

SPOTLIGHT ON R2P



National Dialogue on the Responsibility to Protect (R2P): Reflecting on the Philippine Experience on Atrocity Prevention

The Asia Pacific Centre for the Responsibility to Protect (APR2P)-Philippine office organized a one-day national dialogue Responsibility to Protect in Quezon City, The Philippines on 30 September 2023. This report provides a background, agenda, and highlights of the panel sessions, discussions, and recommendations made by participants during the meeting.

Background

Since its adoption in 2005, the principle of the responsibility to protect (R2P) has been met with different reactions from states : some welcomed it as a progressive agenda in preventing mass atrocity crimes ; others have been stuck in the position of R2P as nothing more than another name for foreign intervention.

The Philippines once actively supported R2P, particularly, during its early development in the United Nations (UN). This support eventually

waned in the succeeding years. In 2021, Foreign Secretary Enrique Manalo, then Philippine Ambassador to the UN, stated during a UN General Assembly meeting about the “still evolving concept of R2P” . To date, there has not been an active invocation of R2P in various domestic and even regional issues.

In this regard, a national dialogue on R2P was convened on 30 September 2023 at Novotel Hotel, Quezon City, Philippines to take stock of the current understanding of R2P in the country. It sought to map out how state and civil society actors can invoke R2P in regard to current initiatives on atrocity prevention, specifically in addressing the drug war-related killings in the country considered as crimes against humanity and responding to atrocities committed by various armed groups in Myanmar. The dialogue is also intended to generate insights and recommendations from participants on

what direction the Philippines should pursue with regard to R2P and preventing atrocity crimes, as well as on the proposed draft treaty on the prevention and punishment of crimes against humanity.

Agenda

The dialogue opened with welcome remarks from Dr. Carmel Abao, Chair of the Department of Political Science, Ateneo de Manila University who highlighted the partnership between the Department and the Asia Pacific Centre for the Responsibility to Protect, University of Queensland in advocating for R2P and atrocity prevention as well as the work of the Asia Pacific Centre for the Responsibility to Protect-Philippine Office capacity building and networking on gender, atrocity prevention and transitional justice.

Professor Alex Bellamy, Director of the Asia Pacific Centre for the Responsibility to Protect, University of

Queensland, shared his message on the importance of having a national dialogue in the Philippines with very critical issues related to atrocity prevention that need to be addressed.

The first panel was on “Understanding R2P and Atrocity Prevention: the Philippine Experience” had the opening lecture delivered by Dr. Ma. Lourdes Veneracion, Director, Asia Pacific Centre for the Responsibility to Protect-Philippine Office on the basics of R2P and atrocity prevention, highlighting the core atrocity crimes that states are obligated to protect their own populations from, as well understanding risk factors embedded in societies that may bring about the commission of atrocities.

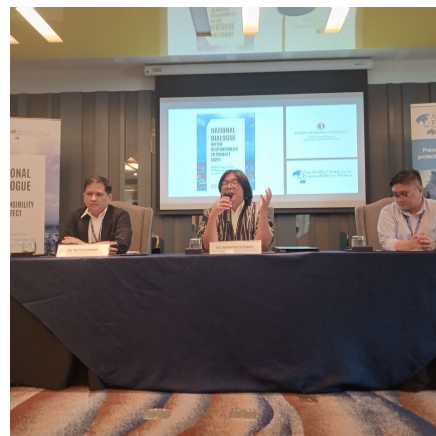
Dr. Noel Morada explained the relevance of R2P in the Philippines and underscored that it had been a supporter of the principle based on its official endorsement of R2P as part of the 2005 World Summit Outcome Document (WSOD), its participation in the United Nations (UN) Interactive Dialogue on R2P from 2009 to 2022, and support for UN resolutions that invoked R2P in the cases of Libya, Darfur, Syria, and Myanmar. He also said that the Philippines has enacted Republic Act 9851 against genocide and crimes against humanity and had been an early supporter of the International Criminal Court (ICC) until it withdrew as state party in 2019. Through the years, however, interest in advancing R2P seemed to have waned, with the norm failing to cascade at the domestic level and not being able to find normative actors to champion it. As pointed out by Dr. Morada, without champions advocating for the principle, R2P will not automatically cascade at the domestic and regional levels

Questions raised during the open forum mainly related to the Philippine experience on R2P and how the principle can be further popularized among various stakeholders. Dr. Morada responded with the need for continues and progressive capacity building on R2P. He shared experiences from the African region and Cambodia that trained various actors on R2P. Dr. Veneracion, for her part, highlighted the importance

of constituency building around R2P of both state and civil society actors and how it can be used to frame issues in the country such as drug war-related extra judicial killings.

The second panel was on “The International Treaty for the Prevention and Punishment of Crimes against Humanity” and implications for the Philippines and the Association of Southeast Asian Nations (ASEAN). Atty. Raymond Baguilat focused his discussion on the discursive link between crimes against humanity and R2P as well as their limitations at the domestic and international spheres. The proposed convention on crimes against humanity may be considered a progressive development but for the Philippines, there may be several limitations. For example, its non-support for the proposed treaty would be the argument that the Philippines already has an existing domestic law on crimes against international humanitarian law, genocide and other crimes against humanity or the Republic Act 9851. In this light, it may be argued that this domestic law is sufficient to address crimes of such nature. Additionally, the Philippine withdrawal from the ICC poses a situation where the country’s position on crimes under international criminal law may have already framed succeeding responses at the international level. This means that present and future state actors may possibly invoke the same reasoning of the Philippine withdrawal from the ICC in their stance on any international criminal law instruments. In March 2018, President Rodrigo Roa Duterte withdrew the Philippines from the ICC based on the reasoning that the country has sufficient and working justice system. For Atty. Baguilat, however, international instruments are necessary, particularly in the context of protecting marginalized groups such as indigenous peoples. Because of the realities of socio-political changes as well as mere rhetoric on justice, it would be better to have international instruments as available recourse for the marginalized.

On the other hand, Atty. Ray Paolo Santiago, Ateneo Human Rights Center, walked the participants through a discussion on international criminal law, the ASEAN as



Atty Santiago and Atty Baguilat on the issue of mechanisms on crimes against humanity, moderated by Atty Tugade.

an institution, and experience in promoting human rights protection. He discussed the importance of the Nuremberg and Tokyo Tribunals in addressing crimes against peace, war crimes, and crimes against humanity committed during the Second World War. Other tribunals that contributed to the progressive development of international criminal law were the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). The statutes and jurisprudence of these tribunals informed the Rome Statute of the ICC and its elements of crime. In the Southeast Asian region, only Cambodia and Timor Leste are state parties to the ICC; the Philippines already withdrew. At the level of the Association of Southeast Asian Nations ASEAN, the Charter provides for the promotion and protection of fundamental human rights and freedoms; it also recognizes the United Nations (UN) Charter and international law, including international humanitarian law. However, when seen as individual ASEAN Member States (AMS), only Cambodia, Indonesia, Lao PDR, the Philippines, Thailand, and Viet Nam are state parties to major human rights conventions. With regard to the situation on Myanmar, the ASEAN came up with a Five Point Consensus: call for immediate cessation of violence; conduct of constructive dialogue for the peaceful resolution of the situation; have a Special Envoy to facilitate the dialogue process; provision for humanitarian assistance; and have special envoy and delegation to visit Myanmar and meet the parties concerned. Unfortunately, this Consensus did not generate much

action. For this reason, responsibility and accountability must be invoked through existing international human rights law, international humanitarian law, and international criminal law that the ASEAN committed to uphold.

During the open forum, a participant commented that R2P and atrocity prevention are important concepts for the security sector to know about and understand. For example, the Philippine National Police (PNP) has numerous capacity development programs on various issues and even have a human rights and peace and development office. But R2P and atrocity prevention, to date, have not yet been introduced to them. The other comment was about the Philippine justice system and the limitation of implementing the law on crimes against humanity. The panelists agreed with these comments and further shared the need to not only progressively capacitate state actors but also reform and strengthen the justice system.

The third panel focused on the “Myanmar Crisis and the Philippine Response”. Former ICC Judge and Current Chair of the International Labor Organization (ILO) Commission on Inquiry in Myanmar Raul Pangalangan discussed the significance and findings of the Commission, specifically, as related to ILO Freedom of Association and Protection of Right to Organize Convention 1948, No. 87 (violence against trade union leaders) and Forced Labor Convention 1930, 29 (“forced labor in the context of military activities”). The Report, titled Towards



Former ICC Judge and ILO Commission Chair on Myanmar, Professor Raul Pangalangan

Freedom and Dignity in Myanmar, found violation of civil liberties and exercise of trade unions rights in the country in the context of the reign of the military junta. With regard to Convention No. 87, the Commission found that “trade union members and leaders were killed, arbitrarily arrested, subjected to sham trials, convicted, detained, abused and tortured, threatened, intimidated, subjected to surveillance, forced into exile, deprived of their basic civil liberties and oppressed at the workplace.” Additionally, the Commission also found women trade union leaders subjected to sexual violence by the security forces. As to Convention 29, “the Commission concluded that there has been systematic and widespread use of residents by the Myanmar military to perform a range of different types of forced labor in the context of military activities.” Given these findings, Commission Chair Pangalangan invited the participants to think about the following points: the need to establish a treaty basis for investigation, value the role of international institutions that provide foundational norms and enforcement regimes, recognize the indispensability of cooperating with civil society, and maximize the use of technology to document violations. Thereafter, he shifted his discussion to the seemingly forgotten issue of atrocities against the Rohingya both in Bangladesh and Myanmar. He reminded the audience that “any alleged crimes within the ICC’s jurisdiction --- included but not limited to crimes against humanity, such as deportation and persecution, allegedly committed against the Rohingya population” --- committed in Bangladesh and Myanmar.

Mr. Augusto Miclat, for his part, noted that the R2P principle “is linked to our sustained engagement of democracy and human rights issues in Southeast Asia, especially in Myanmar and the current engagement in the continuing crisis in Myanmar is reflected through various strategies such as solidarity and peacebuilding, coalition-building at the national, regional and global levels since the 90’s.” The civil society strategies go all the way back in the 1988 uprising in the country that struggled



Mr. Miclat and Professor Pangalangan on the Myanmar issue

to advance democracy and human rights. For example, solidarity work to advance genuine justice was undertaken with the Initiative for International Dialogue (IID) established the Free Burma Coalition (FBC)-Philippines. According to Mr. Miclat, even before the adoption of R2P in 2005, civil society networks in the region have initiated various campaigns related to atrocities prevention especially in Myanmar. He mentioned about “extending people-to-people solidarity to help restore democracy in Myanmar,” call for the release of political prisoners, campaign to stop violence against women (i.e. ‘license to rape’), anti-forced labor campaign, advocacy work against militarization and marginalization of ethnic minorities, and campaign for the ASEAN Five-Point Consensus.

Relatedly, platforms used by civil society groups are the ASEAN Civil Society Conference/ASEAN Peoples’ Forum, Milk Tea Alliance, Burma Solidarity Philippines, and the Asia Pacific Solidarity Coalition. For Mr. Miclat, the challenges to the application of R2P in Myanmar are: the ASEAN’s constructive engagement and non-interference policy; Myanmar’s Constitution that does not adhere to human rights and democratic practices; too much reliance on ASEAN’s Five-Point Consensus that may no longer be viable; and lack or absence of guidelines to compel the junta to return power to democratically elected civilians and non-recognition of the National Unity Government (NUG) of Myanmar by the ASEAN. He concluded that R2P’s principles of preventing atrocity in the case of Myanmar is embedded in civil society’s various strategies and principles of solidar-

ity and democratization work in the region and beyond. In the course of campaigns and advocacy calling for the restoration of democracy in Myanmar, civil society groups monitor not only the strict compliance and accountabilities of Myanmar but also of other governments to the legal frameworks, norms, practices and international treaties and covenants such as R2P, Universal Declaration of Human Rights, the Right to Peace Principles and other civil political, economic and socio-cultural rights.

The open forum focused on what responses are appropriate with regard to the Myanmar issue. ILO Commission Chair Pangalangan suggested the importance of 'hooks' defined as entry points where concrete response be done. In the case of the ILO, the 'hooks' were Convention 87 and 29 and even these pertain to labor rights, the military junta can still be held accountable for their violation. For Mr. Miclat, the 'hook' is the continuing engagement of civil society organizations both at the national and regional levels. The idea of people-to-people (P2P) must be highlighted for their contribution on raising awareness on various issues.

Highlights of Workshop Discussion

Twenty one (21) participants were divided into three groups: academe/think tanks, civil society groups, and government. Each group was given a set of questions to discuss, to wit:

1. What are the continuing domestic challenges and constraints in advancing R2P and atrocity prevention in the Philippines and what are some recommendations to overcome these?
2. What role can academe, civil society, and government take in promoting a deeper understanding of R2P and what are some recommendations in promoting dialogue and partnerships?
3. What kind of assistance are needed and how can the Philippines help promote R2P and atrocity prevention at the regional and international levels?

Continuing challenges and constraints in advancing R2P

Academic/Think Tanks

In the discussion of academics and think tanks, the continuing challenge and constraint of R2P is on understanding R2P itself. For the participants, R2P is new and something they have not previously heard or studied in their respective academic institutions. To mitigate this situation, the group recommended the following. First, Higher Education Institutions (HEI) can use existing curriculum – peace studies and human rights programs can be used to further mainstream R2P and atrocities prevention; both can also be integrated in relevant discussions concerning international law and politics and governance that could be more relatable to students. Second, R2P and atrocity prevention should be made more understandable and intelligible to people. Strategically, these can be part of discussion at the local level as related to issues of peace and human rights; indigenizing R2P or reconstructing it within the local context may help people to understand what it is. Atrocity crimes prevention should be institutionalized, and data-driven engagements may likewise be helpful. Finally, R2P-related institutions, such as the CHR, should be strengthened.

Civil Society

The civil society group identified several risk factors on the commission of atrocity crimes in the country that render it difficult for R2P to ground itself as practice. First is the seeming embeddedness of immoral governance and corruption in the country combined with a broken justice system and prevalence culture of impunity. Second is fragility and volatility in Muslim Mindanao with continuing horizontal conflicts or *rido* and the practice of bossism, warlordism, and political dynasties. Third is the historicity and deepening exclusion of indigenous peoples (IPs), denial of their rights, and experiences of political persecution in different parts of the country, including, in the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM). Fourth, emerging patterns of human rights violations

against human rights defenders and civil society actors who experience 'red-tagging' and even abduction and disappearances; additionally, some collectives have also been institutionally reconstructed as threats to society that must be eliminated as implicated in the infamous war on drugs in the country. Fifth, the continued presence of private armies and other armed groups and proliferation of firearms. Sixth, there is an emerging tendency of (re) militarization of citizen obligations with the revival of the Reserved Officers Training Corps (ROTC) in education programs and reorientation towards negative peace. Finally, there had been the continuous shrinking of the democratic space in the country where the government no longer seems to be open to engage with civil society organizations. This was particularly observed during the Duterte administration when civil society groups could not actively participate in discussion such as those on women, peace and security.

For the civil society group, R2P and atrocity prevention are quite relevant to the Philippines because of the aforementioned risk factors. They identified many policies and legal remedies such as RA 9851, norms on peace and security, and conventions on human rights. However, the problem has always been about implementation and internalization of core values of human rights and state obligation to protect its own citizens. There is also a need to identify entry points or even potential 'hooks' where R2P can be invoked. Multi-level and multi-space constituency-building should also be undertaken and ensure that R2P and the prevention of atrocities are actively present in discourses and practices.

Government

Based on discussions in the government group, there seems to be no 'buy-in' on R2P because of other pressing issues that the government has to respond to such as inflation, agriculture matters, maintaining peace and order in areas with communist insurgencies and possible terrorist groups as well as serious concerns on the West

Philippine Sea. There is no unified approach of the government in promoting atrocity prevention, and there may be repercussions when the Philippines advocates for a certain norm that other countries would not support such as in the situation of Myanmar. For example, although for institutions like Department of National Defense (DND) and Armed Forces of the Philippines (AFP), R2P and atrocity prevention are core concepts in their operations, there had been challenges struggles in the actual transmission of concepts in the field. Such is the case when it comes to capacity building programs when many topics are discussed (international humanitarian law, international human rights law) but not really deepened and internalized. Additionally, there is currently low morale in the security sector because of the Military and other Uniformed Personnel (MUP) bill in Congress that may dampen efforts to further capacitate the security sector on progressive norms such as R2P, human rights, and other issues. As military personnel, their being productive citizens after retirement are genuine concerns and without state support for them, demoralization may affect their performance and engagement

The Philippine withdrawal from the ICC was also a big blow against advancing R2P and atrocity prevention in the country because the international normative and legal frame and standards no longer provide a clear anchor of the state's mandate to protect. This means that international commitment may not be assured if there is no standard upon which it holds itself to. Finally, the need to strengthen the justice system is acknowledged but also recognized to be difficult in the country where impunity has been part of the system.

According to the government group, Filipinos seem to have less trust in government. For example, the AFP now has to work harder in order to improve its image as a partner in peacebuilding. The media, though admittedly seen as a critic of government, is more often seen as an adversary as many journalists are critical of the government.

Roles of Stakeholders

Academe/Think Tanks

For the academic/think tank group, they should contribute to promoting R2P and atrocity prevention as part framed along the lines of the Philippine commitment to and compliance of international treaties and norms. Discussions led by academics/think tanks should be evidence-informed and thus, educational institutions should be part of R2P and atrocity prevention monitoring. Lastly, R2P and atrocity prevention should also involve other relevant sectors such as media, local government units and communities.

Civil Society

For the civil society group, the people-to-people (P2P) approach should be part of the psyche of civil society and the general citizenry. People should be aware of the state's obligation to protect them and should be held accountable for its failure to do so. The very idea of R2P and atrocity prevention should be translated in the peoples' context and language and proper messaging should be appropriate for different actors. Both formal and informal education must continue in order for R2P to be internalized by various publics through deliberative discussions and dialogues --- it should not fall in the cracks of agenda setting, constituency-building, and mobilization.

If the Philippines supports the treaty on crimes against humanity, it could more to promote public trust and legitimacy and elevate its credibility in the international community. The various international commitments of the Philippines should also be translated at the local level. Specifically, it should formalize and refine its 'whole-of-government' approach to involve all organs of the state for the delivery of needed services on the ground, as well as its over-securitization of social services instead of focusing on defense of national territory. Communities should also be involved and capacitated in developing a multi-pronged early warning early response (EWER) systems.

Government

For the government group, on the issue of R2P 'buy-in' there has to be support from the leadership and explore how leaders understand R2P. With regard to state accountability, how can the state also assist both state actors accused of perpetrating violence and victims. There should be strict implementation of the five human rights laws such as: RA 7438 (rights of persons, detained, arrested, etc); RA 9745 (anti-torture law); RA 9851 (international humanitarian law); RA 10353 (anti-enforced involuntary disappearance); RA 9710 (Magna Carta of Women); RA 7877 (Sexual Harassment Act); RA 8353 (Anti-Rape Law); RA 9262 (VAWC); RA 11313 (Anti-Bastos Law). And there has to be continuous and progressive dialogues among various stakeholders.

Assistance for Promoting R2P

For the academe/think tank group, more assistance in terms of capacity building is needed to ensure that monitoring violence and atrocities, participation of institutions and personnel work on R2P and atrocity prevention are improved. Currently, there are no activities on R2P and atrocity prevention except the current one being held. Secondly, it was also suggested more research on atrocity prevention in light of the situation of indigenous peoples, urban poor communities, human rights defenders to be conducted. There may be news reports on human rights violations against them but discussions are not framed along the lines of preventing atrocities. Third, R2P and atrocity prevention discussions should be data-driven and evidenced-based, with clear examples on its applicability in local situations, particularly in developing early warning and early response in conflict-affected areas. Inclusive dialogue that involves various stakeholders, particularly vulnerable groups should also be undertaken for various publics to understand the normative utility and advocacy of these norms.

For the civil society group, the following issues that need assistance in terms of funding and programmatic responses remain: sustaining

peace in Mindanao, protection of IP rights nationally and in the BARMM, accountability for drug war-related extrajudicial killings and how to appropriately and meaningfully use the ICC mechanisms, ending impunity, and mainstreaming R2P and atrocity prevention and deepening understanding on human rights in the National Service Training Program (NSTP), Philippine Military Academy (PMA), and Philippine National Police Academy (PNPA).

Finally, for the government group, information-sharing between relevant agencies in connection with security threats such as terrorist groups and drug cartels should involve various stakeholders. There should also be intelligence assistance, cooperation, collaboration, and communication to promote cybersecurity. The Philippine government has successfully negotiated peace agreements with insurgents in Muslim Mindanao and has been in the forefront of advancing women, peace and security regionally and globally. It can do the same for R2P and atrocity prevention. It can also provide refuge to people displaced by armed conflict for as long as their presence does not undermine national security. There should be expressed official support for R2P domestically and internationally and champion initiatives on atrocity prevention. Specific examples provided by the group include having like-minded groups to actively advocate for R2P and atrocity prevention, strengthen the implementation of RA 9851, lead discussions at the ASEAN level, and support international initiatives such as the draft treaty on the punishment of crimes against humanity

Concluding Observations

Of the participants, only three have heard of R2P or have followed its developments at the national and international levels. There was strong interest in deeper understanding of the norm from majority of participants as they saw the link of R2P and atrocity prevention with many current issues in the country. Though there was no expressed commitment on advancing R2P and atrocity prevention, there was interest to participate in succeed-

ing information sessions related to this topic and a sustained space for continuing conversation may be necessary. Thus, for future activities of the Asia Pacific Centre for the Responsibility to Protect-Philippine Office, the following activities are recommended:

1. High Level Conversation among select government actors on R2P and atrocity prevention by engaging mid-level government official involved in training and policy making.
2. Training of local government units in conflict-affected areas, specifically, their Peace and Order Councils.
3. Security sector training on R2P and atrocity prevention such as development and implementation of a capacity building program for the Armed Forces of the Philippines and the Philippine National Police.
4. Initial scoping research on atrocity sites in the Philippines that may be undertaken in order to provide evidence-based policy recommendations in addressing atrocities in the country and the responses that were undertaken to resolve these.



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