

## Chapter Sixteen

*Vyacheslav Gavrilov*

### **The Responsibility to Protect and the Asia-Pacific**

#### **Executive Summary**

- The Responsibility-to-Protect (RtoP) concept is a multidisciplinary “road map,” based on existing legal and political doctrines and rules, that establishes actions the states and the international community should undertake in cooperation with each other in order to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.
- The Asia-Pacific is one of the regions in which the majority of states have chosen to bypass the debate on the RtoP, claiming that any discussion of the concept could undermine the established notions of national sovereignty.
- However, further international debates about the RtoP implementation should include the Asia-Pacific countries due to their increasing influence on the evolution and regulation of international relations as well as their quest for a solid, regional system aimed at preventing and/or minimizing the consequences of international crimes.
- Quite a number of facts indicate that in the Asia-Pacific region, where the notions of development and security have always been closely intertwined, the awareness of the necessity to adapt the theoretical provisions of RtoP to the realities of the region is growing year by year. For instance, it is in this context that a special study group was established by the Council for Security Cooperation in the Asia Pacific (CSCAP) to examine the RtoP concept and explore its implications for regional actors and organizations.

## Idea and Nature of Responsibility to Protect

In the contemporary world, despite the regulatory and organizational preventive measures taken by the international community, mass-atrocity incidents caused by acts of violence continue to be the reality of the world around us. In order to minimize such incidents and prevent them from occurring in the future, the international community took a number of serious steps, of both a theoretical and practical nature, at the turn of the twenty-first century. Development and normative formulation of the concept of the “Responsibility to Protect” (RtoP), which stipulates the responsibility of states to protect their populations from the most dangerous international crimes, is the most important result of the above-mentioned steps.

The Responsibility to Protect was unanimously adopted by world leaders at the 2005 World Summit. Governments recognized their primary responsibility to protect their own populations from genocide, war crimes, ethnic cleansing, and crimes against humanity, and promised to assist each other to fulfill this responsibility and to protect populations when governments manifestly failed to do so. Thus, the shift in emphasis from the international community’s “right to intervene” in realizing humanitarian interventions to the improvement of the concept of the “responsibility of states” to fulfill commitments inherent to state sovereignty became one of the basic ideas of the RtoP concept.

Conditions of the RtoP acceptance and its contents allow us to define it as a concept worked out and adopted at the universal level, within which the existing legal and political commitments of separate states and the international community in the humanitarian sphere are correlated with each other and are implemented sequentially to ensure effective protection of populations from the most grave international crimes. That is why RtoP cannot be named a new legal rule or doctrine. In my view, it can be considered a multidisciplinary “route map,” which, because it is based on existing legal and political doctrines and rules, and through

developing them, establishes a list of actions the states and the international community should undertake in cooperation with each other to protect populations from international crimes.

RtoP proceeds from the imperative and eternal duty of states to defend their populations and the responsibility of the international community to render effective and timely assistance in case of need, in any place in the world. The RtoP concept especially underlines the value of prevention and, when it fails, of early and flexible response adapted to the specific circumstances of each case.

### **Pillars of RtoP**

As agreed by the UN member states in the 2005 World Summit Outcome,<sup>1</sup> the RtoP concept rests on three equally important and nonsequential pillars.

The first pillar involves the protection responsibilities of the state. These responsibilities, inherent to the states because of their sovereign natures, find their formal expression in the sources of international law and political documents, and are aimed at protecting the populations of these states against four types of especially dangerous crimes under international law. The second pillar provides for assistance from the international community to the states while they are performing their RtoP duties. The third pillar proceeds from the responsibility of the international community for a timely and decisive response in cases in which national authorities are manifestly failing to protect their populations.

Since the first pillar provides for certain responsibilities of the state, actions of its bodies for RtoP implementation will be treated as primary and basic under this pillar. Such actions should, first of all, target policy formulation and implementation in order to prevent the crimes mentioned, including their incitement. The state here is entitled to establish a range of measures and means that it will use to achieve this aim. These measures can be diverse, from

---

<sup>1</sup> See World Summit Outcome (2005), par. 138-140, available at: <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement>>.

carrying out special education programs for the population to a total reformation of the legal and political systems of the state.

The cooperation between the state authorities and international bodies in the process of RtoP implementation takes an immediate form under the second pillar. This is determined by the impossibility of international community rendering assistance to the state in its RtoP performance without mutual obligations and an active partnership between the states and international bodies.

Such assistance, however, cannot be provided without the request for its rendering or without the consent for its realization on the part of the state concerned. This fact, just as for pillar one, determines the significant and primary importance of the state bodies in launching the mechanism of the second pillar. At the same time, in contrast to the first pillar, it is the international and not the state bodies that determine the thrust of these mechanisms.

International assistance can be rendered at the state's request or be offered to the state by certain bodies or organizations that consider the state unable to carry out the necessary reforms and to cope with the serious situation by itself. As a rule, the question here is about states that are under stress before an outbreak of crisis or conflict. The offer of help and the determination of its type are especially delicate areas, because many national governments fear that any internalization of the problem could result in further external interference and possible intervention.

The first and second pillars fundamentally differ from the third, according to which the formal consent of the state to cooperate with international bodies is not needed, as a rule, and the activities of international institutions are directed, first of all, not at preventing crimes but at minimizing and overcoming the consequences of their commitment.

The duty of the international community to take all the necessary measures for the protection of populations forms the basis of the third pillar. These measures, according to the 2005 World Summit Outcome, can be carried out in two stages.

In the first stage, “the international community, through the United Nations, has the responsibility to use appropriate diplomatic, humanitarian, and other peaceful means, in accordance with Chapters VI and VIII of the UN Charter, to help to protect populations.” Such measures can include, in particular, peacekeeping capabilities of the United Nations along with the involvement of regional bodies. The second stage assumes the possibility of acceptance of a wider range of collective actions, either peaceful or non-peaceful, by the international community under Chapter VII, including sanctions and military operations.

The actions of the international community, according to the third pillar, should be taken in a timely and decisive manner, on the one hand, and in full conformity with the UN Charter, on the other hand.

Nevertheless, together with the question of what measures should be applied by the international community in each particular case, there is an equally significant problem of a clear definition of the time when the efforts of international bodies for rendering assistance to the state under the second pillar can be replaced by rendering assistance to the population itself under the third pillar. This question is also crucial for the whole RtoP concept, because it is exactly where the line beyond which the state turns from a “leading” to a “guided” subject, in the case of population protection, is determined. The RtoP concept refers to the situation when “national authorities are manifestly failing to protect their populations” as such a line. Despite some uncertainty of this criterion, in general, it appears to be effective, as the inability or unwillingness of the national authorities to perform their duties to protect can be recognized clearly in the majority of cases.

There are far more questions concerning the additional criterion, which allows the international bodies to proceed to the second stage and to perform non-peaceful acts under the third RtoP pillar. Paragraph 139 of the 2005 World Summit Outcome Document stipulates that the basis for it arises when peaceful means turn out to be inadequate. But such “inadequacy” is difficult to recognize in a specific situation, which is why it is necessary to elaborate supplementary conditions at international levels that would specify

the meaning of this term. This should be done to reduce, as much as possible, the risk of an incorrect qualification of the situation, which would come at a high cost not only for the state concerned, but for the international community, as well.

The above factors lead to the conclusion that the cooperation between national and international authorities takes place within each of the three RtoP pillars and is focused on the main task of this concept – the protection provision. Nevertheless, the modalities, means, and intensity of cooperation are different within the pillars and are determined by their internal specifics: in the first pillar, by the state's understanding and performance of its duty to protect; in the second pillar, by rendering assistance to the state from outside; in the third, by collective response in the case of a crisis.

### **The Asia-Pacific and Difficulties of RtoP Implementation**

The Asia-Pacific is a region in which the majority of states have chosen to bypass the debate on the Responsibility to Protect, claiming that any discussion of the concept could undermine the established notions of national sovereignty. The events in Libya and Syria where, under the pretext of protecting a peaceful population from international crimes, acts of the forcible overthrow of the leaders were undertaken, contribute to the strengthening of such attitudes.

Nevertheless, one can agree with the statement that “no matter what one may think of the situation in Libya, it opens a complex debate about responses to imminent atrocities, divisions of labor in the context of such responses, and, perhaps most crucially, the way in which norms of intervention and responsibility will evolve.”<sup>22</sup> This debate should not proceed without the Asia-Pacific countries, which, on the one hand, have ever-increasing influence on the processes of developing and regulating international relations, and, on the other hand, require the creation of a solid regional system of prevention and minimization of the consequences of international crimes.

---

<sup>22</sup> Pierre P. Lizée, “Asia and the Responsibility to Protect: What Now?” Pac Net (September 27, 2011), 56, available at: <<http://csis.org/files/publication/pac1156.pdf>>.

Under the circumstances, the outright rejection of the RtoP on the grounds that it undermines the foundation of state sovereignty should be replaced by collective discussions and practical measures by Asia-Pacific countries, within which the conditions and order of interaction between states and international institutions in the process of RtoP implementation (especially of its third pillar) should be clarified. Moreover, the disputable elements of the concept should acquire concrete definitions suitable to all.

As a result, an RtoP approach to population protection that is primarily based on the state's own resources, rather than external intervention, would have a chance to be accepted, while its difficulties and shortcomings could be minimized. Such an attitude toward the problem seems to be much more appropriate than an outright unwillingness to deal with the existing approaches in this sphere, as it is obvious nowadays that many countries of the Asia-Pacific region are not always capable of ensuring the protection of their populations from international crimes without assistance from the international community.

### **RtoP and the Asia-Pacific: What's Next?**

Quite a number of facts indicate that in the Asia-Pacific region, where the notions of development and security have always been closely intertwined, the awareness of the necessity to adapt the theoretical provisions of RtoP to the realities of the region is growing year by year. For instance, it is in this context that a special Study Group was established by the Council for Security Cooperation in the Asia Pacific (CSCAP) to examine the RtoP concept and explore its implications for regional actors and organizations. The Study Group was also tasked with providing policy recommendations regarding possible regional contributions to the global debate surrounding RtoP implementation.

After two years of strenuous work, a detailed Final Report<sup>3</sup> was prepared by the working group. In this document, the importance

---

<sup>3</sup> CSCAP Study Group on the Responsibility to Protect, Final Report, available at: <<http://www.cscap.org/uploads/docs/RtoP/CSCAP%20Study%20Group%20on%20RtoP%20-%20Final%20Report.pdf>>.

of the necessity to implement the RtoP concept in the Asia-Pacific region for the prevention of humanitarian disasters and/or the minimization of their consequences was emphasized, as well as twelve concrete recommendations, were outlined.

The proposals are divided into three blocks. The first one outlines recommendations for national governments. The second provides recommendations for regional entities, principally the ASEAN Regional Forum (ARF). The third contains recommendations for strengthening partnership between the region and other actors with respect to RtoP implementation.

The report of the RtoP Study Group referred to two main areas in which progress could be possible. The Joint Office of the Special Advisers to the UN Secretary-General on Genocide Prevention and the Responsibility to Protect is an underutilized mechanism. One of its main functions is to establish platforms for dialogue with regional actors in order to facilitate exchanges about the RtoP. National governments in Asia should avail themselves of this mechanism and develop networks, processes, and frameworks of reference that could be activated if the risk of mass atrocities becomes apparent in the respective region. A regular and sustained agenda of consultations between regional states and the Joint Office could be devised immediately to set this process in motion.<sup>4</sup>

Another important suggestion in the Study Group report was its recommendation that the ARF participants should consider establishing a Risk Reduction Center (RRC) within the ARF Unit. The center could conduct early warning procedures and assessment of the risk of genocide, war crimes, ethnic cleansing, and crimes against humanity in the Asia-Pacific, and cooperate with the UN in this area. The first stage of the center's work would involve risk analysis to identify countries at risk, and the second stage would constitute a more detailed analysis. From the Study Group's point of view, a draft framework of the RRC would need to be approved by the ARF participants before being put into operation, and would be reviewed by participants on an on-going basis. In order to prevent interference in the internal affairs of states, this framework would be limited to information that is publicly available.

---

<sup>4</sup> Lizée, *op. cit.*



Some years ago, the idea of the creation of the RRC was considered within the ARF, but without much success. However, now, “many state and nonstate actors in Asia would support such a Centre because it could address the risk of mass violence before it erupts, and in a way that would not undercut established notions of national sovereignty – for instance, through the establishment of expert groups that would report to national governments in the region.”<sup>5</sup> The validity of this statement is confirmed by several countries of the Asia-Pacific region, including China, already making public statements approving the idea of creating the RRC.

As for other activities, which could be carried out by the ARF in the sphere of RtoP implementation, the Final Report proposes establishing a standing regional capacity to support national capacity to prevent RtoP crimes and respond to them in a timely and decisive manner. Among its other suggestions is the strengthening of the capacity of regional institutions to employ diplomacy to mediate and resolve crises before they escalate. A number of concrete proposals were also reflected in the report concerning the establishment of collaboration between the Asia-Pacific countries and the UN to prevent RtoP crimes as well as strengthen region-to-region and intraregional dialogues to facilitate the identification of best practices and lessons learned relating to RtoP implementation.

To be sure, the above-mentioned initiatives should not be considered indisputable and final. It would take a good deal of time before the countries of the Asia-Pacific region would take concrete actions on their basis in order to create a regional system that would prevent mass atrocities and ensure fast response in case acts of violence take place. Such a system should combine the state’s primary responsibility to protect its population with the international community’s responsibility to assist the state in case of need, but without the violation of its sovereignty and interference in its internal affairs. The first step in this direction has already been made, and there are no doubts that other steps will follow in the future.

---

<sup>5</sup> Lizée, *op. cit.*