The program would also allow for a sustained dialogue between regional policy circles and civil society actors on matters of post-conflict reconstruction’.<sup>48</sup>

68. The Study Group also believes that the working methods developed by the UN Peacebuilding Commission might provide a useful template that could be replicated within the ARF or within a less formal setting to marshal capacity building assistance for states that request it, on an ad hoc basis in the first instance. The Peacebuilding Commission is an intergovernmental body which was formally established by concurrent Security Council (Resolution 1645, 20 December 2005) and General Assembly (Resolution 60/180, 30 December 2005) resolutions. It was given three primary purposes:

1. To bring together all relevant actors to marshal resources, to provide advice, and propose integrated strategies for post-conflict peacebuilding.
2. To focus attention on the necessary reconstruction and institution-building efforts to ensure post-conflict recovery and sustainable development.
3. To provide recommendations and information to improve coordination of all relevant actors.

69. The Peacebuilding Commission is an ‘advisory body’ that operates on the basis of consensus among its thirty-one state members and the states with which it is working. The Commission organises ‘country specific meetings’ to assess the needs of individual states in partnership with the government and other relevant stakeholders, including UN agencies, regional institutions and international financial institutions. Thus, the Commission provides a forum for agencies, donors and the state concerned to identify shared peacebuilding priorities, develop strategic plans and initiate coordinated programs.<sup>49</sup> Countries may come onto the PBC’s agenda at the request of the Security Council, the ECOSOC or General Assembly with the consent of the state concerned. It is supported by a small Peacebuilding Support Office, whose role is ‘gathering and analysing information relating to the availability of financial resources, relevant United Nations in-country planning activities, progress towards meeting short

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<sup>48</sup> Third Meeting of the CSCAP Study Group on Regional Peacekeeping and Peacebuilding, New Delhi, India, December 8-9, 2006, Executive Summary, p. 2.

<sup>49</sup> ‘The UN Peacebuilding Commission: Benefits and Challenges’, Background Paper prepared by the International Peace Academy for the Regional Seminars organised by the Friedrich-Ebert-Stiftung, 6 June 2006.

and medium-term recovery goals and best practices'.<sup>50</sup> A third element of the UN's new peacebuilding capacity is the Peacebuilding Fund. Rather than providing substantive funding, the Peacebuilding Fund envisages its role as 'catalytic' – helping to stimulate further funding by other agencies and donors.<sup>51</sup> In the words of the Non-Aligned Movement this is a 'holistic, coherent and inclusive' approach to post-conflict reconstruction.<sup>52</sup> It would be appropriate to review the performance and operation of the Peacebuilding Commission, Peacebuilding Support Office and Peacebuilding Fund before moving forward towards more detailed consideration of replicating the model at the regional level for the purpose of assisting capacity building.

70. The work of the Peacebuilding Commission is limited to a handful of post-conflict countries and its mandate makes it difficult to envisage it being used by states to prevent future crises from emerging. Nevertheless, the methodology employed by the Commission provides a suitable framework for a capacity building mechanism, whether entirely informal or under the auspices of the ARF. ARF participants who believe that they might benefit from the adoption of a coordinated capacity building program in which mutually agreed policy priorities were supported by bilateral donors, regional and international institutions and international financial institutions might approach the ARF to convene a 'Commission' including the government, ARF members and stakeholders to develop the sort of integrated plans envisaged by the Peacebuilding Commission. This work could be supported by the proposed Peacebuilding and Reconstruction Program within the ARF Unit and might in the future be augmented by a regional fund for peacebuilding and capacity building. It has been reported that Timor-Leste had raised the idea of submitting itself to a regional process such as this. An initially ad hoc process involving an eager volunteer would be a very useful place to begin.

***Recommendation 10: The ARF could consider strengthening the Eminent and Experts Persons Group so that it may play a role in implementing RtoP.***

71. 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. It is mandated 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'. Within this mandate, the EEPs might contribute to implementing RtoP by, among other things:

1. **Providing advice on a regional framework for early warning and assessment.** The EEPs could play a role in assisting the Risk Reduction Centre in developing a framework for early warning, ensuring its reliability and transparency and overseeing its implementation, recommending revisions where appropriate.<sup>53</sup>

<sup>50</sup> General Assembly Resolution 60/180, 30 December 2005, para. 23.

<sup>51</sup> 'The UN Peacebuilding Fund (PBF)', Presentation by the Peacebuilding Support Office, 3 July 2007.

<sup>52</sup> A/61/PV.86, 6 February 2007, pp. 6-8.

<sup>53</sup> Of course, this advice would be 'non-binding' in line with the Co-chairs' Paper on the Terms of Reference of the ARF Experts/Eminent Persons (EEPs).

- 2. Supporting the ARF Chair’s efforts in the fields of diplomacy, mediation, fact-finding and good-will missions.**
- 3. 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.
- 4. Engaging in experts-level dialogue on the assessment and management of risk with the UN’s Joint Office on Genocide Prevention and RtoP.**

72. To fulfil these roles, it is important that the EEPs bring forward their expertise in mediation, the prevention of conflict, genocide, war crimes, ethnic cleansing and crimes against humanity, early warning and assessment, capacity building and economic development, peacekeeping, humanitarian operations and disaster relief. To ensure that the expertise of the EEPs is fully utilised we recommend that ARF participants revise and update their register of EEPs and consider periodic revisions when they deem it necessary.

73. In addition to their work for the ARF, the EEPs could also provide specialist information and analysis to the Joint Office of the Special Advisers to the UN Secretary-General through a regular program of meetings. EEPs might also be commissioned or invited to provide advice on specific issues or to review Office assessments as the need arises.

## **Global institutions and partnership with the Asia Pacific**

### **Box 7: Recommendations 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.**
- 12. Region-to-region and intra-regional dialogue should be strengthened to facilitate the identifying of best practices and lessons learned relating to the implementation of RtoP.**

***Recommendation 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.***

74. When genocide, war crimes, ethnic cleansing and crimes against humanity are incited or committed, delays could cost thousands of lives and make effective response more difficult. As a recent report by the Centre for International Cooperation makes clear, the key to responding in a timely and decisive manner lies in building anticipatory relationships and focusing on functional cooperation between the region and the UN.<sup>54</sup> The prevention or early resolution of RtoP crimes requires the forging and use of relationships with local elites and parties to various conflicts. This is a particularly difficult proposition for global bodies like the UN, which is why partnership with regional arrangements is particularly useful. Recent RtoP related situations in Kenya and Guinea were prevented from escalating by regional diplomacy backed by the UN. 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.<sup>55</sup> The Asia Pacific region has already begun to develop national focal points and networks relating to peacekeeping, disaster response and humanitarian operations. A variety of measures might be considered for strengthening and developing these relationships, so that they might be utilised for preventive purposes when the incitement or commission of RtoP crimes is threatened. Options that might be considered are identified in the box below. Although modest in themselves, together these initiatives would open important lines of communication between the UN and the region and ensure that regional expertise, interests and insights are brought to the fore in early warning and assessment, strengthening the capacity of both the UN and the region to detect and prevent the incitement and commission of RtoP crimes.

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<sup>54</sup> Elsina Wainwright, 'Conflict Prevention in Southeast Asia and the South Pacific', Center on International Cooperation, New York University, April 2010, p. 27.

<sup>55</sup> Richard Gowan and Bruce Jones, 'Back to Basics: The UN and Crisis Diplomacy in an Age of Strategic Uncertainty', Center on International Cooperation, New York University, July 2010, p. 17.

## **Box 8: Building Anticipatory UN – Asia Pacific Relationships**

- **Annual high-level dialogue.** This would build on the current ASEAN-UN dialogue and include the Secretaries-General of the UN, ASEAN, and the Pacific Islands Forum, the ARF chairs, and representatives from regional governments that are represented on the UN Security Council. This dialogue would provide an opportunity for high-level leaders to forge relationships that may be called into action by an RtoP crisis, and to exchange ideas about priorities, concerns and challenges.
- **Regular officials-level meetings on peace and security.** The UN Asia Pacific Regional Office (ESCAP) based in Bangkok could consider hosting regular meetings with government officials and members of the ASEAN Secretariat and ARF Unit working on areas connected to peace and security in order to establish and develop relationships. As well as developing relationships and modalities for interaction, these meetings might also examine future challenges and how their respective organisations and governments might cooperate. This report contains several recommendations for the strengthening of the ARF Unit. Were these capacities established (Risk Reduction Centre, Peacebuilding and Reconstruction Program, Civil-Military Coordination Cell) they would establish an important node for the two-way sharing of information and advice between the UN and the region at the officials level.
- **Training in early warning, assessment, conflict analysis, and other related areas.** The ESCAP and Joint Office for Genocide Prevention and RtoP could offer training in fields such as conflict analysis and assessment, early warning, mediation, and interfaith dialogue to government officials and members of the ASEAN Secretariat and ARF Unit. This would not only build regional capacities in this area, it would also forge vitally important networks and relationships.
- **Young leaders dialogue.** The UN's Department of Political Affairs could collaborate with the ASEAN secretariat but also potentially the ARF Unit to initiate a 'young leaders' dialogue'.<sup>56</sup>

75. Another area in which the partnership between the UN and the region might be strengthened relates more broadly to cooperation aimed at supporting peacekeeping, policing and/or humanitarian operations. Principally, partnership in this area relates to the development of protocols for cooperation, joint training and doctrine, and operational planning and execution – topics dealt with in more detail by other elements of the Study Group's work, especially relating to deepening regional cooperation on humanitarian operations and establishing a consultative mechanism to monitor and advise the UN Peacebuilding Commission.<sup>57</sup>

<sup>56</sup> Wainwright, 'Conflict Prevention', p. 28.

<sup>57</sup> Third Meeting of the CSCAP Study Group on Regional Peacekeeping and Peacebuilding, New Delhi, India, December 8-9, 2006, Executive Summary, p. 2.

***Recommendation 12: Region-to-region and intra-regional dialogue should be strengthened to facilitate the identifying of best practices and lessons learned relating to the implementation of RtoP.***

76. There is no single pathway to implementing the RtoP and regions differ in terms of cultural norms and preferences, institutional capacity, social capital and historical experience. As such, each region has something unique to bring to the debate about how best to implement the RtoP. For example, Africa has begun to develop a sophisticated regional peace and security architecture replete with early warning mechanisms and an African Standby Force for peacekeeping operations. This process has been characterised by the African Union as a shift from ‘non-interference to non-indifference’. A similar process is underway in the Organisation of American States. There is much that the Asia Pacific region can learn from these other regional experiences. Likewise, the Asia Pacific can also provide instructive advice to other regions. This region hosts the largest and most experienced contributors to UN peacekeeping, leaders in the field of international policing, and has achieved significant reductions in both RtoP related crimes and armed conflict in general. The Asia Pacific region therefore has much to share with other regions and much to learn from them.

77. There are two potential modes for region-to-region dialogue. The first and most important is Track One. 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. In the first instance, the Asia-Europe Meeting (ASEM) would provide a useful vehicle for furthering dialogue with Europe, but there are few requisite channels for dialogue with Africa, Latin America and the Middle East and this would need to be addressed if the region is to take full advantage of the lessons learned by others. The second avenue is Track Two dialogue. There exist a number of bilateral and multilateral Track Two channels for region-to-region dialogue. Most notably, the Europe-Asia Forum has already tackled issues relating to identity-based conflicts, early warning and peacemaking. CSCAP itself provides a potential vehicle for Track Two region-to-region dialogue. The CSCAP Steering Committee might consider initiating annual dialogue with partners in other regions, canvassing a broader range of security issues but including lessons learned about the implementation of RtoP. Although Track Two dialogue can make a useful contribution this should not draw attention away from the imperative for Track One dialogue. Moreover, Track Two dialogue must be carefully calibrated to avoid undermining Track One efforts.

78. Given the diversity within the Asia Pacific region itself, it is also important to encourage ongoing intra-regional dialogue on matters relating to RtoP. The most promising way of achieving this goal is to encourage already existing processes to engage in dialogue about RtoP. Such processes may be Track One or Track Two. Within Track Two, sub-regions might engage in their own dialogue parallel to that engaged in by CSCAP. For example, in Northeast Asia, the Northeast Asia Cooperation Dialogue (NEACD) could be considered as a potential vehicle for advancing discussion of RtoP. NEACD is a multilateral Track Two forum involving foreign ministry officials, defense ministry officials, military officers, and academics from China, Russia, South Korea, North Korea, Japan and the USA.

## Next Steps: Delivering on the Promise

### Box 9: Parallel Processes for Implementation

<b>ARF MAIN PROCESS</b>	<b>ARF PARALLEL PROCESSES</b>	<b>UNITED NATIONS</b>	<b>FURTHER STUDY – TRACK TWO</b>
<p>The ARF should consider this report's recommendations:</p> <p>STEP 1: An experts-meeting to consider the proposals presented here and make its own proposals for implementation based on them;</p> <p>STEP 2: An inter-sessional meeting to consider the expert-group recommendations and bring forward proposals to the ministerial meeting;</p> <p>STEP 3: A ministerial-level discussion of the proposals brought forward and declaratory commitment to implement them</p> <p>STEP 4: Implementation</p>	<p><b>ARF Inter-sessional Support Group on Confidence Building Measures and Preventive Diplomacy (ISG on CBMs and PD)</b> could examine:</p> <ol style="list-style-type: none"> <li>Friends of the Chair concept.</li> <li>The role of EEPs.</li> <li>Strengthening the ARF Unit.</li> </ol> <p><b>ARF Peacekeeping Experts Groups</b> could consider:</p> <ol style="list-style-type: none"> <li>Standing capacity.</li> <li>Joint training.</li> <li>First steps.</li> </ol> <p><b>Wider dialogue:</b></p> <ol style="list-style-type: none"> <li>ARF Contact Points for Counter-Terrorism and Transnational Crime.</li> <li>ARF Contact Points for Heads of Defence Universities, Colleges and Institutions.</li> </ol>	<p><b>OSAPG/RtoP:</b></p> <ol style="list-style-type: none"> <li>Enhanced dialogue with government</li> <li>Training</li> <li>Desk-to-desk exchanges</li> </ol> <p><b>DPA:</b></p> <ol style="list-style-type: none"> <li>Young leaders dialogue</li> </ol> <p><b>ESCAP:</b></p> <ol style="list-style-type: none"> <li>Joint training</li> <li>Enhanced dialogue</li> </ol>	<p><b>Study Group on Early warning and assessment</b> to consider</p> <ol style="list-style-type: none"> <li>Modalities for early warning.</li> <li>Proposal for Risk Reduction Centre.</li> <li>Register of mediators and other experts.</li> <li>Standing capacity for prevention of RtoP crimes and protection</li> </ol>

79. The previous section set out the Study Group's recommendations, identifying a range of measures that could be adopted by national governments, regional arrangements, and global partners to support the implementation of the RtoP in the

Asia Pacific region. This section looks beyond the Study Group and identifies practical pathways for moving this agenda forward. In keeping with the previous section, it focuses primarily on the ARF but also includes suggestions for the UN. Because several of the major recommendations presented in the previous section, especially the calls for the establishment of a Risk Reduction Centre and Regional Standing Capacity, involve major undertakings that will require further specification of the details, this section also outlines avenues for further study.

## **Implementing RtoP in the Asia Pacific: Next Steps for the ARF**

### *NEXT STEP > Convene ARF Experts Meeting on RtoP*

80. 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. Therefore, the implementation of RtoP by the ARF should begin with the establishment of an ARF Experts Meeting to consider the measures recommended by the CSCAP Study Group on RtoP. The Experts Meeting would revise and refine the recommendations contained herein and propose the establishment of an inter-sessional meeting which would then advise the ARF Ministerial Meeting.

81. The ARF could consider convening a one-off experts meeting on implementing the RtoP in the Asia Pacific region. The 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 the previous section and work towards developing an agenda and work plan to accompany a recommendation for the establishment of an inter-sessional meeting on implementing RtoP. To that end, the experts meeting may explicitly consider and offer its own proposals on each of the twelve recommendations contained in this report. The ARF experts meeting on RtoP could also invite briefings from the CSCAP Study Group on RtoP and form a judgment about whether and how to move forward with implementation. Where it decides that specific recommendation should not be further explored or should be amended, it would be beneficial if the experts meeting could explain its decision and recommendations.

### *STEP 2 > Inter-sessional meeting on implementing RtoP*

82. 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 by ARF Ministerial Meeting*

83. The Ministerial Meeting might then 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

## **Parallel Processes**

84. Although it is most efficient and coherent to use a single ARF experts meeting on RtoP as a vehicle for examining the issues identified above, it is also important to recognise that these issues impact on the work of several other ARF bodies. As such, it is sensible to suggest that these bodies focus on RtoP issues where appropriate. In particular, the ARF Inter-sessional Support Group on Confidence Building Measures and Preventive Diplomacy (ISG on CBMs and PD) is a suitable venue for deliberating on whether or how best to strengthen the Friends of the Chair concept, the EEP and ARF Unit to facilitate the ARF's role in preventive diplomacy and mediation. There is no requirement that the ARF adopt RtoP language in order to build the capacities it needs to support the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity. Building these capacities outside the rubric of RtoP will strengthen the region's capacity in this area irrespective of its badging.

85. It is also important to reinvigorate the ARF's engagement with peacekeeping. The ARF Peacekeeping Experts Meeting may therefore consider in detail the proposal for the establishment of 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. In order to lay the foundations for the establishment of such a standing capacity, the ARF Peacekeeping Experts could consider recommending:

- a. Strengthening and increasing the multinational training of civilian humanitarian workers, police and military personnel for protection operations. The Peacekeeping Experts meeting has made a degree of progress on this issue;
- b. Establishing a tangible regional network of training institutions, such as a regional node of the International Association of Peacekeeping Training Centres or an ARF Peacekeeping Training Centres Network comprising peacekeeping training centres, international policing training centres, and humanitarian/civilian/peacebuilding training centres;
- c. Expanding the use of joint training exercises;
- d. Establishing a civil-military coordination cell within the ARF Unit as a first step towards the establishment of a rapid deployable multinational headquarters;
- e. Provision of assistance for individual countries to establish national training centres;
- f. The establishment of interim regional standby arrangements covering humanitarian assistance, civilian assistance, police and peacekeepers, probably managed by the ARF Civil-Military Coordination Cell;
- g. The establishment of a regional capacity to instigate, manage and coordinate humanitarian relief efforts;
- h. Pathways towards the establishment of a multinational training centre;
- i. Pathways towards the establishment of a standing regional capacity to prevent the four RtoP crimes and respond in a timely and decisive manner. This might include the establishment of small multinational

teams in the first instance, such as multinational formed police units, infantry units, or logistical and transport packages.

86. To support and strengthen regional dialogue on RtoP, ARF participants might consider ways of introducing the concept to participants in existing military, police, and educational dialogues and forums in the region. This might help to encourage the sharing of lessons and experiences that could enrich engagement with RtoP by including officials and experts from areas such as defence, law enforcement, humanitarian work, and the academic community. There are two existing networks into which RtoP related dialogue might be inserted:

- ARF Contact Points for Counter-Terrorism and Transnational Crime
- ARF Contact Points for HDUCI (Heads of Defence Universities, Colleges and Institutions)

These groups might be encouraged to explore RtoP and to examine the potential for developing training materials, lecture series for educational institutions and other forms of dialogue.

## **Strengthening Partnership with the United Nations**

87. Strengthening the partnership between the UN and the Asia Pacific region is crucial not only for implementing the RtoP effectively but also for strengthening regional peace and security more generally. Building partnership requires action from both sides and although this report is focused mainly on the role of regional arrangements, it is important to underscore the point that the UN also has an important role to play. In particular, the Study Group identified roles for the Joint, the Department of Political Affairs, and the UN's Asia Pacific Regional Office.

### **Box 10: United Nations Activism**

#### **Joint Office of the Special Advisers on the Prevention of Genocide and RtoP**

- **Enhanced dialogue with national governments.** The Joint Office should proactively engage national governments in setting priorities and goals, information sharing and sharing advice related to early warning and assessment. Informal dialogue between the Joint Office and national governments should become habitual and two-way but might be augmented through the institution of annual dialogue between national focal points and the Joint Office. The Joint Office might encourage governments to identify focal points by inviting them to participate in an officials-level scoping meeting to discuss the work of the Joint Office and potential modes of cooperation with Member States and regional institutions.
- **Training on early warning and related issues.** In order to strengthen regional capacity in early warning and assessment and build appropriate and effective relationships, the Office should extend its training. Working through

the UN's Asia Pacific regional office (ESCAP), the Office should provide training on early warning, assessment, and prevention to members of the ARF Unit and ASEAN secretariat, government officials and individuals from relevant Track Two organisations.

- **Desk-to-desk exchanges.** The UN secretariat, especially the Office of the Special Adviser, ASEAN secretariat and ARF Unit should engage in desk-to-desk exchanges of officials in order to deepen understanding and strengthen relationships.

### **Department of Political Affairs**

The UN Secretary-General's own department, the Department of Political Affairs has an important role to play in helping to build and strengthen anticipatory relationships between the region and the UN. In particular, the department should consider extending or supplementing the UN-ASEAN dialogue with an annual high-level leader's dialogue and a 'young leaders dialogue'.

### **UN Asia Pacific Regional Office (ESCAP)**

As the focal point for the UN's activities in the Asia Pacific region, the UN's Asia Pacific Regional Office (ESCAP) in Bangkok has an important role to play in strengthening the interface of the region and the UN, and in particular in building partnership with governments and the ASEAN Secretariat and ARF Unit. One way of accomplishing this is by ESCAP offering training in fields such as conflict analysis and assessment, mediation, and interfaith dialogue to government officials and members of the ASEAN Secretariat and ARF Unit.

## **Track Two: Areas for Further Study**

88. The CSCAP Study Group on RtoP has set out twelve recommendations for implementing RtoP in the Asia Pacific region. Some of these recommendations require further study and elaboration in order to set out more precisely what is required and how it will be delivered. For that reason, consideration might be given to continuing to study the implementation of RtoP in Asia Pacific. CSCAP is a unique organisation of which we can all be justifiably proud. Because of the immense quantity and diverse range of expertise housed within CSCAP, the Council is well placed to serve as a key vehicle for advancing dialogue on the practicalities of implementing RtoP. One avenue that it might consider is the establishment of a new Study Group on Early Warning and Assessment to build on the consensus identified in this report and examine in further detail some of the practical issues relating to implementation. In particular, the CSCAP Study Group on RtoP has identified four important areas of work for consideration by Track Two, which CSCAP might want to consider tasking a new Study Group to complete. They are:

1. **Examining the key issues relating to early warning and assessment**, especially: (1) working towards the development of a shared methodology for early warning and assessment and (2) examining the modalities for strengthening cooperation between the region and the UN in the field of early warning and assessment.

**2. Developing a proposal for a Risk Reduction Centre.** Although this report has identified some of the principal tasks that would be fulfilled by a Risk Reduction Centre, many questions remain concerning its function and role, working practices, institutional situation, funding and more besides. A follow on study could be tasked with developing more specific proposals relating to the establishment of a Risk Reduction Centre.

**3. Establishing a register of Track Two mediators and teams of experts.** A more modest task is the establishment and maintenance of a register of Track Two mediators. This register could be made available to Track One and Track Two actors seeking assistance with mediation. Study is also needed of the practical feasibility and operating procedures for establishing a register of small teams of experts on matters such as ceasefires, power sharing arrangements, election design and monitoring, human rights protection and promotion and constitutional reform to provide expert advice when requested. A Study Group on Early Warning and Assessment could convene a one-off experts-level meeting to examine the feasibility of establishing a register and bring forward recommendations.

**4. Standing Capacity for preventing and responding to the RtoP crimes.** The Study Group recognised that early warning and assessment is only part of the equation and that it was equally important to ensure that the region had the capacity to act to prevent and respond to genocide, war crimes, ethnic cleansing and crimes against humanity when necessary. Given the enormity of the task of establishing a standing capacity along the lines recommended in this report, therefore, the Group recommends that any subsequent Track Two study of the modalities of implementing RtoP in the Asia Pacific region focus on the specific requirements entailed in building a standing capacity.

## **Resource Implications**

89. The recommendations brought forward in this report are consistent with existing principles of international law and the commitment to RtoP made by Heads of State and Government in 2005. They are also modest in terms of the resources required to implement them and make use of existing capacities wherever possible. By way of a summary, in the immediate term the following resources would be required to implement the aforementioned recommendations:

- 1) Funding for additional meetings and travel to support enhanced dialogue and information sharing (UN-region, intra-region, region-region, Track One/Track Two).
- 2) Modest strengthening of the ARF's capacity:
  - a. Establishment of the Risk Reduction Centre (based on the UN's experience with the Joint Office, this would require approximately four full-time staff and associated costs)
  - b. A single additional appointment to develop, maintain and administer the mediators register.

- c. A single additional appointment to manage ARF-UN and region-to-region dialogue.
  - d. Establishment of the Peacebuilding and Reconstruction program (based on the experience of the UN's Peacebuilding Support Office, no more than three fulltime staff would be required).
  - e. Establishment of the Civil-Military Coordination Cell (staff could be provided gratis by participating states)
- 3) Potential additional investment in CSCAP or some other regional Track Two network to facilitate the additional study and dialogue identified in this report.
  - 4) Initial modest expansion of the multinational activities undertaken by peacekeeping, policing and peacebuilding training centres in the short term. Any additional future investment in a standing capacity to prevent and respond to genocide, war crimes, ethnic cleansing and crimes against humanity humanitarian capacity will be offset by efficiency gains accrued through coordination.

## **About the CSCAP Study Group on the Responsibility to Protect**

90. The CSCAP Study Group on the Responsibility to Protect was mandated by the CSCAP Steering Committee in Kuala Lumpur in June 2009 to examine the Responsibility to Protect (RtoP) and 'explore the implications of this new norm for regional actors and organisations'. The Group was also tasked with 'providing policy recommendations regarding possible regional contributions to the global debate surrounding the implementation of RtoP'. It was co-chaired by AUS-CSCAP, CSCAP Canada, CSCAP Indonesia and CSCAP Philippines and supported by financial assistance from the CSCAP Steering Committee, the Australian Agency for International Development and the Asia-Pacific Centre for the Responsibility to Protect. CSCAP Canada provided the group with administrative support and CSCAP Indonesia and CSCAP Philippines hosted meetings. The Group held an initial informal scoping meeting alongside the CSCAP General Conference in Jakarta (15 November 2009) and three formal meetings. The first meeting, held in Jakarta (26-27 February 2010), examined the meaning and scope the RtoP and implementation issues relating to the Association of Southeast Asian Nations (ASEAN) and the ASEAN Regional Forum (ARF). The second meeting, held in Manila (20-21 September 2010) examined issues that were not discussed in the first meeting (especially the primary responsibility of the state to protect its own population) and engaged in detailed analysis of implementation issues. Individual reports on each of these meetings are available at [www.cscap.org](http://www.cscap.org). The third meeting, held in Phnom Penh (April 2011), discussed and agreed the wording of this final report.

91. The Study Group has enjoyed and benefited from the support and guidance of the United Nations secretariat. The group received a briefing at the first meeting by the Special Adviser to the UN Secretary-General, Edward Luck, and the Special Adviser participated in every aspect of the meeting. At the second meeting, which focused on

more specific implementation issues, the group benefited from a briefing by Gillian Kitley, Senior Officer of the UN's Office of the Special Adviser for the Prevention of Genocide. As Mr. Luck had done in the first meeting, Ms. Kitley participated in every aspect of the group's discussion at that meeting.

92. The present report represents a consensus of the whole study group. The first draft was written by the co-chairs based on the insights offered and agreement reached in the group's first two meetings. Group members provided extensive written feedback on the draft. A further draft was prepared based on this commentary and offered to the Group for discussion at its third meeting. The present report is the product of this extensive dialogue and was adopted by consensus of the whole Group. From the outset, the co-chairs stressed that the only effective response to the challenge established by the recurrence of genocide, war crimes, ethnic cleansing and crimes against humanity was one that could command agreement of the whole group and the group worked hard to find consensus. All members approached the task with a shared determination to make a meaningful and realistic contribution. Some individual members would no doubt have liked the final report to have gone further in its recommendations, others the reverse. The result is a consensus that maps out a long-term agenda for implementing RtoP and preventing the commission of genocide, war crimes, ethnic cleansing and crimes against humanity in the Asia Pacific region, and protecting the victims, and identifies practical and realistic first-steps. It does so in a manner consistent with the UN Charter and cherished regional

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