

The Role of Regional and Subregional Arrangements in Strengthening the Responsibility to Protect

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Conference Report

On May 11, 2011, the Stanley Foundation convened a large array of UN member state representatives, key UN Secretariat and regional organization officials, and independent experts for a brainstorming meeting designed to focus attention on the role of regional and subregional arrangements in strengthening the responsibility to protect (R2P).

As noted by numerous participants, R2P has “passed the normative Rubicon,” with focus now directed to practical implementation of many of its key elements. As consensus has deepened, the critical role of regional and subregional arrangements in R2P implementation has elicited particularly widespread support. Yet, few discussions—whether about, with, or between the regions—have yet provided a precise vision of what this role might be in specific (sub)regional contexts and how it might be maximized in support of R2P objectives.

Given the upcoming General Assembly informal interactive dialogue scheduled for July 12, 2011, on “The Role of Regional and Subregional Arrangements in Implementing the Responsibility to Protect,” the Stanley Foundation’s May meeting sought to explore further the potential for regional contributions to protect against genocide, ethnic cleansing, crimes against humanity, and war crimes. It was designed to elicit substantive input from member states, UN officials, and independent experts for the pending secretary-general’s report, as well as General Assembly consideration of the subject in July.

Meeting discussions were prompted by the findings of four regional experts as outlined in individual policy papers on regional approaches to the responsibility to protect in Africa, Asia, Europe, and Latin America-Caribbean. The following text presents the main points of the discussion, as well as areas ripe for additional input and dialogue. It is followed by the policy papers upon which discussion was based.

Key Questions for Further Input and Dialogue

- What advantages and liabilities do (sub)regional processes bring to bear in addressing R2P crimes? What have been their successes and failures, and what can we learn from them?
- The policy papers that informed the May 11 discussions focused on a limited set of regional and subregional arrangements. What do arrangements beyond those discussed below have to offer in terms of models and lessons learned?
- Has a lack of formal arrangements impacted particular cases in (sub)regions where collective structures are informal, diffuse, or nonexistent? If so, how?
- What should be the relationship among different levels of multilateral engagement (United Nations, regional, and subregional)? How can effective coordination be ensured?
- How might cross-regional dialogue be encouraged? What role should the United Nations play in this process?
- What role can regional arrangements play in early warning, and what relationship should exist between regional and international early warning mechanisms?

- Regional bodies carry a unique form of political legitimacy. Yet neighboring states often harbor strong strategic interests in their own “backyard.” How have neighbors mitigated or exacerbated atrocity risks? How do these dynamics impact the functioning and role of regional arrangements?
- What lessons do existing peer review models, such as the African Peer Review Mechanisms and the Human Rights Council’s Universal Periodic Review, suggest for regional engagement? What would an R2P component of these models look like?
- How might the unique political legitimacy of UN structures and regional arrangements be encouraged as mutually reinforcing? How might confidence building be approached in this context?
- What is the relationship between R2P and other protection-focused regional security concerns such as the threat posed by transnational criminal networks and drug cartels? When and how might R2P be appropriately mobilized for these issues? What added value could it bring?
- What topic should form the basis for the General Assembly’s continuing consideration of R2P in 2012?

Africa

As often noted, African institutions have provided many of the conceptual roots and formal mechanisms that continue to reinforce the responsibility to protect as both a political concept and operating principle. The first serious consideration of how humanitarian motives might drive conflict resolution efforts in Africa occurred at the subregional level, when the Economic Community of West African States (ECOWAS) faced the Liberian crisis of the early 1990s and formed the Economic Community of West African States Monitoring Group (ECOMOG) as an intervention force. Both the intervention and its humanitarian justification proved highly controversial within and beyond the grouping. Yet action in Liberia was soon contrasted with inaction in Rwanda, and contentious debate ultimately resulted in the ECOWAS *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security* in 1999, institutionalizing a permanent mechanism for conflict resolution and laying the foundation for adoption of the responsibility to protect.

Concerns that fueled opposition to the Protocol in the 1990s reflect those voiced today regarding R2P implementation—in particular fears that its mechanisms would be mobilized by the strong to exploit weak. These concerns were ultimately overcome by broadening focus beyond military intervention to a wider menu of engagements that placed prevention at the core of protection efforts. This prevention-focused philosophy informed many of the tools established by the ECOWAS Protocol—such as the mechanism’s early warning system, the Mediation and Security Council, and the Council of Elders—as well as the approach to these issues that would ultimately be adopted by the African Union (AU).

While slower in its consideration of R2P-related issues, the framework established by the African Union benefited from the ECOWAS process and adopted similar structures and mechanisms to give life to the policy of nonindifference enshrined in the Constitutive Act of 2002, including an elaborate continental early warning system, a Peace and Security Council, and a Panel of the Wise. Both the ECOWAS Protocol and the Constitutive Act envisioned a standby force that could enforce military response. Each was instituted, however, in the hope that its use would never become necessary.

While these mechanisms are at the forefront of regional efforts to institutionalize the responsibility to protect, questions remain regarding the capacity and will to fully implement the tools that have been established. As put by one attendee, the structures exist, but implementation is uncertain.

Another participant suggested that, while political will may be lacking in terms of military or other direct enforcement measures, African institutions have been notably proactive in implementing regional preventive mechanisms. The Panel of the Wise, for example, has been frequently mobilized. In Guinea and Niger, ECOWAS deployed political initiatives with the support of the United Nations, playing a critical role in defusing and managing both crises. Several participants cited the African Peer Review Mechanism as an under-referenced but highly relevant model for regional engagement with national authorities.

Asia

Discussion of Asian regional arrangements focused on the Association of Southeast Asian Nations (ASEAN) and its Regional Forum (ARF). In contrast to their highly formalized African counterparts, neither ASEAN nor the wider ARF have adopted the responsibility to protect or reaffirmed its official language. Relevant preventive elements, however, have been incorporated within key regional documents, including the ASEAN Charter of 2008 and the ASEAN Political-Security Community Blueprint. These elements acknowledge the centrality of human rights, emphasize the primary responsibility of states to protect those rights, and underscore the need for capacity building to better equip states to protect their populations.

Existing ASEAN mechanisms—and their limits—must be understood in terms of the nuanced political dynamics of the region. Incorporating a highly diverse spectrum of political systems ranging to both extremes of democratic and autocratic governance, consensus remains the established mode of ASEAN and ARF deliberations. One participant underscored that, barring consensus, agreements that satisfy the least common denominator become the de facto operating principle of the arrangement.

These dynamics are at the root of the strong reaffirmations of sovereignty and noninterference that characterize the ASEAN Charter and other key documents. The ARF, for example, which has tended to focus on nontraditional security issues, has begun to look more closely at conflict prevention. Such prevention, however, is defined explicitly as interstate with no scope given for regional involvement in internal conflicts. Great resistance remains in ASEAN to the topic of preventive diplomacy, which suggests interventionist (if non-military) undertones. The inability to reconcile the interests of active and reluctant states in consensus-based dialogue continues to limit the ARF's potential role in this sphere.

Should ASEAN and the ARF overcome the political barriers to more directly address R2P-related issues, resources constraints would continue to hinder both arrangements' capacity to deepen their focus on mass atrocity prevention, or to strengthen efforts toward their broader human rights and conflict prevention agendas. Member contributions to the new Human Rights Commission cover little more than travel expenses to semi-annual sessions. ASEAN functions on minimal contributions that support a small secretariat, largely unequipped for the continuous engagement that more proactive preventive efforts would require.

In spite of these limitations, existing building-blocks within the ASEAN architecture suggest opportunities for engagement that might enhance its ability to respond more directly to R2P concerns. Over the last year, representatives from ARF states have begun to consider R2P directly through Track II

dialogue initiated by the Council for Security Cooperation in the Asia Pacific (CSCAP). The United Nations is considering future engagement with ASEAN on the model of this study group. Both efforts suggest there might be scope to: (1) build on existing frameworks for improving state capacity and, (2) consider how Pillar Two efforts might complement the current emphasis on Pillar One capacities.

Some ASEAN states, such as the Philippines, have demonstrated willingness to request regional involvement both in terms of conflict mediation and broader capacity building; these are precedents upon which engagement might be expanded and should be encouraged.

Europe

While Europe hosts many regional and subregional arrangements with the potential to strengthen approaches to the responsibility to protect, the policy paper that formed the basis for discussion focused on the Organization for Security and Cooperation in Europe (OSCE) and the contribution its mechanisms and historical development might make to implementation and cross-regional learning.

Given Europe's central role in many of the 20th century's most destructive incidents of mass atrocities, participants noted the level of innovation and norm development within Europe in the last 60 years. These shifts suggest the speed and depth of progress that can be made once institutions have fully internalized the norms they are designed to implement and enforce. OSCE development since the 1970s provides a case in which a regional organization incorporated a spectrum of diverse—and largely antagonistic—political systems, prioritized human rights, and operated successfully on a logic of engagement rather than coercion or confrontation. Lacking the supranational elements of the European Union (EU), the OSCE has developed a form of assertive, influential engagement that relies more on the compliance pull of membership in a “club” of shared norms than on formalized, independently empowered enforcement structures.

The OSCE's High Commissioner on National Minorities was noted as a particularly salient model for regional engagement. While much has depended on the personal practice of individual commissioners, the office was given a mandate to engage with states in ways that could be considered highly intrusive. Yet, such engagement has been tolerated as a means to prove suitability for membership in the “club.”

In addition to numerous operational contributions not often mirrored in other regional contexts, the OSCE has provided an example of effective coordination between the regional and international levels, partnering with the United Nations on shared assessments, terminology, and messaging in response to the June 2010 crisis in Kyrgyzstan.

In spite of the accomplishments stemming from OSCE invention and experimentation, European failures have been clear in the regional response to atrocities in the Balkans and the Caucasus. These failures underscore not only the need for continuous learning and adaptation, but also the recognition of the deeply political dynamics at play—a fact that is no less true at the regional than at the international level.

Latin America-Caribbean

Operating in a context unique to their own historical experience, Latin American-Caribbean institutions are the product of a tension between a dedication to human rights principles and profound skepticism among some members of any initiative that appears interventionist and/or threatens sacrosanct principles of sovereignty and territorial integrity. Thus, while many Latin American-Caribbean states voice concern over Pillar Three of the R2P framework, arrangements such as the

Organization of American States (OAS) and the Caribbean Community (CARICOM) host instruments such as the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, and the Inter-American Democratic Charter. These mechanisms offer an elaborate regional framework for the protection of human rights that should, in theory, contribute to the preventive elements of R2P.

The Inter-American Commission, for example, has comparatively intrusive powers, allowing for individual petitions, country visits to assess general and specific human rights situations, recommendation of “precautionary measures” to prevent urgent cases of violation, and the power to request that the Inter-American Court order binding “provisional measures” to address the same. In recent years, the court has begun to hear a new generation of cases pertaining to collective massacres and considered its role in ordering provisional measures in this context. The Inter-American Democratic Charter, adopted in 2001, declares not only the promotion of democracy and human rights, but also the possibility of sanction when democratic norms are breached.

While acknowledging these mechanisms and institutions, some attendees described them as more reactive than proactive, and claimed that responses tend to be lethargic. Others noted that organized crime has complicated the regional context for human rights protection. Nonstate criminal actors and transnational drug cartels have become key perpetrators of violence in a region that now accounts for 28 percent of the world’s homicides. While this problem has reached catastrophic proportions, the relationship between transnational criminal violence and the responsibility to protect remains ambiguous—it is unclear to what degree the violence meets the “widespread and systematic” criteria necessary to define it as an R2P crime, or what the R2P framework might contribute to efforts to combat organized criminal violence should it qualify. Some participants contended that, under certain circumstances, state responses to the criminal threat through military force could also be viewed as an R2P violation.

The immediacy of the transnational criminal threat, however, dominates the focus of regional leaders seeking to ensure the physical security of civilians. One participant highlighted that, to maintain regional relevance, R2P needs to support the creation of a culture of prevention that bars smaller-scale criminal violence from devolving into the worst excesses reflected in the framework.

Unique Contexts, Relatable Experience: Maximizing the Potential for Cross-Regional Learning

Normative frameworks, institutional structures, and political dynamics vary widely across regional and subregional contexts. Yet each region discussed faces internal contradictions that at once foster and obstruct implementation of R2P at the regional level.

Africa, for example, was considered to be at the institutional and normative forefront of regional R2P approaches. It suffers, however, from gaps in implementation capacity and political will, given the “automatic membership” of a wide range of political systems and lingering sensitivities over international intervention. European integration, by contrast, was described as driven by the impetus of shared norms and a submission of national identities to a broader normative structure. The inclusive commitment to R2P principles that stems from this process, however, creates concerns within the region that Europe will be relied upon as de facto implementer of military action. Latin America and the Caribbean must balance between a deep regional commitment to human rights and equally fervent devotions to territorial integrity and nonintervention. Asian arrangements suffer a similar tension as they seek consensus among states with vastly different political systems, perspectives, and interests.

Participants agreed that, while the specific tensions faced within each region are unique to their political and institutional contexts, addressing them would benefit from cross-regional learning and dialogue. Participants also suggested that cross-regional dialogue should be enhanced not only at the UN level but also with and among the regions. Formalized communication between the AU, EU, and the UN Security Council should be enhanced and expanded such that consultation becomes part of the procedural expectation with and between regional arrangements. Cross-regional discussion should also take place outside the political dynamics of the United Nations.

While mechanisms and frameworks will vary by region, such dialogues would contribute to general confidence building through the sharing of relevant experiences and lessons learned, and to the promotion of a universal interpretation of R2P across the regions.

Shared Challenges

Among the topics that would benefit from cross-regional dialogue, the following were highlighted:

Identifying Effective Policy Approaches

While international, regional, and national actors develop institutional structures designed to most effectively implement mass atrocity prevention and response measures, all still lack a sense of certainty over what measures can best address the nuances of mass atrocity crimes.

Participants noted that many of the mechanisms discussed, particularly in the Asia-Pacific and Latin America-Caribbean regions, were designed either for conflict prevention or to supervise adherence to the broad human rights agenda. While these frameworks are closely linked to the implementation of R2P, conflict prevention, human rights promotion, and mass atrocity prevention are similar but distinct activities. They do not always present the same indicators or require the same response. Questions were therefore raised about the suitability of existing mechanisms to assess warning signs and advance policies that directly address the R2P framework's specified crimes.

In terms of direct policy approaches, conceptual ambiguity arose around the timing of specific types of engagement, particularly in relation to conflict triggers such as elections. With respect to Côte d'Ivoire, one participant suggested that reliance on the election as a conflict resolution tool fundamentally disregarded the deep societal divisions that would ultimately drive the resurgence of post-election violence. Another contended, however, that potential perpetrators are "masters at the time variable" and will exploit cautious approaches that defer elections or other forms of decisive change until preferred conditions are met.

One participant noted that it is precisely these manipulative tendencies that must be countered by diplomatic tools and political leverage, many of which can be usefully exercised by regional actors. Much remains to be learned, however, about *which* tools applied, *when*, and *in what manner* have the greatest impact on potential spoilers and atrocity perpetrators.

Building Regional Capacity for Prevention and Response

While the state of development varies across regions, participants agreed that all could benefit from enhanced capacity for mass atrocity prevention and response. Broad recommendations to enhance this capacity ranged from addressing the resource constraints of preventive mechanisms at the international, regional, and national levels to modernizing human rights mechanisms and building domestic consistencies and capacities that can feed upward to the regional level.

Various models of engagement were discussed for their potential applicability to R2P challenges. The African Peer Review Mechanism and the Optional Protocol to the Convention against Torture were both cited as engagement frameworks that allow for country- and situation-specific visits and assessment. The Peer Review Mechanism, in particular, was praised for doing what is typically neglected—engaging with governments on its recommendations and providing support to address them. Participants considered whether such tools would be transferrable to other regional contexts in order to mobilize Pillar Two assistance and resources.

Role Differentiation and Coordination Between the United Nations, Regional Bodies, and National Authorities

While Chapter 8, Articles 52 and 53, of the UN Charter outline a particular set of relationships between the UN and regional arrangements, coordination in practice remains complex and often haphazard. One participant noted that the most positive outcomes arise when the United Nations works closely with its regional and subregional counterparts, as it did in response to the crises in Guinea and Niger. Linkages broke down in the course of the Ivorian crisis, which may have been a source of suboptimal outcomes.

Perpetrators often seek to split international consensus and actively exploit mechanisms and processes that best place them to pursue their objectives, a fact which makes consistent and effective coordination even more critical. The root of coordination challenges, however, varies widely across the regions. The highly developed nature of African Union structures often complicates their relationship with UN institutions such as the Security Council. Yet the more amorphous nature of Asian-Pacific arrangements generates an entirely different challenge.

Many participants cited confidence building as critical to effective coordination. Some regional organizations fear their perspectives will be marginalized when nonregional interests attract greater attention at the international level. More needs to be done to build trust, maximize the mutually reinforcing political legitimacy that can be offered both by UN and regional structures, and ensure that varying levels of multilateral engagement move in concert normatively and operationally.

Some participants extended the need for coordination to the national level, suggesting that both the United Nations and regional structures might be instrumental in encouraging the establishment of national R2P focal points that could form a global network to be integrated into regional and international prevention and response systems. The root of internal barriers to R2P implementation at the regional level often lies in the lack of domestic constituencies that ensure the focus of individual governments on R2P issues. Some suggested that the international community might play a role in fostering domestic champions that then engage their counterparts at the regional level to forward R2P implementation.

Regional Appropriation of State Responsibility

Strongly supporting the role of regional and subregional arrangements, participants voiced concern that the international community must be careful not to assume the responsibilities of the state—an act that undermines the sustainability of protective measures and weakens the normative foundations of R2P.

The failure of some states to protect their populations has created a tendency to look to regional and subregional groupings to substitute for state authority. In some cases, however, the state remains capable of executing many protection functions. When there remains a possibility for a state to meet its protection responsibilities, regional attention should be mobilized to help it do so.

Greater focus in general should be placed on regional assistance capacities, or Pillar Two responses to mass atrocity threats.

Emphasizing Prevention Without Marginalizing Response

Throughout the discussion, participants reinforced the centrality of prevention and enhancing regional capacity to advance implementation of Pillars One and Two of the R2P framework. While this core focus resonated across the room, some cautioned against forgetting or marginalizing Pillar Three, without which the overarching framework would collapse. While many member states and regional actors are reasonably concerned about placing too much emphasis on building coercive response capacities, such capacities are critical to the credibility of R2P as a concept, as well as to effective implementation of its less-invasive preventive elements. In developing regional approaches, an appropriate balance must be struck that allows an emphasis on prevention without ignoring the mechanisms and capacities required for response.

Maximizing the Contribution of Civil Society

Participants noted the great value civil society can bring to regional implementation of the responsibility to protect. Particularly in regions such as Asia-Pacific and Latin America-Caribbean, which lack formal reaffirmations of R2P principles, the development of bottom-up constituencies would encourage domestic internalization and ultimately feed into processes at the regional level. Progress has been observed on this score in the Asia-Pacific, where national workshops on R2P have begun to encourage a broader base of domestic support for the concept. More needs to be done, however, to pinpoint how civil society might most effectively impact regional efforts to advance R2P and how the international community might foster that contribution.

Conclusion

Meeting discussion revealed clearly that, while there is significant consensus surrounding the importance of regional and subregional arrangements in R2P implementation, much in this issue is highly complex and underexplored—meriting additional dialogue and input from the membership in the lead up to the General Assembly’s informal interactive dialogue in July. The varied capacities that exist within the regions to support R2P implementation demonstrate that there is no single route to “operationalizing” R2P at the regional level. At the same time, gaps in regional capacity across the board indicate that all regions would benefit from additional focus and an increasingly practical dialogue on how they can best prevent and respond to mass atrocity crimes.

The rapporteur, Rachel Gerber, prepared this report following the conference. It contains her interpretation of the proceedings and is not merely a descriptive, chronological account. Participants neither reviewed nor approved the report. Therefore, it should not be assumed that every participant subscribes to all recommendations, observations, and conclusions.

Application of and Responses to the Responsibility to Protect Norm at the Regional and Subregional Levels in Africa: Lessons for Implementation

By Kwesi Aning and Samuel Atuobi

Abstract

This paper contributes to discussion on moving the Responsibility to Protect (R2P) norm from concept to action by exploring how such shifts can be made from regional and subregional perspectives. We argue that recent events in Africa and the responses and actions of its major multilateral actor, the African Union (AU), and one of its regional economic communities, the Economic Community of West African States (ECOWAS), indicate the urgent need for regional and subregional actors to lead in the implementation of this norm due to chronic instability that threatens

populations in the African region. We further argue that implementing R2P should be based on a carefully structured set of criteria anchored in broad-based constituencies at the regional, subregional, national and local levels. These criteria include, but are not limited to: (a) high level of awareness and knowledge of the R2P norm and what it seeks to accomplish on behalf of the general public, civil society and the academic and policy communities; (b) the extent to which the R2P norm is enshrined in (sub)regional documents; (c) the availability of (sub)regional capacity to elicit compliance from rogue or recalcitrant member states; and (d) political will at the regional and subregional levels to implement the norm.

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Mr. Atuobi has written and researched extensively on peace and security issues in Africa, including governance and security; terrorism and organized crime; responsibility to protect and the protection of civilians in armed conflicts; and mediation and peace processes.

Introduction

The decision taken by the 2005 World Summit on the Responsibility to Protect (R2P) and subsequent report by the United Nations secretary general provide a good framework for both regional and subregional arrangements to strengthen their agendas for conflict prevention. They also suggest avenues for concrete action to prevent genocide, war crimes, crimes against humanity and ethnic cleansing, the four principal crimes that R2P addresses.

The upcoming report of the United Nations secretary general on the role of regional and subregional arrangements in implementing the responsibility to protect is welcome, crucial and timely. This report could stimulate rethinking not only about the challenges, but also possible processes to enhance the effectiveness of regional arrangements in responding to R2P-type situations, particularly in Africa. Growing threats to populations as a result of chronic conflict and the inability of states to act responsibly make it necessary to focus on the regional and subregional

aspects of R2P. Recent conflicts in Côte d'Ivoire and Libya are telling, if disturbing, examples of the failure of states to protect. Equally disconcerting, however, has been the minimal effectiveness and lack of leadership displayed by regional and subregional organizations in both cases.

This paper contributes to discussion on moving the responsibility to protect (R2P) norm from concept to action by exploring how such shifts can be made from both regional and subregional perspectives. We do this by raising a number of relevant questions based on the cases above. First, what have been the internal political dynamics within regional arrangements to support the R2P norm? How have regional and subregional organizations responded to R2P since the World Summit in 2005? What is the level and form of public, policy, and academic awareness of R2P at the regional and subregional levels? What are the capacities of such arrangements to elicit compliance from member states with respect to R2P issues? What lessons do potentially dangerous situations such as those in Côte d'Ivoire and Libya hold for the implementation of the R2P? Finally, what are the criteria for assessing the successful implementation of the R2P at the regional level?

In answering these questions, we argue that implementing R2P has become urgent due to the threat posed to populations by chronic instability. We further argue that the implementation of R2P should be based on a carefully structured, hierarchical set of interventions anchored in broad-based constituencies at the (sub)regional, national and local levels.

The paper starts by discussing internal political dynamics within regional arrangements to develop and support the R2P norm. This is followed by regional responses to and application of the R2P norm by ECOWAS and the African Union (AU) since 2005. In the third section, we focus on public, policy, and academic discourse on the R2P norm at the regional and subregional levels. The fourth section draws lessons from Côte d'Ivoire and Libya and their implications for the practical application of the R2P norm. Subsequently, we consider a set of criteria necessary for the successful implementation of the R2P at the regional and subregional levels.

Internal Political Dynamics Within Regional Arrangements and Their Impact on the Development of and Support for R2P

How do internal political dynamics within regional and subregional organizations affect the development of and support for R2P? In the past, complex political dynamics have inhibited the development of conflict prevention regimes within regional and subregional organizations. For instance, within subregional organizations such as ECOWAS, building consensus around early efforts to develop and invoke conflict prevention and intervention mechanisms proved a challenge. In the early 1990s, lack of consensus among the ECOWAS political leadership meant that a small number of states (Ghana and Nigeria, in particular) shouldered full responsibility for humanitarian interventions to protect civilians in Liberia and Sierra Leone.

In the wake of these conflicts, subregional approaches have improved. ECOWAS and other subregional organizations (the South African Development Cooperation, for example) have negotiated conflict prevention arrangements and security architectures that are necessary for the implementation of the R2P.¹ The communiqué of the ECOWAS Mediation and Security Council (MSC) and decisions of the Authority of Head of States and Governments are reassuring examples of ECOWAS decisions that promote conflict prevention, regional stability, and the protection of civilians. ECOWAS's political decision making with respect to R2P has thus improved, and reflects more flexible political dynamics within the subregional organization. More importantly, these decisions demonstrate the ability of the ECOWAS Commission to perform outside the narrow institutional

and juridical mandate provided by its Treaty. Thus, at the decision making level, minimal challenges remain to what the ECOWAS Commission would want to do in relation to R2P.²

However, other obstacles to ECOWAS implementation of R2P persist – the greatest being the challenge of improving member state willingness to abide by their treaty commitments. While there is abundant political will to sign documents and take decisions, the actions of leaders in the region reflect a glaring lack of commitment to adhere to those decisions. This is compounded by the fact that ECOWAS still lacks the capacity to enforce subregional decisions at the national level. For example, as the Ivorian conflict revealed, one cannot be sure how many members will be willing to contribute troops or provide logistical support for collective enforcement.

Although there is consensus to develop the ECOWAS Standby Force (ESF) to intervene when necessary to protect civilians, existing capacities have yet to reach the force capability level necessary to enforce mandated action.

To conclude, political dynamics within ECOWAS are conducive to the development of arrangements that support the implementation of R2P. What is important, however, is to determine how such regional standby arrangements can reach the level of capability required to act.

With respect to the African Union (AU), which is much larger body (53 members), divergent political views tend to impede the decision making process. Yet, the Constitutive Act of the Union is clear about the willingness to intervene in member states to protect populations in “grave circumstances.”³ There is also the Ezulwini Consensus, which proclaims support for R2P.⁴ These declarations, however, do not mean that internal political dynamics favor the practical implementation of the R2P.

The complexity of these dynamics means that implementing R2P will prove difficult in the full regional context. The challenge within the AU is resolving political issues in order to build consensus for timely and decisive action. Compounding this issue is the lack of clear or automatic mechanisms to activate the AU’s decision making process in R2P situations. In Côte d’Ivoire and Libya, the AU tended to be slow and conservative. The AU needs to develop political processes that can easily be activated. The AU’s response to the Kenya crisis in 2007/2008 was exemplary and should guide future decision making within the organization.

ECOWAS and AU R2P Applications and Responses Since 2005

Theoretically, regional arrangements in Africa lend themselves to the core issues that R2P seeks to address: conflict prevention and protection of vulnerable civilians. Most regional and subregional organizations have peace and security architectures. The AU Peace and Security Architecture (especially the early warning mechanism and African Standby Force), for example, provides the foundation to enhance the organization’s capacity to prevent conflicts and protect civilians in danger. Given this, how have regional responses to crises in Africa been interpreted through the lens of R2P?

Generally, official pronouncements within regional organizations on conflicts or political crises have refrained from interpreting them through the lens of the R2P norm. This contrasts sharply with the interpretation of events on the continent by civil society groups in and outside Africa, which have been based largely on an R2P perspective.

The AU scarcely mentioned R2P as the basis of action in Côte d’Ivoire and Libya. It is not clear why the leadership of the organization has refrained from making references to R2P and identifying

the need for civilian protection as the basis of its decision making related to crises on the continent. References to R2P as the basis of decision making are important to refine and embed the norm.⁵ Could Africa's leadership be unsure of the application of R2P? We argue that such hesitancy does not bode well for R2P implementation on the continent. We are persuaded, however, that continuing discussion on the role of regional organizations in R2P implementation presents a good opportunity to clarify the position of the AU on moving the norm from theory to practice.

By contrast, ECOWAS has been more prepared to apply R2P to conflicts in the West African subregion. During the 2009 political crisis in Guinea, the organization interpreted the situation as a typical R2P case and acted accordingly. At the time, ECOWAS responded to the worsening security and humanitarian situation and gave the strongest indication of the subregional body's commitment to the R2P norm.⁶ In a move to protect populations from the refusal or inability of the Guinean government to take its responsibility to protect seriously, ECOWAS proposed sending an intervention force. Dr. Mohamed Ibn Chambas, President of the ECOWAS Commission stated,

Because of the great threats to human rights and uncontrollable violence, I propose that we recommend to our superiors a preventive deployment of a force to protect civilians and give aid, which will contribute to setting up an atmosphere of security for the Guinean population.⁷

Although it was ultimately unnecessary to send an ECOWAS force to Guinea, it was appropriate and important to apply R2P to the situation.

In addition, ECOWAS was ready to assume the responsibility to intervene to restore democracy and stability in Côte d'Ivoire if necessary. ECOWAS was poised to apply the R2P norm once again in West Africa, setting an example for other subregional organizations. What needs to be done, as we have already mentioned, is to develop further the capacity of ECOWAS to enforce its decisions.

Public and Academic Awareness of and Discourses on R2P

Public and academic awareness are necessary for refining the R2P norm and building broad-based support. However, few activities have yet aimed at raising public awareness. In Ghana, R2P has been completely absent from public discourse, reflected further by a lack of discussion in print and electronic media.

The academic community has likewise been slow to include the R2P norm in curriculum. Nevertheless, the amount of scholarly research on R2P has been encouraging. A Google search reveals an abundance of academic writing on R2P from regional perspectives. Some of these writings have considered the ways in which existing regional and subregional mechanisms address R2P issues. However, while significant, these works have typically been based on desk research and analysis of R2P documents. There has been little primary/field research on R2P in Africa. Thus, within regional and subregional organizations, the research foundation remains weak for implementation of the norm. Regional organizations should therefore commission primary research to serve as the basis of R2P implementation.

Some civil society organizations (CSOs) in Africa have undertaken awareness-raising initiatives about R2P and these efforts must be encouraged and supported. However, their activities have not yet maximized their potential impact. The role of civil society in R2P implementation is important because of the closeness of most CSOs to the general population. Although CSOs have attempted to generate R2P discussions within the public domain by holding seminars, these have been one-off events and have not gone far enough to elicit and sustain public interest.

Lessons From Current Conflicts for the Implementation of R2P: Libya and Cote d'Ivoire

The mass protests in Tunisia and Egypt and the conflicts in Côte d'Ivoire and Libya hold some lessons for the implementation of R2P on the African continent under the leadership of regional and subregional organizations.

The first lesson from ongoing conflicts in Africa, including Côte d'Ivoire and Libya, is that most states in the region remain fragile and the potential for conflicts or large-scale violence that may require intervention by (sub)regional organizations persists. Intervention here does not necessarily mean military intervention, but rather the mobilization of effective conflict prevention and management regimes that are based on reliable early warning and response systems.

The second lesson from the conflicts in Côte d'Ivoire and Libya is that it is quite difficult to persuade Africa's political leadership to mobilize regional arrangements for conflict prevention. The age-old "lack of political will" still prevails within regional and subregional organizations and therefore impedes decision making. In general, decision making related to conflict prevention and early warning requires the political decision to act. The Ivorian and the Libyan conflicts were thus exacerbated by a lack of both respect for regional norms and courage on the part of the AU to take timely decisions. With reference to Côte d'Ivoire, the President of the ECOWAS Commission, Ambassador Victor Gbeho, has stated that, "we cannot hide our disappointment that owing to the doubting Thomases on the continent we had to take a longer route and therefore los[t] many lives needlessly."⁸ This statement reflects the frustration that currently exists within African institutions when it comes to decision making. Thus the issue of political will need to be addressed before any meaningful implementation of the R2P norm can take place in Africa.

The third lesson is that there is lack of capacity on the part of regional and subregional organizations to enforce decisions or intervene in order to protect civilians in member states. At the political/diplomatic level, there is lack of capacity to undertake effective mediation and preventive diplomacy activities that can help avert large-scale conflicts. For instance, AU involvement in Côte d'Ivoire dragged on for weeks while the conflict intensified. Eventually, regional and subregional mediation efforts failed and the conflict had to be resolved through war. The AU's involvement in Libya has also been slow and ineffective, coming only after UN Security Council Resolution 1973 authorized the imposition of No-Fly zone over Libya North Atlantic Treaty Organization (NATO) began airstrikes.⁹

Finally, the lack of capacity within regional and subregional organizations impedes their ability raise a significant intervention force when necessary. When it comes to the recent political crisis in Africa, key regional organizations have shown a lack of capacity and political will to take timely and decisive action within the remit of the R2P norm.

Criteria for Successful Implementation of R2P at the Regional and Subregional Levels

In this section, we reflect on some possible criteria for assessing successful implementation of R2P at the regional and subregional levels. We believe that the successful implementation should be based on a set of carefully articulated inter-related criteria.

The first criterion should be a high level of awareness and knowledge of the R2P norm and what it seeks to accomplish on behalf of the general public, civil society and the academic community. This would ensure public support for the implementation of R2P in several spheres of interest. Once there is enough public and broad-based awareness and understanding of the usefulness of

R2P for conflict prevention and the protection of civilians, the civilian population is likely to push for its implementation by political actors.

Another important criterion for success is the extent to which R2P is enshrined in regional protocols and conflict prevention documents. This would ensure that there is no ambiguity between the objectives of the R2P and these documents. In other words, how do we align R2P with regional policy frameworks for smooth implementation? Related to this point is the extent to which the R2P norm reflects the thinking and statements of regional and subregional policy makers. This would ensure that policy makers speak with one voice on R2P.

The third criterion is the availability of regional capacity to elicit compliance from member states. Once regional organizations acquire the capacity to enforce decisions, member states are more likely to comply. Such capacity includes the ability to take enforcement action within member states to protect civilians. Since R2P is about the protection of populations against genocide, crimes against humanity, war crimes and ethnic cleansing, its successful implementation will depend on adequate capacity to enforce civilian protection mandates.

Finally, the success of the implementation of R2P at the regional and subregional levels will depend on political will. Just as within the UN system, the decision to act in any conflict situation is a political one. At the regional level, it is essential to ensure that the political class favors the application of R2P to situations on the continent.

Conclusion

Application of R2P has been neither widespread nor consistent within regional and subregional organizations in Africa. There is clearly a disjuncture between commitment to normative standards and commitment to act when it matters. This is largely a result of a lack of political will and capacity to enforce decisions. Implementation of the norm should therefore begin with aligning actions taken by regional organizations in Africa with the formal commitments member states have already made. In addition to securing such political will, great attention must be paid to promoting public awareness and building regional capacity to secure compliance from member states.

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Endnotes

- ¹ See for example the ECOWAS Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (1999); and the ECOWAS Conflict Prevention Framework (2010).
- ² See Kwesi Aning, and Samuel Atuobi. 2011. “West Africa and R2P,” in W. Andy Knight and Frazer Egerton, Eds., *Routledge Handbook of the Responsibility to Protect* (London: Routledge).
- ³ See article 4h of the Constitutive Act of the African Union.
- ⁴ See page 6 of the AU document Ext/EX.CL/2 (VIII), “The Common Africa Position on the Proposed Reform of the United Nations,” also referred to as The Ezulwini Consensus.
- ⁵ Kwesi Aning and Naila Salihu. 2011. “Regional Approaches to Statebuilding II: The African Union and ECOWAS” in Mats Berdal and Dominik Zaum eds. *Power after Peace: The Political Economy of Post-Conflict Statebuilding* (Oxford: OUP).
- ⁶ Aning and Atuobi, op cit.
- ⁷ Brahim Ouedraogo, 2009. “Guinea: W. African bloc calls for preventive troops” Associated Press, The Huffington Post, at www.huffingtonpost.com/huff-wires/20091213/af-guinea/.
- ⁸ BBC News “Why UN acted over Libya and Ivory Coast – but not Syria” www.bbc.co.uk/news/world-africa-13389470. Accessed 16 May 2011.
- ⁹ See UN Security Council Resolution 1973 (SC10200) at www.un.org/News/Press/docs/2011/sc10200.doc.htm. Accessed 19 April 2011.

The Role of Regional and Subregional Arrangements in Strengthening the Responsibility to Protect: ASEAN and the ARF

By Noel M. Morada

Introduction

This paper examines the role of ASEAN and the ARF in strengthening the responsibility to protect (R2P) in Asia. As a regional organization, ASEAN has not formally adopted the term and language of R2P in its formal statements and documents. The same is true for the ASEAN Regional Forum (ARF), a security dialogue framework whose agenda is controlled by ASEAN. However, there are a number of agreements and documents in ASEAN and the ARF that have adopted principles and norms that are related to R2P, such as the promotion and protection of human rights, rule of law and good governance, democracy, conflict prevention, preventive diplomacy, peacebuilding, and post-conflict reconstruction.

ASEAN has also embarked on a long-term community-building project that underscores the importance of shared norms and values, as well as responsibilities of states in the promotion and protection of human rights. It has created regional bodies such as the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Promotion and Protection of Women and Children's Rights (ACWC) in connection with its goal of achieving an ASEAN Political Security Community. Within the ARF, a Council for Security Cooperation in the Asia Pacific (CSCAP)'s study group on R2P is working to mainstream R2P within the forum's security dialogue agenda.

ASEAN

The Association of Southeast Asian Nations (ASEAN) remains a key organization in promoting peace and security in Southeast Asia and the larger East Asian region. Established in 1967, ASEAN's membership has expanded from the original five, to ten members at the end of the 1990s. In 2003, under the Bali Concord II, the organization began to promote the idea of an ASEAN Community that not only aims for regional economic integration but, more importantly, the development of a security community where member states share a common set of political development norms and obligations.¹ Specifically, the security pillar within the ASEAN Community originally envisioned a higher level of cooperation among member states where countries in the region, "live in peace with one another and with the world at large in a just, *democratic* and harmonious environment (emphasis added)."²

The use of the word "democratic" signaled an attempt on the part of ASEAN to transform itself into a more people-oriented organization. This was further refined (after the ASEAN Security Community was renamed the ASEAN

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Political-Security Community, or APSC) in the APSC Blueprint adopted in 2009 that characterized this pillar as aiming for, “political development in adherence to principles of *democracy*, the *rule of law* and good governance, respect for and the *promotion and protection of human rights* and fundamental freedoms as inscribed in the ASEAN Charter (emphasis added).”³

What follows are discussions of the relevant sources of principles and mechanisms within ASEAN that could potentially help to strengthen the responsibility to protect norm in the region. Thereafter, a discussion of areas of partnership between ASEAN and the United Nations is presented, particularly in the areas of disaster relief, human rights, and peace and security.

ASEAN Charter

The ASEAN Charter is an important document that embodies the people-centered principles of the organization, apart from traditional norms that uphold respect for state sovereignty and noninterference. Specifically, the Charter states that one of the organization’s purposes is to, “strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and *responsibilities* of the Member States of ASEAN (emphasis added),” [Article I, (7)]. It also identifies relevant principles, such as adherence to the rule of law, good governance, the principles of democracy and constitutional government; respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice; and upholding the United Nations Charter and international law, including international humanitarian law, subscribed to by ASEAN Member States [Article II, 2 (h), (i), and (j)].

The Charter also provided for the creation of a regional human rights body (Article XIV) in order to conform to the ASEAN’s purposes and principles related to the promotion and protection of human rights in the region. Although the terms of reference for the ASEAN human rights body was negotiated after the Charter was adopted, it was nonetheless a major accomplishment in the history of ASEAN for a human rights protection mechanism to be established in the region after more than a decade of negotiations.

From ASC Plan of Action to APSC Blueprint⁴

In 2004, the ASEAN Security Community (ASC) Plan of Action was adopted and the major areas for security community building were identified as political development, *shaping and sharing of norms, conflict prevention, conflict resolution, and post-conflict peacebuilding*.

Among the specific activities under political development are:

- Strengthening democratic institutions and popular participation.
- Promoting understanding and appreciation of the political system, culture, and history of ASEAN member countries.
- Strengthening the rule of law and judiciary systems, legal infrastructure and capacity building.
- Promoting the free flow of information among and within ASEAN member countries.
- Enhancing good governance in the public and private sectors.
- Establishing a network among existing human rights mechanisms.

- Protecting vulnerable groups including women, children, people with disabilities, and migrant workers.
- Promoting education and public awareness on human rights.⁵

In the area of conflict prevention, the ASC Plan of Action identified specific activities that include:

- Strengthening confidence-building measures (e.g., utilizing civilian and military personnel in disaster relief operations).
- Strengthening preventive measures (e.g., developing an ASEAN early warning system based on existing mechanisms to prevent occurrence and escalation of conflict).
- Strengthening the ASEAN Regional Forum (ARF) process in support of the ASC (e.g., moving the ARF to the preventive diplomacy stage and beyond).

It also identified activities under conflict resolution, such as:

- Developing regional cooperation for the maintenance of peace and stability, such as:
 - Promoting technical cooperation with the United Nations and relevant regional organizations.
 - Establishing/assigning national focal points for regional cooperation for maintenance of peace and stability.
 - Utilizing national peacekeeping centers to establish regional arrangements for maintenance of peace and stability.
- Developing or supporting initiatives such as:
 - Promoting exchange and cooperation among ASEAN centers of excellence on peace and conflict management and resolution studies.
 - Considering the establishment of an ASEAN Institute for Peace and Reconciliation.⁶

Finally, in the area of post-conflict peacebuilding, some of the activities identified in the Plan of Action include:

- Strengthening ASEAN humanitarian assistance by:
 - Providing safe havens in conflict areas.
 - Ensuring delivery of basic services or assistance to victims of conflict.
 - Orderly repatriation of refugees/displaced persons and resettlement of internally displaced persons.
 - Ensuring safety of humanitarian assistance workers.
 - Promoting humanitarian relief assistance organizations.
 - Considering the establishment of ASEAN Humanitarian Assistance Centre.
 - Intensifying cooperation with the United Nations and other regional organizations/donor countries.
- Developing cooperation in post-conflict reconstruction and rehabilitation in affected areas, such as:
 - Undertaking human resources development and capacity building.
 - Assisting in institution building and promoting popular participation.
 - Reducing inter-communal tensions through education exchanges and curriculum reform.
 - And increasing cooperation in reconciliation and promotion of a culture of peace.
- Establishing a mechanism to mobilize necessary resources to facilitate post-conflict peacebuilding (e.g., a Stability Fund), including through cooperation with donor countries and international institutions.⁷

In 2009, the ASEAN Political-Security Community (APSC) Blueprint was adopted by member states, which built on the previous ASC Plan of Action. Specifically, the Blueprint stated that the principal characteristics and elements of the APSC include:

- Promotion of political development, “in adherence to the principles of democracy, rule of law and good governance, *respect for and promotion and protection of human rights and fundamental freedoms* (emphasis added).”
- Promotion of, “*a people-oriented ASEAN*, in which all sectors of society, regardless of gender, race, religion, language, or social and cultural background, are encouraged to participate in, and benefit from, the process of ASEAN integration and community building (emphasis added).”
- That in the implementation of the Blueprint, ASEAN should, “strive toward promoting and supporting gender-mainstreaming, *tolerance, respect for diversity, equality, and mutual understanding* (emphasis added).”
- That the APSC, “subscribes to a *comprehensive approach to security*, which acknowledges the interwoven relationships of political, economic, social-cultural, and environmental dimensions of development (emphasis added).”⁸

Based on the above, the APSC Blueprint could serve as the main framework to promote and strengthen R2P norm internalization in the region. Although these ASEAN documents do not use the language of R2P, the essential elements of APSC are clearly related to the norm of responsibility to protect, particularly with regard to human rights protection, conflict prevention and resolution, and post-conflict peacebuilding. To some extent, R2P could enhance the APSC Blueprint if this norm were to be incorporated within the framework, especially in developing the capacity of ASEAN states to prevent genocide and mass atrocities.

In a region that is made up of multi-ethnic societies and governed by states with a variety of political systems and cultures, the language used in the APSC documents that are undoubtedly linked to R2P include, “people-oriented ASEAN,” “promoting tolerance, respect for diversity, and equality,” and “comprehensive security.” Given that ASEAN members have adopted the APSC Blueprint, it can serve as a useful benchmark for measuring progress in the areas of political development, norm building, and conflict prevention—each of which relate to R2P implementation. Nonstate actors and civil society groups that advocate human rights protection, R2P, and participatory regionalism could also exert pressure on governments to implement the APSC Blueprint and make substantial progress in realizing the goals of this particular pillar of the ASEAN Community.

Since the adoption of the APSC Blueprint in early 2009, a number of activities related to the promotion of human rights protection in the region have been undertaken, including the adoption of the Terms of Reference for both the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Promotion and Protection of Women and Children (ACWC). Meetings between these regional human rights bodies and civil society groups have also been conducted that were geared toward developing an ASEAN Human Rights Declaration and a five-year work plan.⁹ The ASEAN secretary general’s report also noted the activities and proposals for strengthening conflict prevention, peace and conflict management, and regional cooperation in maintaining peace and stability. This includes joint studies, seminars, and dialogues in conflict

reduction and resolution with Track II institutions; the adoption of a three-year work program (2008-2010) by the ASEAN Defense Ministers Meeting (ADMM) that aims to take stock of existing peacekeeping capabilities of ASEAN member states and the establishment of ASEAN peacekeeping centres to conduct joint planning, training, and sharing of experiences aimed at establishing an ASEAN arrangement for the maintenance of peace and stability; and strengthening ASEAN humanitarian assistance through the promotion of civil-military dialogue and coordination in humanitarian relief efforts.¹⁰

AICHR and ACWC

ASEAN has created two bodies that aim to promote human rights protection in the region: the ASEAN Intergovernmental Commission on Human Rights (AICHR), which was launched in 2009, and the ASEAN Commission for the Promotion and Protection of Women and Children (ACWC).

As a consultative body within ASEAN, the AICHR's Terms of Reference do not give the body the mandate to either monitor human rights violations in ASEAN member states or impose sanctions against erring members. Among the relevant mandate and functions of the AICHR are to:

- Develop strategies for the promotion and protection of human rights and fundamental freedoms to complement the building of the ASEAN Community.
- Develop an ASEAN Human Rights Declaration with a view to establishing a framework for human rights cooperation through various ASEAN conventions and other instruments dealing with human rights.
- Enhance public awareness of human rights among the peoples of ASEAN through education, research and dissemination of information.
- Promote capacity building for the effective implementation of international human rights treaty obligations undertaken by ASEAN member states.
- Encourage ASEAN member states to consider acceding to and ratifying international human rights instruments.¹¹

Apart from promoting human rights protection in the region, an important role of the AICHR is also to, “uphold *international human rights standards* as prescribed by the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and international human rights instruments to which ASEAN Member States are parties.”¹²

Meanwhile, the ACWC is also a consultative body within ASEAN tasked to promote the protection of women and children in the region in accordance with international laws, treaties, and conventions. Among other purposes, the ACWC's Terms of Reference identifies its objective to, “uphold human rights as prescribed by the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), Beijing Platform for Action (BPFA), A World Fit for Children, International Humanitarian Law and other international human rights instruments and regional declarations related to women's and children's rights to which ASEAN Member States are parties.”¹³

Among its pertinent mandate and functions are to:

- Promote the implementation of international instruments, ASEAN instruments and other instruments related to the rights of women and children.
- Develop policies, programs and innovative strategies to promote and protect the rights of women and children to complement the building of the ASEAN Community.
- Promote public awareness and education of the rights of women and children in ASEAN.
- Assist, upon request by ASEAN Member States, in preparing for CEDAW and CRC Periodic Reports, the Human Rights Council's Universal Periodic Review (UPR) and reports for other Treaty Bodies, with specific reference to the rights of women and children in ASEAN.
- Propose and promote appropriate measures, mechanisms and strategies for the prevention and elimination of all forms of violation of the rights of women and children, including the protection of victims.¹⁴

While it would seem that on paper ASEAN has consciously incorporated a number of norms and principles related to R2P, there are a number of constraints that it faces in implementing its vision and plans of action concerning protection of people's human rights and prevention of conflict.

For one, the financial and human resources of the regional organization remain quite inadequate based on the annual contribution of member states to the ASEAN Secretariat's budget. Each of the ten members contributes only US\$1.4 million annually to the organization's budget. The organization also relies on external assistance for many of its projects (mostly in the area of technical and development aid) from developed countries in the West and Japan. Even the annual budget of the AICHR is inadequate, with each member contributing only US\$20,000 to cover for meetings of the regional human rights body.

Indeed, ASEAN as a regional organization requires greater external assistance to implement many projects related to the ASEAN Political Security Community pillar, especially in promoting the protection of human rights, rule of law, good governance, and democracy. More importantly, each member state also needs external assistance in developing its capacity to promote these norms and in preventing genocide and mass atrocities in the domestic sphere.

ASEAN-UN Partnership Opportunities

Myanmar and Cyclone Nargis. ASEAN's efforts in helping Myanmar deal with the humanitarian crisis in 2008 after Cyclone Nargis served as an important lesson for the organization to enhance further cooperation in disaster relief among member states. Indeed, were it not for the intervention of ASEAN, Myanmar could have faced mounting international pressures that included the risk of some members of the international community invoking R2P in responding to the crisis situation in the country.¹⁵

ASEAN essentially presented to the military junta three options in resolving the impasse at the time, namely: (1) for the government of Myanmar and the United Nations to lead the relief efforts; (2) for a tripartite ASEAN-Myanmar-UN coordination; and (3) for the government of Myanmar to manage the issue with the broader international community without ASEAN engagement. In the end, the second option was chosen by the military junta, which led to the creation of the Tripartite Core Group (TCG) and the ASEAN Humanitarian Task Force (AHTF).¹⁶

There is no question that the post-Nargis experience has led to enhanced cooperation between ASEAN and the United Nations. For example, the Third ASEAN-UN Summit held in Ha Noi in October 2010 saw the launching of the Post Nargis Recovery and Preparedness Plan (PONREPP) as well as the adoption of the Joint Declaration on ASEAN-UN Collaboration in Disaster Management. It was also agreed that the two organizations would prepare and implement the “ASEAN-UN Strategic Plan of Action on Disaster Management 2011-2015” in coordination between the relevant ASEAN bodies and established UN mechanisms.¹⁷

Human Rights. The Third ASEAN-UN Summit also identified the promotion and protection of human rights as one of the issues of mutual concern for both organizations. Specifically, the importance of efforts in this area at various levels—national, regional, and international—was emphasized. One of the ways in which both organizations have agreed to coordinate in promoting and protecting human rights is through exchanges in best practices and capacity building between ASEAN’s human rights bodies (AICHR and ACWC) and the United Nations.¹⁸

Peace and Security. In the area of peace and security, the ASEAN-UN Summit recognized the importance of enhanced cooperation and exchanges of experiences and best practices in preventive diplomacy, peacekeeping, and peacebuilding through seminars, workshops, and training. It was agreed that through increased cooperation between the two organizations in these areas, ASEAN’s ability to promote comprehensive security in the region would be enhanced further.¹⁹

In order to foster joint action between ASEAN and the United Nations on the above issue areas, it was agreed during the Summit in Hanoi that a regular meeting between the two organizations’ secretariats would be undertaken to enhance the ASEAN-UN dialogue partnership, including identification of further areas of collaboration.²⁰

ARF

The ASEAN Regional Forum (ARF) remains the most important security dialogue framework in Asia since its creation in 1994. Composed of 27 participating states and organizations from various regions,²¹ the ARF has over the last 16 years covered a range of traditional and nontraditional security issues. As a forum for security dialogue, ASEAN envisioned the ARF to ultimately address three stages of engagement: confidence building, preventive diplomacy, and conflict resolution (later modified to approaches to conflict resolution).

Discussions on preventive diplomacy (or PD)—although a sensitive issue to many in the region as it is perceived to undermine the norm of noninterference and respect for state sovereignty—have moved toward some identification of medium- and long-term measures, such as the creation of a risk reduction centre.²² The core principles of PD identified by ARF members, however, have underscored the following points: (1) that PD is about the employment of diplomatic and peaceful means to resolve conflicts; (2) *it is noncoercive* and does not include military action or use of force; and (3) it applies to *conflict between and among states*.²³

The ARF has also adopted as one of its concrete PD approaches the development of an early warning system (EWS) for conflict prevention.²⁴ It is not clear, however, whether such an EWS would monitor intrastate conflicts given the sensitivities of some ARF states to external intervention. In 2008, the ARF Experts and Eminent Persons (EEPs) meeting in Beijing agreed that PD discussions should focus on nontraditional security issues, such as disaster management, nuclear proliferation, and terrorism.²⁵ The meeting also stressed that PD should be based on noninterference, trust, and consent.

In the 17th ARF Ministerial Meeting in Hanoi in July 2010, the forum adopted a Plan of Action that includes, among others, the following goals by 2020:

- Further enhancement of regional capacity and readiness for peacekeeping activities, including through necessary training measures.
- Integration of defense track and personnel in the ARF process.
- Consolidation of confidence building measures while implementing a number of preventive diplomacy-focused measures.
- Development and implementation of the ARF PD Work Plan as mandated by the 16th ARF.
- Expansion and enhancement of the ARF's institutional effectiveness in implementing the ARF Plan of Action, which includes the promotion of the role of the ARF Chair with the assistance of the ASEAN Secretary General as point of contact in cases of emergency or crisis.²⁶

CSCAP Study Group on R2P²⁷

The Council for Security Cooperation in the Asia Pacific (CSCAP) study group on R2P was established in 2009 by the CSCAP Steering Committee to, “explore the implications of this new norm for regional actors and organizations.” The group was also tasked with providing, “policy recommendations regarding possible regional contributions to the global debate surrounding the implementation of R2P.”

To date, the group has held three meetings: an informal scoping meeting in Jakarta in late 2009, a full meeting—also in Jakarta—in February 2010, and a second full meeting in Manila in September 2010. A third and final meeting in Phnom Penh was held in April 2011. This meeting is charged with reaching a consensus on a final report, which will be presented at the CSCAP Steering Committee meeting in Kuala Lumpur in June 2011

Some of the important points of consensus from the two meetings of the CSCAP study group on R2P in 2010 were as follows:

- The nature and scope of the R2P is as set out in paragraphs 138-140 of the World Summit Outcome Document and the primary R2P rests with the state.
- The R2P is consistent with existing international law and especially with the UN Charter.
- Regional arrangements, including those in the Asia-Pacific region, have a role to play in implementing the R2P.
- The ARF should play a role in implementing the R2P.
- Devising effective and appropriate early warning and assessment mechanisms and empowering regional actors to act upon these warnings.
- Developing more regularized and defined channels of UN-regional dialogue around R2P-related matters.

- Recognizing the importance of Pillar One (the state's primary responsibility to protect) and highlighting the steps that some regional states are taking to strengthen their Pillar One responsibility.
- Combining forces with the UN Peacebuilding Commission (PBC) to ensure that post-conflict environments do not become breeding grounds for the four R2P crimes.
- Reviewing regional organizations' existing definitions of preventive diplomacy and examining ways of making this definition consistent with a more proactive R2P role.

The final report of the CSCAP study group on R2P will be presented to the ARF for its consideration after receiving final approval by the Council's steering committee in June 2011. It is hoped that ARF ministers will take into serious consideration the proposals related to the role of regional organizations and arrangements in implementing R2P.

Given that the ARF remains an ASEAN-centered process, it is also faced with a number of constraints and challenges in implementing its goals and projects. For one, contributions to the budget of the ARF under the ARF Fund remain voluntary among participating states. The ARF Unit within the ASEAN Secretariat is also limited in terms of human resources to effectively coordinate and implement many of the ARF activities and projects. More importantly, decisions made in the ARF—because it is primarily a post-ministerial meeting held annually—are not necessarily binding to all participating states without the political support of heads of states or governments back home. While there have been proposals to elevate the ARF into summit meetings, so far this idea has not been met with positive response from ASEAN leaders.

Conclusion

This paper identified a number of openings for dialogue in ASEAN and the ARF on strengthening the R2P. Although ASEAN and the ARF have not formally adopted the language of R2P in their documents, it is clear from the foregoing discussions that ASEAN has adopted norms and principles related to R2P, particularly in its APSC Blueprint and plans of action. In more specific terms, the goal of promoting and protecting human rights, rule of law, good governance, and democratic values in the ASEAN Community could contribute to strengthening mechanisms and institutions already in place in the region. These mechanisms includes the AICHR and the ACWC—two regional human rights bodies that could work in partnership with the United Nations to prevent genocide and mass atrocities in this part of the world.

Expanding beyond Southeast Asia, the ARF is another regional security framework that could help strengthen the commitment of participating states to the 2005 World Summit consensus on R2P, specifically in building state capacity to prevent R2P crimes. The work of the CSCAP study group on R2P is very important in this regard, as it has provided an opportunity for Track II dialogue to take place in an effort to generate regional consensus on the norm and its implementation.

While it is too early to determine whether the ARF will adopt the recommendations that emerge from the final report of the study group, opportunities for continuing dialogue on strengthening and implementing R2P remain substantive. This is because ASEAN as Chair of the ARF not only recognizes the importance of engaging Track II experts in setting the agenda of the Forum, but also has demonstrated its willingness to incorporate discussion of norms related to human rights, conflict prevention, peacebuilding, and post-conflict reconstruction.

With the support of non-ASEAN participating states in the ARF such as Australia, Canada, and the United States, ASEAN's democratic states could continue efforts to mainstream R2P in security discussions within the forum. These regional-level efforts, however, must be supplemented by corresponding action at the domestic level. Promoting awareness and building constituencies in the domestic sphere are critical to strengthening the commitment of member states of regional organizations in preventing genocide and mass atrocities.

Endnotes

- ¹ The ASEAN Community is composed of three pillars, namely, ASEAN Security Community (later renamed ASEAN Political-Security Community), ASEAN Economic Community, and ASEAN Social-Cultural Community.
- ² Declaration of ASEAN Concord II (Bali Concord II), from www.aseansec.org/15159.htm, accessed on 30 April 2011.
- ³ ASEAN Political Security Community Blueprint, p. 2, from www.aseansec.org/22337.pdf, accessed on 30 April 2011.
- ⁴ This section of the paper is from the author's forthcoming publication, "Responsibility to Protect in Asia: China, ASEAN, and Challenges to Building Regional Consensus in Preventing Genocide and Mass Atrocities," in Irwin Cotler and Jared Genser (eds.), *Responsibility to Protect: The Promise of Stopping Mass Atrocities in Our Times* (Oxford University Press, September 2011).
- ⁵ Declaration of ASEAN Concord (Bali Concord II), ASEAN Knowledge Kit, Jakarta, ASEAN Secretariat, November 2006, pp. 41-42.
- ⁶ *Ibid.*, pp. 44-48.
- ⁷ *Ibid.*, pp. 49-50.
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- ⁹ "ASEAN's Leading Human Rights Body Maps Next Phase of Development," 26 April 2011, ASEAN Website, from www.aseansec.org/26201.htm, accessed on 30 April 2011.
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- ¹⁴ Ibid., pp. 2-3.
- ¹⁵ “ASEAN-led mechanism,” Post Nargis (Institutionalizing the Experience from Post Nargis Operation) Knowledge Management Portal, from www.aseanpostnargiskm.org/response-to-nargis/asean-led-mechanism, accessed on 30 April 2011.
- ¹⁶ Ibid.
- ¹⁷ Co-Chair’s Statement of the Third ASEAN-UN Summit, Ha Noi, 29 October 2010, from www.aseansec.org/25496.htm, accessed on 30 April 2011.
- ¹⁸ Ibid.
- ¹⁹ Ibid.
- ²⁰ Ibid.
- ²¹ Participating states in the ARF include the ten (10) members of ASEAN and East Timor, four Northeast Asian states (China, Japan, South Korea, and North Korea), Mongolia, two North American states (the United States and Canada), four South Asian states (India, Pakistan, Sri Lanka, and Bangladesh), Australia, New Zealand, Papua New Guinea, Russian Federation, and the European Union (EU).
- ²² Noel M. Morada, “ASEAN Regional Forum: Origins and Evolution,” in Jurgen Haacke and Noel M. Morada (eds.), *Cooperative Security in the Asia Pacific: The ASEAN Regional Forum*. London: Routledge (2010), p. 28.
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- ²⁴ Chairman’s Statement, ASEAN Regional Forum Working Group on Preventive Diplomacy, 7-8 November 1996, from www.aseansec.org/arf4xb.htm, accessed on 30 April 2011.
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- ²⁶ Hanoi Plan of Action to Implement the ASEAN Regional Forum Vision Statement, from www.aseanregionalforum.org/LinkClick.aspx?fileticket=%2fCeYzZS%2b36c%3d&tabid=66&mid=1106, accessed on 30 April 2011.
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The Role of European Arrangements in Strengthening the Responsibility to Protect

By Andrea Bartoli

The European continent has a long, complex history of human advancement and tragic undoing. It is a legacy of contradictions that must be addressed properly to make sure that the region's contribution to the emerging norm of the responsibility to protect (R2P) is effective and lasting. The first insight shared by Europeans is that to conceptualize and implement norms is the product of tortuous interaction, debate and, finally, collective learning. Europe remains, literally and practically, "in-the-making."

This paper will intentionally use "broad strokes" to suggest approaches that might prove helpful in the current debates around R2P. It will intentionally use only one "arrangement" (the Organization for Security and Co-operation in Europe [OSCE]). It uses the "relational responsibility" frame and insists on the wisdom of strengthening engagements.

Appreciating What Exists

It seems opportune that the upcoming report of the UN secretary general and the July 2011 General Assembly (GA) interactive dialogue on R2P and (sub)regional organizations, recognizes first what regional arrangements already offer. Notably, many institutional settings—while not established for R2P purposes explicitly—do serve R2P functions. The European Union, OSCE, European Parliament, and Council of Europe are at the forefront of a growing institutional transformation that puts human rights and citizens' participation at the core of the European political project.

It is essential to recognize what member states have done in the area of R2P before the concept was codified in the 2005 Outcome Document. Europe demonstrates that R2P—as a political norm—has been part of the international consensus since World War II and the founding of the United Nations. While the language and specifications are somewhat new, the fundamentals have been part of the European political discourse for generations.

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Keeping the Dialogue Mutually Relevant

The European relationship to R2P as a political norm debated within the United Nations system is mutually beneficial. On one hand, it reflects Europe's extensive normative contributions and creates space for European experience to continue to influence the developing concept. Conversely, it allows R2P, as refined at the international level, to influence further development of European institutions.

The report of the secretary general and July's GA dialogue should therefore provide an occasion for keeping the R2P debate mutually relevant. It is important to note that European countries have played a very important role in the Group of Friends on Responsibility to Protect (currently Chaired by the Netherlands), both individually and collec-

tively (think of the role of Denmark in the international dialogue launched with Ghana and Costa Rica). Regional developments often prove innovative and the United Nations could learn from them. At the same time, the ordinary consultations could more specifically address shared R2P concerns.

Be Aware of the Conceptual Framework

Many of the basic ideas that have animated modern human rights movements originated in the historical and philosophical traditions of Europe. The concepts of natural law, rights, and liberties can be found in the city-states of classical Greece. The development of Roman Law codified many of these principles and, with the expansion of the Roman Empire, they were spread across the globe. Through the intellectual reawakening of the Enlightenment, the concept of natural rights became the foundation of the modern human rights discourse. Even out of the carnage of the French Revolution, the Declaration of the Rights of Man and of the Citizen emerged in 1789, establishing fundamental legal rights. Successive treaties and protocols, such as the Geneva Conventions, serve as benchmarks of modern humanitarian law and offer a glimpse of the significant collective learning that links conceptual formulation with political institutions and practices.

Linking Concepts and Institutions

In the modern age, not only has Europe become the center of a conceptual revolution that strengthens the progressive tradition toward securing international human rights and democratic governance, but this progression is also quintessentially intertwined with emerging European institutions. Europe operates in institutional terms, and many of these institutional arrangements have a “protection” component that existed prior to the emergence of R2P as such—think specifically of the OSCE High Commissioner on National Minorities.¹ It would be impossible to envision Europe today without these conceptual frameworks. They have become the loom upon which the European institutional fabric is woven. This living tapestry serves as a record of the long process of incorporation, belonging, and enlargement that has shaped modern Europe. Within this evolutionary process, the respect for minorities has become a precondition to being recognized as European—to be accepted politically and institutionally. Europe should therefore lay claim to this “protection” orientation and also stress its early commitment to conflict prevention, another fundamental element of the R2P doctrine.

Europe as an Ambitious Political Project

When viewed concurrently, the historical trajectory and the institutional/cultural trajectory of the continent produces a clear picture of a Europe that unites—in a way that mirrors the UN charter—to prevent the very scourge of war and violence. From the destruction caused by the Second World War, a small group of sovereign states with a shared commitment to economic expansion and a vision of human progress over time emerged to form a common European identity. From the uncertain beginnings of the European Coal and Steel Commission, the modern European Union gradually evolved to become a continental entity that shares porous borders, a common currency, and many of the same socioeconomic institutions as its constituent states. Europe demonstrates that it is possible to powerfully reconfigure national interests in the context of a supranational project. It also demonstrates that the respect of citizens’ rights must be at the very core of contemporary political projects.

Recognizing the Contradictions of the Past

Yet despite a rich cultural tradition and numerous contributions to the human rights movement, Europe has nevertheless borne witness to many of history’s gravest human rights abuses—such as genocide, war crimes, crimes against humanity, and ethnic cleansing. These atrocities have become

part of Europe's historical legacy and can be traced back thousands of years. In 146 B.C., Rome fought Carthage and slaughtered hundreds of thousands of people in one of history's earliest genocides. Archeological excavations in Talheim (Germany) and Schletz (Austria) provide evidence that mass atrocities were committed on European soil even earlier.

In addition to committing mass atrocities against domestic and foreign populations at home and abroad, Europe's civilian, legislative, and military institutions have also been associated with violent acts committed against foreign peoples in the name of "colonial tutelage." European powers violently subjugated large portions of the globe and strengthened this control throughout the nineteenth and twentieth centuries. In many cases, these colonial enterprises ended only in the second half of the twentieth century. The twentieth century alone bore witness to horrific events of mass violence in Europe's own backyard. In particular, the Holocaust illustrated that the continent's darkest chapters were not all confined to the distant past.

Dealing With the Past as a Collective Responsibility

Historically, European countries and citizens have been both perpetrators and victims of mass atrocities. This insight seems to be key to understanding how to strengthen European arrangements that have emerged to prevent violence. Where are the examples of stark "purity"? Who can claim to have no violent past? R2P reminds us that since the end of the Second World War, genocide, war crimes, crimes against humanity, and ethnic cleansing have not disappeared, as many had hoped. The lessons of the Holocaust went unheeded and successive acts of widespread violence continued to stain European soil and shock the conscience of mankind. These "crimes of aggression," which were conclusively defined by the 1998 Rome Statute that established the International Criminal Court, entered public consciousness in a profound way. The last decade of the deadliest century in history spawned some of the most horrific memories for many Europeans alive today, most notably with the eruption of conflict that engulfed the Balkans on the cusp of the new millennium. Despite these notable shortcomings, Europe is trying to learn from the past and is eager to participate in R2P as global collective learning.²

Practicing R2P Before the "Norm"

Who is the agent of the responsibility to protect? Can we identify "exclusive" agents or rather—as practice seems to demand—the norms required to align the work of multiple actors? The case of the "preventive deployment" requested by Macedonia between December 1992 and February 1999 is indicative of how political will can be channeled into the practical application of R2P. This preventive action illustrates that leaders are developing the capacity to conceptualize and actualize strategies of protection that are consistent with both national sovereignty and international expectations.

In 1992, the wars in the Former Yugoslavia led to some of the most horrific accounts of mass atrocities in modern Europe. The violence prompted the establishment of the International Criminal Tribunal for Yugoslavia, but also led to the request by Macedonia of the first "preventive deployment" of military forces to avoid further engulfment in the conflict.

Similarly, the peaceful dissolution of Czechoslovakia demonstrates that the solidity of the European system is based on the free expression of political representation in whatever form this expression is made.

To reformulate the preceding question: who is the subject of the responsibility to protect? Is it only state institutions, or is R2P a concern that is shared by citizens and their respective organizations?

Europe can count on a vibrant civil society and the legal framework that not only authorizes, but also encourages citizens' participation in shaping the contours of an interactive system. This system assumes, as the Finnish President Urho Kekkonen put it at the inaugural meeting of the 1975 Helsinki Summit, that, "security is not gained by erecting fences," but, "by opening gates."

OSCE

This is why the case of the Organization for Security and Cooperation in Europe (OSCE) is so relevant in this context. The Organization is the direct successor of a series of institutional arrangements that were created to address tensions between East and West. It was founded more than 30 years ago as the Conference on Security and Co-operation in Europe (CSCE). The Helsinki Final Act (1975) is the proof that R2P orientations and functions were identified well before the norm was framed by the Outcome Document of 2005. The "Decalogue" addresses not only the relationship between states, but also the relationship of states and citizens. Overall, human rights norms and references are paramount.

Fifteen years following agreement on the initial institutional framework, another innovation was introduced with the establishment of the Conflict Prevention Centre (CPC)—the culmination of more than 20 years of institutional development. This continuity is very important. The Conflict Prevention Centre (CPC), as well as the organization itself, evolved significantly over the years and acquired new responsibilities. Initially, the focus was on implementing Confidence- and Security-Building Measures (CSBMs). As the exchange and verification of information regarding participating states' military activities increased, along with mechanisms for promoting co-operation among participating states with regard to military matters, the availability of new information became more important.

This focus on military coordination is significant because the mechanism addresses many of the concerns of R2P's third pillar before such capacities are required. In this approach, the focus is not on the "finality" of the military intervention, but rather the premise that true cooperation is strengthened by a degree of participation in shared measures. Military capacities are considered from the beginning of cooperative engagements, rather than relegated to a final category of last resort intervention. The stabilizing role played by the armed forces in OSCE countries and more recently Kenya, Egypt, and Tunisia could offer an interesting line of reflection.

OSCE developed over the years with an emphasis on preventive diplomacy missions and peace-keeping activities, both of which continue to be supported by the operations of the Conflict Prevention Centre. Why is this crucial to R2P? It is important because norms are not applied in a vacuum, but in real theaters. Each case is different, but each has lessons to offer. Specific activities and cases also become an occasion to revisit their institutional context.

Following a few years of operational experience, OSCE member states decided to form a Consultative Committee composed of representatives from all participating states in order to supervise the work of the Conflict Prevention Centre. Interestingly, the Committee also has the authority, "to initiate and, with the assistance of the CPC Secretariat, execute fact-finding and monitor missions." Both fact-finding and monitoring are extremely difficult in tense situations. They are challenging in less contentious times, but become almost impossible (a fact that often indicates something is unraveling) when the risk of significant violence is rising.

In 1992, there was an additional "advancement" in OSCE institutional design with the establishment of the Forum for Security Co-operation (FSC) to focus on arms control, disarmament and

confidence- and security-building, security co-operation, and conflict prevention. The fact that countries that once shared deep suspicions and enmity were able to agree not only on a generic formula, but very practical mechanisms probably offers a glimpse of what a cooperative (and truly preventive) R2P approach could look like.

It is important to note that, after these institutional changes, the number of missions and other field activities supported by the Conflict Prevention Centre increased to sixteen. Furthermore,

... [The] turning point for the OSCE was the opening of the first large mission in the former Yugoslavia, the Mission to Bosnia and Herzegovina, in December 1995. The next major phase in the CPC's development came in the aftermath of the Kosovo crisis and the experiences gathered from the rapid establishment in 1998-1999 of the largest OSCE field activity to date, the Kosovo Verification Mission (KVM). These experiences led to recognition of the need to drastically enhance the Secretariat's operational capabilities.³

This observation emphasizes how norms and institutions grow through failures as well as successes. The fundamental orientation should be collective learning and, if this orientation is maintained, both successes and failures can provide very helpful insights. This is most evident when we look at another of the OSCE's remarkable institutions: the High Commissioner on National Minorities.

As observed in a study prepared on the occasion of the 30th anniversary of the organization,

The CSCE participating States recognized that there is no security without respect for basic political and civil rights. They have granted human rights the same status as other fundamental principles of peace and security, such as the sovereign equality and territorial integrity of states. Uniquely in the world, the CSCE participating States, by signing the Helsinki Final Act, have assumed collective responsibility for each other's national development in the field of human rights.⁴

The establishment of the High Commissioner on National Minorities doesn't emerge as an imposition, but rather as an expression of collective responsibility; it is an opportunity to socialize best practices and concerns.

The High Commissioner will act under the aegis of the Committee of Senior Officials (CSO) and will thus be an instrument of conflict prevention at the earliest possible stage. [...] The High Commissioner will provide "early warning" and, as appropriate, "early action" at the earliest possible stage in regard to tensions involving national minority issues which have not yet developed beyond an early warning stage, but, in the judgment of the High Commissioner, have the potential to develop into a conflict within the CSCE area, affecting peace, stability or relations between participating States, requiring the attention of and action by the Council or the CSO. [...] Within the mandate, based on CSCE principles and commitments, the High Commissioner will work in confidence and will act independently of all parties directly involved in the tensions.⁵

Especially during the tenure of Max van der Stoep, the role of the High Commissioner was interpreted in a highly political fashion. In the midst of the extraordinary tensions created by the end of the Cold War and dissolution of the Soviet Union, the High Commissioner interpreted his role broadly, highlighting his independence and stressing the pro-active dimension of the office. The High Commissioner was not only managing crisis; he was also serving states in their trajectory to become

fully respectful of their own commitments. This approach was not exogenous, it was not externally imposed but rather cognizant that participating member states have an interest in security and that, “systematic violations of human rights and fundamental freedoms, including the rights of persons belonging to national minorities, can give rise to a wide range of potential threats.”⁶

R2P and security are more closely related than many tend to consider when the military intervention of external actors is stressed as the cornerstone of the strategy.

However, the violent crisis in the Balkans and the Caucuses demonstrate clearly that R2P is a political construct that must be played and maintained in a volatile, ambiguous, and contradictory political environment. No mechanism (OSCE or otherwise) will trump the political choices of sovereign member states. It would be an illusion (and a danger) to believe that “experts” will conduct European affairs in a technocratic ivory tower. Rather, arrangements such as the OSCE demonstrate the promise and fragility of states’ cooperation. Engagement—rather than intervention—will increase the chances of solutions being found cooperatively rather than violently.

The European experience in general, and OSCE in particular, offer some useful preliminary insights to the current debate on R2P.

- Experience seems to tell us emerging norms are strengthened when they are expressions of **self-regulation** of individual states and of **collaborative configurations**.
- Norms and practices are learned **over time**. Europe was not constructed in a day and it is actually still in the making. Yet few could now conceive of European institutions deprived of their fundamental references to human rights.
- Norms must be institutionalized to promote **patterns of cooperation** that allow the process of self-organizing by member states to occur.
- A fundamental R2P orientation is embedded in the **state-citizens relation** and is fundamental to how they understand their mutual relations and their external actors. Also, this process is far from being completed and is manifested by how states are fulfilling their duties (or not).
- Each case is an opportunity for European arrangements to prove themselves in the context of unique situations, to learn from them and be strengthened by that **learning**. In this context, **failures** such as in the Balkans and in the Caucuses are extremely important because they **may provide otherwise unavailable insights**.
- Each human situation is by definition unique, in the same way as each person is unique. Yet, we believe in some expression of universality as expressed by the Declaration of Human Rights. While each individual person is unique, the holder of inherent rights must be **universally recognized**. Similarly, each situation is unique, and yet must be interpreted as an expression of universal values. R2P, as a political norm, attempts to offer this framework as a fundamental component of UN member states’ self-understanding. Europe has contributed to this trajectory linking norms and institutions and it is serving its citizens and the citizens of the world through its own learning.
- A more general insight is that mechanisms are simply expressions of nation-states political will and that they do not have political capacities and political roles to play independent of states that are true actors/agents in the **system**.

- The emergence of **new figures**, such as Office of the UN Special Adviser on the Prevention of Genocide (OSAPG) and the Special Adviser on Responsibility to Protect, allow the expression of political will by member states over time in a way that could potentially lead toward more concerted strategies.
- Europe is moving toward further continental integration (so that it will speak with one voice) and further diversification (so that local communities may have stronger roles at the level of units smaller than nation-states). Both tendencies can play an important role in furthering the development of R2P if the preventive approach to governance makes genocide, war crimes, crimes against humanity, and ethnic cleansing a concern shared at all levels—especially when it comes to **dealing with the past**.
- Violent episodes of the past, as well as individual states dealing with particular circumstances (i.e. Spanish civil war; Italy in Ethiopia; Switzerland and the Holocaust; UN-Netherlands contingent response in Srebrenica; France in Rwanda; Belgium in DRC ...), are rich **repositories of extremely delicate memories and responsibilities**. When violence occurs, its impact stays with human communities for centuries. It is essential for any state to devote a significant amount of resources to address the past, to deal with the past, to learn from the past, to make sure that the past is accurately understood, to respect the memory of peoples and events, and to enable multiple actors to have collective conversation and construct inclusive narratives that will make the recurrence of those crimes less probable through a consistent application of the R2P norms.
- In the European-OSCE arrangements, member states are in control and in the lead, sharing values and accepting to experiment on:
 - Inclusiveness.
 - Multilateral dialogue.
 - Equality of states.
 - Comprehensive agenda.
 - Co-operative approach.
 - Principles and pragmatism.
 - Flexibility and adaptability.
- They are open to cooperation and therefore able to execute an adaptable architecture; they are able to **institutionalize cooperation by allowing collective learning**.
- New institutions have emerged including the Budapest Centre for the International Prevention of Genocide and Mass Atrocities, which has been, in collaboration with Madariaga—College of Europe Foundation and the Folke Bernadotte Academy, the driving force of the internal European conversation on this issue since the Stockholm Conference of 2004.

Endnotes

¹ For additional detail, see: www.osce.org/hcnm.

² Mo Bleeker has recently edited an important contribution on this subject (see www.dplf.org/uploads/1292518783.pdf). It is also important to note that the EU Council Decision 2002/494 JHA created Network of Contact Points in respect of persons responsible for genocide, crimes against humanity, and war crimes. The network brings together prosecutors, investigators, and officials from immigration departments and representatives from the Ministry of Justice to act as contact points.

³ www.osce.org/ retrieved on May 5, 2011.

⁴ The Culture of Dialogue The OSCE Acquis 30 Years after Helsinki accessed online by CORE | Centre for OSCE Research, Institute for Peace Research and Security Policy at the University of Hamburg (IFSH) Hamburg 2005.

⁵ The Challenges of Change Helsinki Summit 1992 www.osce.org/ retrieved on May 5, 2011.

⁶ Document of the Eleventh Meeting of the Ministerial Council Maastricht 2003 accessed online at www.osce.org/odihr/elections/16378 on May 7, 2011.

Enhancing the Responsibility to Protect in Latin America and the Caribbean

By Bertrand G. Ramcharan

1. The Inter-American system for the promotion and protection of human rights has solid experience and jurisprudence.¹ The American Convention and other normative instruments require governments to respect, protect, and ensure human rights and to have in place adequate and effective national protection systems. The instrumentalities available for protection include urgent action by the secretary general of the Organization of American States (OAS); urgent fact-finding visits by the Inter-American Commission; a petitions system of the Commission; special procedures of the Commission; recourse to the Inter-American Court; interim measures of protection by the Inter-American Commission and the Inter-American Court; and, in some instances, action by the Assembly of the OAS.
2. A 2010 report of the Open Society Justice Initiative found that, “while the Inter-American system has had a tremendous and positive impact on the legal and socio-political development of the region over the past quarter century, the Inter-American Commission and Inter-American Court have nevertheless struggled with low levels of implementation of their final recommendations and orders.”² The report divided the remedial framework of the Inter-American Commission and Court into three categories: pecuniary damages and other individual remedies, orders to investigate human rights violations and punish the perpetrators, and general measures of nonrepetition.³ It cited a recent study which found a 29 percent rate of total implementation of the remedies ordered by the Inter-American human rights bodies, a 12 percent rate of partial implementation, and a 59 percent rate of nonimplementation.
3. In the Caribbean Community (CARICOM), there are neither treaties devoted specifically to human rights, nor institutionalized human rights mechanisms. The CARICOM Social Charter contains notable human rights provisions, but establishes no machinery for implementation. In some cases, CARICOM Heads of State and Government respond directly to situations where there has been conflict or where there is a risk of it.

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The R2P Framework: Elements Relevant to Regional and Subregional Implementation

4. The concept of the responsibility to protect (R2P), as endorsed by UN heads of state and government in 2005, requires efforts that go beyond the existing international and regional human rights machineries with a view to heading off, or stopping, genocide, ethnic cleansing, crimes against humanity, and war crimes. From this perspective, it is worth reflecting on what additional measures or institutions might be considered to enhance the responsibility to protect in Latin America and the Caribbean.
5. Paragraph 138 of the 2005 World Summit Outcome Document declared: “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.” General Assembly Resolution 60/1 (A/RES/60/1).
6. Secretary General Ban Ki-moon, in his report to the General Assembly of 12 January 2009, A/63/677, stressed the value of prevention and, when it fails, of early and flexible response tailored to the specific circumstances of each state. The report outlined a broad-based approach to the prevention and protection responsibilities of member states, the United Nations, regional and subregional organizations, and civil society partners.
7. *Pillar One* of the strategy presented in the report is the enduring responsibility of the state to protect its populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. The report considered the responsibility of the state critical to effective and timely prevention strategies.
8. *Pillar Two* is the commitment of the international community to assist states in meeting their obligations. The report envisaged assistance being provided to member states with respect to:
 - Conflict-sensitive development assistance.
 - Indigenous mediation capacity.
 - Consensus and dialogue.
 - Local dispute resolution capacity.
 - Capacity to replicate capacity.
9. *Pillar Three* is the responsibility of member states to respond collectively in a timely and decisive manner when a state is manifestly failing to provide such protection.
10. The report invited member state to review what more they could do, individually and collectively, to implement their obligations under human rights law.
11. It urged that states should become parties to the relevant international instruments, including the Statute of the International Criminal Court (ICC).
12. The report advocated helping to build the capacities of regional and subregional organizations to prevent crimes and violations relating to the responsibility to protect (R2P). The report considered this a wise investment.
13. The report noted that there had been proposals at the United Nations for creating a standing or standby rapid-response civilian and police capacity for emergencies and encouraged further creative thinking about such options.

14. The report advocated that the UN system should increase its rule of law assistance to member states.
15. The report urged that in a rapidly unfolding emergency situation, the United Nations, regional, subregional, and national decision makers must remain focused on saving lives through “timely and decisive” action.
16. The report invited the UN General Assembly to consider whether and, if so, how to consider a periodic review of what member states have done to implement the R2P.
17. The report contained an annex on “Early Warning and Assessment.” Within this annex, the secretary general asked the relevant UN departments, programmes, agencies and inter-agency networks to incorporate consideration and perspectives relating to R2P into their ongoing activities and reporting procedures.

Existing Mechanisms Related to R2P Implementation in the Latin American and Caribbean Region

18. Based on past experience, one could say that there are risks of genocide, ethnic cleansing, crimes against humanity, and war crimes in Latin America and the Caribbean. However, there are few existing instrumentalities that are specifically mandated to act preventively in response to such threats.⁴
19. The human rights bodies of the OAS can, and do, react when necessary, but they are more classical human rights bodies. Their reaction to atrocity threats would be slow—even accounting for the established record of both the Inter-American Commission and the Inter-American Court in identifying **interim measures of protection** in response to immediate cases. Their focus is on dispensation of justice after the fact. Keeping in mind the quasi-judicial nature of their mandates (Commission) and of their judicial (Court) institutions, one cannot say that, alone, they can rise fully to the challenge of R2P.
20. Human rights are often at serious risk during states of emergency. Article 27 of the American Convention allows the temporary suspension of some rights in cases of emergency. Others, however, may never be suspended under any circumstances. In the assessment of H. Faundez Ledesma, a leading author on the Inter-American System for the Protection of Human Rights, “regrettably, the Commission’s function of oversight in this area has not been exercised systematically or rigorously, but sometimes selectively.” Faundez Ledesma suggests creating greater space for the Commission in this area:
21. Although Article 27 does not expressly refer to the duty (of the Government concerned) to notify the Commission, Article 41.d authorizes the Commission to request that the governments of the OAS member states (whether or not they are parties to the Convention) report on the measures adopted in the area of human rights. Similarly, by virtue of Article 43, the States Parties are obligated to provide the Commission with the information that it requests on the manner in which their domestic laws ensure the effective application of any provision of the Convention.⁵
22. In a 2009 interview, Judge Cancado-Trindade, former President of the Inter-American Court of Human Rights, noted that, “in more recent years...,” the Inter-American Court had started hearing, “...a new generation of cases, the most recent and very disturbing cases, which concern massacres, and collectivities of victims.”⁶ This review, however, has occurred mostly after the fact.

The development-oriented activities of the OAS and the CARICOM kick in where there is need for rebuilding. This is now apparent in places such as Haiti. Neither body, however, provides the equivalent of the UN Peacebuilding Commission.

Recommendations to Enhance Regional and Subregional Implementation of R2P in Latin America and the Caribbean

23. Based on the foregoing, the policy question arises for consideration: what more could the OAS and the CARICOM do to enhance implementation of the R2P? This question may be considered using the policy framework advanced in the 2009 report of SG Ban Ki-moon:
24. A. *The enduring responsibility of the state to protect its populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. Ratifications of international and regional conventions and national reviews of R2P:* Since the issuance of SG Ban Ki-moon's report and the discussion of it in the UN General Assembly, we are not aware of specific OAS follow-up in these areas. **The Inter-American Commission and Court might be invited to present reports that could be discussed in the near future in the OAS Assembly. The CARICOM Secretariat might similarly be invited to present a report on this topic to the CARICOM Heads of State and Government.**
- B. *Assistance to member states with respect to conflict-sensitive development assistance; indigenous mediation capacity; consensus and dialogue; local dispute resolution capacity; capacity to replicate capacity; rule of law assistance:* Since the issuance of Secretary General Ban Ki-moon's report and the ensuing discussion in the UN General Assembly, we are not aware of specific OAS or CARICOM follow-up in these areas. **This topic might be placed on the agenda of the OAS Assembly and the meeting of CARICOM Heads of State and Government.**
- C. *The responsibility of member states to respond collectively in a timely and decisive manner when a state is manifestly failing to provide such protection:* Since the issuance of SG Ban Ki-moon's report and the ensuing discussion in the UN General Assembly, we are not aware of specific OAS or CARICOM follow-up in these areas. **This topic might be placed on the agenda of the OAS Assembly and of the CARICOM Heads of State and Government.**
- D. *Helping to build the capacities of regional and subregional organizations to prevent crimes and violations relating to the R2P:* Since the issuance of SG Ban Ki-moon's report and the ensuing discussion in the UN General Assembly, we are not aware of specific OAS or CARICOM follow-up in these areas. **This topic might be placed on the agenda of the OAS Assembly and the meeting of the CARICOM Heads of State and Government.**
- E. *Incorporating consideration and perspectives relating to the R2P in the relevant line OAS and CARICOM departments, programmes, agencies and inter-agency networks and reporting procedures:* Since the issuance of SG Ban Ki-moon's report and the ensuing discussion in the UN General Assembly, we are not aware of specific OAS or CARICOM follow-up in these areas. **This topic might be considered soon by the Secretary-General of the OAS and the Secretary-General of the CARICOM.**
- F. *Contributing to a standby rapid-response civilian and police capacity for emergencies:* Since the issuance of SG Ban Ki-moon's report and the ensuing discussion in the UN General Assembly, we are not aware of specific OAS follow-up in these areas. **This topic might be**

placed on the agenda of the OAS Assembly and of the meeting of CARICOM Heads of State and Government.

25. It is possible that there may have been some OAS or CARICOM follow-up actions of which we are not aware. Even if this were the case, the policy framework presented above would still seem to be apposite in considering future activities for the enhancement of the R2P in Latin America and the Caribbean.
26. In addition, we would offer for discussion the proposal that **the CARICOM should appoint a Caribbean Commissioner on Human Rights and the Responsibility to Protect**. We would likewise offer for discussion the proposal that **the OAS should appoint an Inter-American Commissioner on Human Rights and the Responsibility to Protect**. Each of these Commissioners would be given specific mandates to act preventively and to spearhead urgent-action responses.

Endnotes

¹ See, Robert K. Goldman, “History and Action: The Inter-American Human Rights System and the Role of the Inter-American Commission on Human Rights,” *Human Rights Quarterly*, Vol. 31, No. 4, pp. 856-887. See also in the same volume, Lauri R. Tanner, “Interview with Judge Antonio A. Cancado Trindade, Inter-American Court of Human Rights,” *Ibid.* pp. 985-1005. See generally, Dinah L. Shelton, *Regional Protection of Human Rights*. Oxford University Press, 2007. See also, *Documentary Supplement*, Oxford University Press, 2008.

² Society Justice Initiative. *From Judgment to Justice. Implementing International and Regional Human Rights Decisions*. Open Society Foundation, 2010, p.19.

³ *Ibid.*

⁴ See, generally, Bertrand G. Ramcharan, *Preventive Human Rights Strategies*, Routledge, 2010; Bertrand G. Ramcharan, *Preventive Diplomacy at the United Nations*. Indiana University Press, 2008.

⁵ H. Faundez Ledesma, *The Inter-American System for the Protection of Human Rights* (2007), pp. 124-125.

⁶ *Loc cit.* in note 1 above, p.989. Judge Cancado-Trindade referred to the *Myrna Mack Chang* case (2003–Guatemala), *Massacre of Plan de Sanchez* (2004–Guatemala), *Massacres of Mapiripan, of Ituango, and of Pueblo Bello* (Colombia), the massacre of the *Moiwana Community* (Surinam), and the Peruvian cases of *Castro Castro, and the University of La Cantuta*. These cases would confirm the need for more vigorous OAS and CARICOM action on the responsibility to protect, especially preventive actions.

The Chair's Summation Notes

by Richard H. Stanley

Notes used by Stanley Foundation Chair Richard Stanley to summarize the substance of the four morning panel discussions. This summation was presented immediately following lunch on May 11, 2011.

1. Context for approaching this issue—paraphrased quotation from Dr. Bartoli's paper:

“Conceptualizing and implementing norms is the product of tortuous interactions, debates and, finally, collective learning.”

2. The role of regional and subregional arrangements is important. They can contribute greatly to strengthening and implementing R2P. Regions and subregions differ. Hence regional and subregional institutions should and will differ. They won't be carbon copies of each other. However, there are cross-cutting ideas and lessons learned that should be shared. Cross-regional dialogue will help this learning process. Regional and subregional actions and initiatives should be in consonance with the UN and the R2P “norm” and principles.

3. Participants expressed a strong preference for use of political and diplomatic tools, including prevention, conflict resolution, human rights protection. Confidence-building measures are a part of strengthening R2P and developing a culture of prevention. Some participants feared that military actions in R2P pillar 3 could be abused. There was general agreement that military actions should be used only when deemed absolutely necessary.

4. As the role of Regional and Subregional Arrangements is developed, it is very useful to consider them with the three R2P pillars in mind. How would regional and subregional actions and options strengthen the three pillars?

A. Pillar 1—states are responsible for protecting their populations. International actions should strengthen understanding and adherence to this pillar and not abridge it.

B. Pillar 2—help states build their capacity to protect. Embed R2P concepts into state ethos and systems: good governance, rule of law, juridical systems, democracy, development, peer review.

C. Pillar 3—when necessary, take international action to stop and deal with egregious human rights violations (specifically, the four crimes).

It is useful to consider Pillar 3 in two different aspects:

3A—nonmilitary actions such as sanctions, asset freezes, travel bans, etc.

3B—military actions (used only when deemed absolutely necessary).

5. Regional and subregional arrangements should work to strengthen their capabilities and effectiveness on R2P. Matters warranting attention may include:

- Cross-regional dialogue
 - Embedding R2P concepts and principles institutionally
 - Review their own human rights system
 - Strengthen consensus-building capability
 - Consider early warning capability and systems
 - Develop mediation capacity
 - Regional standby enforcement capacity to deal with atrocities
6. Regional and subregional arrangements can have a comparative advantage in working with states in their region. They should be certain that this advantage is not undercut by the self-interests of neighboring states. Among other things, they can and should:
- B. Promote discourse to emphasize and reinforce the R2P “norm.” Embed it in state mindsets.
- Build awareness
 - Build constituencies
 - Training and education
 - Carry this to the village level
 - Engage with civil society
 - People-to-people R2P
- A. Help states build their capacity to protect. Help states succeed in protecting their populations.
- Good governance
 - Rule of law
 - Juridical systems
 - Human rights principles and systems
 - Civil society
 - Peer review

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