

Implementing the Responsibility to Protect



UNDERSTANDING THE PRINCIPLE AND THE ROLE OF REGIONAL ARRANGEMENTS

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From the killing fields of Cambodia, to the genocide of Rwanda and the bloody civil war in Bosnia, the international community has all too often witnessed cases of conscience shocking inhumanity.

Time and again, sovereign states and the international community failed to prevent genocide and mass killing and then failed to protect the victims.

The nadir came in 1994, when the United Nations (UN) stood aside amidst the carnage of the Rwandan genocide. Nearly one million people were slaughtered in little over three months. The failure to deal effectively with the aftermath helped trigger the war in neighbouring Democratic Republic of Congo (DRC) which claimed the lives of over two and a half million people, most of them civilians.

Purpose

- Outline the nature and scope of the RtoP
- Outline avenues for translating the principle from words to deeds
- Identify the role of regional arrangements in implementing RtoP

This concept had its roots in a number of initiatives developed in the 1990s and early twenty-first century. 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, 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). Whilst the RtoP concept draws on this history it is distinct from it and derives its authority, meaning and scope from the unanimous agreement of UN Member States in 2005.

RtoP 'Three 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.
- Second, the international community's responsibility to assist the state to fulfill its responsibility to protect.
- 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.

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

No pillar is more important than the other. 15 of the governments in the Asia Pacific participated in the recent General Assembly debate on RtoP, which adopted a unanimous resolution welcoming the Secretary General's report on implementing RtoP and indicated the General Assembly's willingness to continue considering RtoP.

Scope of RtoP

- RtoP applies only to the four crimes enumerated in the 2005 Declaration and their prevention: genocide, war crimes, ethnic cleansing and crimes against humanity.
- As such, RtoP applies only to a relatively narrow field of human security.

It is important to distinguish the RtoP that governments have agreed to adopted and the ideas that helped shape it.

RtoP does not apply to generalized human rights questions, use of force that falls short of the aforementioned crimes, human security problems stemming from HIV/AIDs, climate change, generalised economic deprivation and energy shortages.

In terms of human security, it is a very narrow but deep focus on the freedom from fear, from the worst and most conscious-shocking fear, that encompasses upstream preventive measures.

Grounded in IHL



- The crimes are enumerated in law.
- Under customary international law, states already have obligations to prevent and punish genocide, war crimes and crimes against humanity; assist states to fulfill their obligations under International Humanitarian Law; and promote compliance with the law.
- Mechanism for ‘implementing’ R2P are consistent with international law.

Geneva Conventions and Additional Protocols, Genocide Convention, Statute of the International Criminal Court, Convention on the Eradication of Discrimination Against Women, Human Rights Declaration, not to mention provisions within regional and subregional organizations.

Rights and duties of the Security Council, consistent with CH VI, VII and VIII of the Charter

Prevention

- A. preventing the incitement of the four crimes;
- A. supporting the UN in establishing an early warning capability;
- A. assisting states under stress before crises and conflicts break out;
- A. supporting the mission of the Special Adviser of the Secretary-General on the Prevention of Genocide.

Member States explicitly agreed that RtoP entails the prevention of such crimes' and identified four specific elements of prevention:

Implementation



- **Pillar One:**
 - The State's Primary Responsibility
- **Pillar Two:**
 - International Assistance and Capacity-Building
- **Pillar Three:**
 - Timely and Decisive Response

Pillar 1



- The state's primary responsibility to protect its own population from the four crimes.
- 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.
- States voluntarily accepted this obligation and should be expected to fulfill it.

Ratifying relevant International Conventions and faithfully embodying those in domestic law.

National dialogue and reconciliation.

Upholding the Rule of law and ensuring access to justice.

Pillar 2



- The second pillar of the RtoP refers to the international community's duty to assist states in meeting their RtoP obligations through a combination of persuasion and partnership.
- As with pillar one, emphasis is on preventive measures.

Preventive: measures designed 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.

Pillar 2: Assistance

- Encouraging States to meet their responsibilities under pillar one;
- Helping them to exercise this responsibility;
- Helping them to build their capacity to protect;
- Assisting States 'under stress before crises and conflicts break out'.

According to the 2005 WSOD, assistance under pillar two of the R2P could take one of four forms:

Pillar 2: Assistance



- The primary role of pillar two is to galvanise the international community into assisting states to build and maintain the capacity necessary to address potential problems well before they manifest in the commission of mass atrocities.
- Measures undertaken under pillar two are done so with the express consent of the state involved, usually in the form of a specific invitation.

Types of Measures

- **Technical and financial support to states that are enacting preventive measures:**
 - targeted development assistance;
 - support for the establishment of safe and secure dialogue within states;
 - assistance with combating sexual violence;
- **Education on human rights to prevent future crimes;**
- **Building civilian capacities to prevent the four crimes;**
- **Post conflict peace-building measures to prevent future crimes.**
- **SSR Reform: Assistance with establishing impartial and effective security and judicial systems within states;**
- **Building learning processes between regional organisations and the UN;**
- **Military assistance to states as necessary:**
 - consensual deployment of police peacekeepers or even military personnel

UN and regional arrangements to support states where requested.

Pillar 3: Timely and Decisive Response

- The use of 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.

.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 RtoP.

Pillar 3: Measures



- Range of peaceful activities enumerated in Chapters VI and VIII of the UN Charter:
 - Chapter VI relates to the ‘Pacific Settlement of Disputes’:
 - ✦ use of negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means.
 - Chapter VIII of the UN Charter relates to the role of regional arrangements and permits Member States to enter into such arrangements.

Pillar 3: CH VII Response

- Wider range of measures if: (a) peaceful means prove inadequate; and (b) national authorities are ‘manifestly failing’ to protect their populations from 4 RtoP crimes.
- UN Security Council is prepared to take collective action ‘on a case-by-case basis and in cooperation with relevant regional organisations as appropriate’.
- RtoP’s capacity to legitimise coercive interference in the domestic affairs of states is circumscribed by the UN Charter and does not imply any alteration to the Charter’s provisions in this field.

Preventive action in relations to Pillar 3 entails strengthening the UN’s capacity to deploy peace operations which have the mandate and capability to protect civilians under threat.

Regional Arrangements



- 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.
- Regional activity should take into account regional circumstances and norms.
- More work is needed to enumerate this role more precisely and establish the most appropriate mechanisms.

Role of Regional Arrangements

- A. encourage and help states to fulfill their primary responsibility to protect;
- B. support the UN in establishing an early warning capability;
- C. help states build the capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity;
- A. assist states under stress before a crisis breaks;
- A. support the mission of the Special Adviser of the UN Secretary-General on the Prevention of Genocide;
- A. utilise peaceful measures under Chapter VIII of the UN Charter to respond to crises involving the four crimes;
- A. 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

The World Summit Outcome Document specifies at least seven distinct roles for regional arrangements.

Role of Regional Arrangements

- *As actors within their region:* regional arrangements assist their Member States and can adopt appropriate peaceful measures.
- *Through horizontal cooperation:* regional arrangements can work together to learn lessons and build capacity.
- *Through vertical cooperation:* regional arrangements can ‘add value’ to efforts spearheaded and authorised by the UN.

Of course, it is for regional arrangements themselves to determine precisely how they will fulfill these roles, taking into consideration relevant regional needs, capacities, and norms of behaviour.

Further Investigation

1. Is the list of roles for regional arrangements appropriate and legitimate?
1. Assuming a positive answer to the first question or the emergence of a revised list of roles, what institutions and arrangements should take carriage of implementing the RtoP?
1. On the basis of the answers to the first and second questions, what specific measures might be realistically taken in the Asia-Pacific region?

Whilst there is broad consensus on the centrality of regional arrangements in implementing the RtoP, more study is needed to specify the ways in which such arrangements might fulfill these responsibilities.

In the Asia-Pacific region, further study and dialogue is required around three questions in particular:

Meaningful answers to these questions require careful analysis, consultation and dialogue.

This paper has attempted to contribute the questions and some of the parameters in terms of defining the scope of RtoP, the Consortium for Non-Traditional Security in Asia provides the ideal setting for the further consideration and analysis of these questions.