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**STRENGTHENING COMPREHENSIVE AND
COOPERATIVE SECURITY IN THE ASIA-PACIFIC**

**“Making the Responsibility To Protect (RtoP)
Work in the Asia Pacific”**

by

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And

**International Advisory of Global Centre for the
Responsibility to Protect**

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MAKING THE RESPONSIBILITY TO PROTECT WORK IN THE ASIA PACIFIC

Presentation¹ by Gareth Evans, Co-Chair of the International Commission on Intervention and State Sovereignty and International Advisory Board of Global Centre for the Responsibility to Protect, to ASEAN-ISIS 24th Asia-Pacific Roundtable, Kuala Lumpur, 8 June 2010

The issue before us is the responsibility of states, and if they fail the wider international community, to protect peoples against the world's worst human rights abuses: the mass atrocity crimes of genocide, ethnic cleansing, crimes against humanity and war crimes. How can we ensure, in short, that -- while not tearing up, in Asia or anywhere else, the rule book that governs sovereign states' relations with each other -- the world never again endures another Holocaust, Cambodia, Rwanda or Bosnia, or more recently Darfur or Sri Lanka?

For centuries, and indeed until extremely recently, there was no agreed normative foundation for dealing with these cases, with a fundamental division being evident right through the particularly-troubled 1990s between states supporting robust military "humanitarian intervention" in these cases, and those giving overriding weight to state sovereignty and the centuries-old practice of non-intervention.

The Birth of the Responsibility to Protect. But in 2005, after a long debate leading up to that year's World Summit, the UN General Assembly at head of government level unanimously embraced -- and then after another long debate in 2009 reaffirmed -- the new norm of "the responsibility to protect", first articulated by the Canadian-government sponsored International Commission on Intervention and State Sovereignty in 2001. The essence of this is now best understood as involving three pillars:

- Pillar 1, the enduring responsibility of the sovereign state to protect its own people from the four defined mass atrocity crimes;
- Pillar 2, the responsibility of the international community to assist states to fulfil their national obligations in , and
- Pillar 3, the responsibility of the wider international community to step in, in ways that are consistent with the UN Charter, when a state fails, through incapacity or ill-will, to meet its responsibility: international responses should be timely and flexible, and include, but only in the most extreme cases and with Security Council approval, coercive military force.

Although a number of states clearly remain rather more comfortable with pillars 1 and 2 than the potentially more far-reaching pillar 3, it is hard for anyone to argue after the

¹ This draws upon the Submission of the Global Agenda Council on Human Rights and Protection, chaired by the author, to the World Economic Forum's Global Redesign Initiative, March 2010; on the work of the New York-based Global Centre for the Responsibility to Protect and its affiliate, the regionally-based Asia-Pacific Centre for the Responsibility to Protect (www.globalr2p.org); and more generally Gareth Evans, *The Responsibility to Protect: Eliminating Mass Atrocity Crimes Once and for All* (Brookings Institution Press, 2008, paperback ed 2009)

2009 UN debate that the new norm is not here to stay. States from both North and South were overwhelmingly positive about the new doctrine, with only four -- Cuba, Venezuela, Nicaragua and Sudan -- seeking to roll back the basic 2005 consensus.

A striking feature of 2009, as compared with 2005 was the much more overt support of R2P in Asia and the Pacific, not least from India, which had been one of the very last states to come aboard originally, and states like Indonesia, Vietnam and the Philippines who were now much more emphatically supportive. While there was less evident enthusiasm from China, the DPRK, Sri Lanka, Malaysia and, especially Pakistan, very strong support was maintained, as it had been from the beginning, by countries like the ROK, Japan and Timor Leste - as well as Australia . The New York based Global Centre for the Responsibility to Protect, concluded in its published assessment of the 2009 debate that “Overall, the greatest positive shift in favour of R2P from 2005 appeared to come from this region”.

The critical task now, as almost everyone now agrees, is to consistently put these overwhelmingly agreed principles into operational practice worldwide -- in every region, including our own, where these situations could conceivably arise again. And that will mean addressing, at the global, regional and national level as appropriate, four particular challenges which remain clearly evident: reaching conceptual agreement, once and for all, on what are R2P cases; developing effective capability to initiate action, and mobilize political will, on new situations as they arise; ensuring the availability of relevant civilian capability; and (for the very few cases where it will be necessary) ensuring the availability of appropriate military capability.

(1) Agreeing on Cases where Norm Applicable: ensuring that there is a general consensus as to what specific situations justify a responsibility-to-protect label and response (as distinct from conflict or human rights concern more generally);

There has been argument, and a degree of confusion, as to how individual cases should be characterized -- including the important Asian ones of Myanmar in 2008 and Sri Lanka in 2009 -- but the definitional lines are now becoming much clearer. For example, the cases of Darfur (at least in 2003-04), Kenya (in 2007-08), and Eastern Congo (in some respects still continuing), are now more or less universally understood and accepted as clear-cut responsibility-to-protect situations, in a way that Iraq in 2003 and Russia's intervention in Georgia 2008 are absolutely *not* so accepted.

The situation in Sri Lanka in 2009 -- when terrible casualties were inflicted on thousands of Tamil citizens caught between an advancing army and its cornered LTTE opponent -- was complicated by the world having no sympathy with the terrorist insurgents the government was seeking to wipe out. But it is hard to resist the evidence that atrocities were committed by *both* sides, including the government with its indiscriminate shelling, or to contest the characterization of the whole situation as a clear-cut failure by both sides to exercise their responsibility to protect the innocent citizens caught in the middle.

The Burma/Myanmar cyclone case in 2008 was an initially ambiguous one that took time to clarify, but in retrospect is quite straightforward: while the cyclone itself was not a

responsibility-to-protect trigger, if the inadequate military regime response had continued long enough to itself amount to a crime against humanity because of the reckless indifference to loss of life involved, then it would have been.

The power of the responsibility-to-protect norm to energize effective action in practice depends on it being confined to situations where mass atrocity crimes – genocide, ethnic cleansing, and large scale war crimes and crimes against humanity – are occurring or feared in the reasonably foreseeable future. It is not meant to address the multitude of individual human rights violations, violent conflict, natural disasters, climate change, or other human security threats facing populations. Rather, it applies to a narrow subset of crimes under international law that the global community has recognized as particularly intolerable.

To build upon the emerging consensus as to what are, and are not, R2P situations, and help focus and maintain attention and encourage action, there needs to be developed and regularly published a watchlist of ‘situations of R2P concern’. Such an exercise is underway at the Global Centre for the Responsibility to Protect, the idea being to identify those country situations where mass atrocity crimes are either occurring, or are feared imminent, or are feared likely to occur in the readily foreseeable future if preventive strategies are not adopted. This would be used to generate policy recommendations for at the global, regional and national level, and to mobilize effective life-saving advocacy.

(2) Developing Effective Capability to Initiate Action and Mobilize Political Will:

having sufficient early warning, authoritative fact-finding and decision-making capability within the international system at all relevant levels, to ensure that situations that deserve international attention actually get it.

Focal points are necessary within governments and relevant intergovernmental organizations for the collection, analysis, and dissemination of information. The object is to have, readily visible within the system in question, a professional individual or unit whose day-job is the thinking through and pre-positioning of response options, the focusing and energizing of decisions when responses are required, and the overseeing of the implementation of decisions once made. The focal point must have direct access to high-level decision makers and be thoroughly integrated into relevant inter-agency mechanisms. This would aid in ensuring that the appropriate actors receive early warning and policy recommendations, and that should they fail to act, they can be held publicly accountable. The focal point cannot be an isolated entity; it must be firmly enmeshed in the very system that it seeks to influence.

At the UN level, such a specific framework for early warning and early response devoted to situations that can result in mass atrocity crimes is still lacking, but is hopefully now under way with the recent decision to establish a joint office bringing together the Secretary-General’s Special Adviser on the Prevention of Genocide and Special Representative on R2P, with accompanying machinery to better energize and coordinate the multitude of relevant departments and agencies, and to encourage the S-G and key Security Council member states to take whatever action is appropriate.

On grounds of both legitimacy and geography, regional and sub-regional organizations like ASEAN -- whatever their traditional reluctance to get involved in security issues may be -- are ideally positioned to act to prevent future tragedies. Their proximity to situations where mass atrocity crimes may be occurring or imminent allow them to provide credible and timely early warnings to the United Nations and other actors, and to mobilize effective action. It remains to be seen whether it will ever be possible in an Asian context to go as far as the African Union has and introduce formal Charter provisions like what has been described as the “non-indifference” Article 4(h) of the AU Constitutive Act of 2000, referring to “The right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity”. But there is a strong case in ASEAN, and for the other less well developed regional organizations, at least for their “focal point” capacity to be strengthened in this respect.

Within national governments, similar institutional focal points should be established, as has happened now with the US -- with a specially tasked director in the NSC -- and a number of European governments, but has not so far been emulated around Asia to my knowledge.

An extremely important element in this whole equation, particularly when governments default, is the role increasingly being played by civil society organizations. International non-governmental organizations like the Global Centre for the Responsibility to Protect, and the International Crisis Group, Amnesty and Human Rights Watch, and the International Coalition for the Responsibility to Protect (bringing together these and other NGOs), all have crucial alarm-bell ringing and energizing roles. They and similar organizations operating at the national and regional levels should be further supported. An especially useful role in this respect in the Asian context is being played by the Asia-Pacific Centre for the Responsibility to Protect, operating out of the University of Queensland with a Filipino head and with extension and outreach programs, many supported by the Australian government, in Indonesia, Thailand, Cambodia, Vietnam and elsewhere.

(3) Ensuring Civilian Capability: building, and having available for rapid deployment as prevention or reaction circumstances require (both by way of Pillar 2 assistance and in the context of Pillar 3 intervention), effective civilian capability in the areas of diplomatic mediation, policing, other civilian support and fact-finding and monitoring missions.

A particularly important civilian function to which Asian states might be able to make a contribution is policing, which in some difficult cases may be a less sensitive but just as effective a form of engagement as sending in military personnel: the deployment (preferably, as always, with the consent of the government in question) of police forces trained in riot control, may well avoid the catastrophic deterioration of a volatile situation. The European Union has already moved to acquire standby capability in this respect by developing for appropriate crisis management situations the European Gendarmerie Force (EGF). External police support can also play a vital local training role.

There is also a manifest need to build capacity in less sensitive areas like emergency needs assessment, rule of law support, and civil administration generally – with resources organized (in practice, not just on paper) on a coordinated standby basis by the UN, regional organizations and national governments, and in a long-term preventive context of as well as those of post-crisis peacekeeping and peace-building.

Experience has demonstrated the particularly crucial relevance of human rights monitors and fact-finding missions in situations where R2P crimes might be involved. International organizations have discovered the usefulness of fact-finding missions in the context of atrocities and in the middle of armed conflicts. In an Asian context, in Nepal, the UN established a human rights field operation in May 2005 that monitored violations of human rights and humanitarian law, investigated emblematic cases and duly reported its findings. The field operation in Nepal contributed to a dramatic reduction in violations, with summary executions and disappearances nearly eliminated and the release of most political and civil society activists from detention. The identification of appropriately qualified personnel for these missions, able to be mobilized at very short notice, would be a very helpful preparedness step that ASEAN, among others, could take..

- (4) **Ensuring Military Capability:** building sufficient military capability in the international system to meet needs as they arise for both assistance (Pillar 2) and intervention (Pillar 3), and that there is agreement about the proper criteria for the use of coercive military force;

The use of coercive military force may be required in extreme responsibility-to-protect situations, either by way of Pillar 2 assistance on *request* (through preventive deployment, or to suppress occurring violence), or Pillar 3 intervention in conformity with the UN Charter. The history of the UN is replete with instances of frustrated efforts to assemble the military force required to fulfil the deployments mandated by the organization. According to the Charter, member states were expected to “make available to the Security Council” armed forces with the purpose of maintaining international peace and security, and elaborate arrangements were created for a ‘Military Staff Committee’ to supervise these deployments. But no standing capability of any kind has ever been created, and ad hoc arrangements continue to prevail.

Peacekeeping operations, most of which are under direct UN command, continue to grow in number and complexity, and for the most part are now formally empowered under Chapter VII to use force as required for civilian protection, particularly in response to ‘spoilers’. But these kind of sensitive missions, combining traditional peacemaking with a capacity to suppress sporadic violence, require very special training, because what is involved here is very different from traditional warfighting. And even in the context of extreme responsibility to protect situations – of which Rwanda remains the starkest example – the most obvious need is for a capacity to mount at very short notice ‘fire brigade’ response capability which involves more than peacekeeping, but still something narrower than a full first-Gulf War kind of peace enforcement/war-fighting operation.

In order to fill this military deficit, the most immediately practical and widely favoured option is the development of the necessary military capabilities at the regional or sub-regional levels. Two cases in point are the European Union (EU) and African Union (AU). The example set by the African Standing Force, consisting of 5 sub-regional brigades of 3,000-4,000 troops, and expected to be operational by 2010, should be emulated in other regions of the world.

In Asia, and especially South East Asia, habits of cooperation are slowly developing, particularly in the context of coordinated responses to natural disaster situations, but also within the framework of contributions to peacekeeping operations like that in Timor Leste, and there is a need to maintain that momentum, even if it involves over time giving organizations like ASEAN much more of a security-focused role.

Making Things Happen. Making the responsibility to protect work in the Asia-Pacific, as everywhere else, will require not just meeting the challenges of achieving conceptual clarity (so that everyone is broadly agreed in principle as to what kind of cases require what kind of remedial action) and institutional preparedness (so that the necessary physical capability is more or less immediately available to deliver whatever response the situation requires). It will also mean the *political will* being there to make something actually happen.

Mobilizing and sustaining political will requires here, as in every other public policy context -- international or domestic-- a combination of knowledge, strategy, process, and above all leadership at three different levels: sideways, bottom up and top down. There has to be effective pressure on poorly performing governments from their peers: at the global level the group of cross-regional states participating in the 'Friends of R2P' group already established by UN missions in New York is an important potential delivery vehicle in this respect, and at the regional level ASEAN peer group pressure -- is, as we saw in the Cyclone Nargis case re Myanmar --a potentially quite formidable instrument. Bottom-up civil society pressure to make governments everywhere accountable, with the media playing an important role here, is a crucial further instrument. But on top of that, realistically, a decisive role in preventing and halting mass atrocity crimes, is also going to have to be played by committed individuals in high-level leadership positions, both within national governments and intergovernmental organizations.

In mobilizing action, good arguments will have to be made case by case, appealing, variously, to moral imperatives, national interest, and financial and political considerations. The risks to national security, the costliness of enduring conflicts with a cycle of atrocities, and the growing domestic constituencies concerned with abuses no matter where they occur will all be important factors relevant in persuading leaders to accept their responsibilities. But the most compelling argument -- the one that spurred world leaders to accept the R2P norm in principle in 2005, and which will continue to be crucial in ensuring its practical implementation, in this region as elsewhere, remains the moral one based simply on our common humanity: our duty to rise above the legacy of all those terrible failures in the past, and ensure that never again do any of us stand by or pass by in the face of mass atrocity crimes.