

## R2P IDEAS in brief



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### ASEAN AND THE UN SECRETARY-GENERAL'S REPORT ON RESPONSIBILITY TO PROTECT: STATE RESPONSIBILITY AND PREVENTION

#### Introduction

The Secretary General of the United Nations has released 2013 Report on the Responsibility to Protect (R2P): State Responsibility and Prevention. It focuses on prevention of the four mass atrocity crimes—i.e., genocide, war crimes, ethnic cleansing, and crimes against humanity—covered by R2P as endorsed in the 2005 World Summit by UN member states. Specifically, the Report defines the nature of and risks associated with atrocity crimes, policy options for their prevention, and concrete steps that States could take in building their capacities for prevention of these crimes.

This year's Report generated inputs from written submissions of 27 member states of the UN, one regional organization, and 27 civil society organizations across the globe. Separate consultations were also conducted by the Secretariat with more than 120 member states from Africa, Asia, Europe, Latin America and the Caribbean. It is the fourth Report on R2P since 2009, with previous reports focusing on "Implementing the Responsibility to Protect" (2009), "Early Warning, Assessment, and the Responsibility to Protect" (2010), "The Role of Regional and Sub-regional Arrangements in Implementing Responsibility to Protect" (2011), and "Timely and Decisive Response" (2012).

This memo from the Asia Pacific Centre for the Responsibility to Protect (APR2P) provides important highlights of the SG's Report, which will be the basis of the UN GA Interactive Dialogue on R2P scheduled on 11 September 2013 in New York. A set of recommendations is presented in the last section of this memo for consideration by ASEAN member states and civil society groups underscoring the **importance of conducting national and/or regional discussions on the SG's Report among stakeholders in promoting atrocity crimes prevention in the region**. It is hoped that through this memo, ASEAN members will seriously consider participating in this year's Interactive Dialogue on R2P in the UN General Assembly. Five members of ASEAN participated in the dialogue in 2009, none participated in 2010 and 2011, and three members in 2012.

#### Highlights of the SG's Report

##### A. Nature and risks of atrocity crimes (pp. 3-6)

1. Atrocity crimes are more likely to occur during armed conflict, especially internal armed conflict. However, **not all atrocity crimes occur within a context of armed conflict**. Atrocity crimes deliberately target specific groups, communities or populations, including persons protected under the Geneva Conventions, and sometimes cycles of reaction and counter-reaction between communities.

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2. The four crimes covered by R2P—genocide, war crimes, ethnic cleansing and crimes against humanity—share significant prohibited acts and associated risk factors, but with certain distinctions.
  - In **genocide**, the **intent** of the perpetrators is to ‘destroy in whole or in part’ a national, ethnic, racial or religious group.
  - **War crimes**, which are **only committed during armed conflict or occupation**, may include the **targeting of civilian infrastructures** that are not military objectives and those who are no longer taking an active part in hostilities, as well as the **use of weapons** prohibited under international law.
  - Crimes against humanity are distinguished by the systematic or widespread nature of gross violations of international human rights and humanitarian law committed.
3. Atrocity crimes are **processes, not singular events**, with a multitude of factors associated with a heightened risk of these crimes.
  - Countries at risk of genocide and, to an extent, other atrocity crimes, often have a **history of discrimination or other human rights violations** against members of a particular group or population, often on the basis of its ethnic, racial or religious background.
  - The underlying **motivation of actors** for targeting a community, which is often demonstrated through the use of **exclusionary ideology**, construction of identities to accentuate differences and deepened through **hate speech or propaganda** campaigns against the targeted community.
  - The risk of atrocity crimes is often connected to the presence of **armed groups or militia** (allied to the State or a particular population) and their capacity to commit atrocity crimes.
  - The risk of genocide and other atrocity crimes could increase with **government’s lack of capacity to prevent these crimes**, either because of the existence or absence of institutional structures aimed at protecting or deterring atrocity crimes
4. These risks can be compounded by **triggers or drivers** that create a **permissive environment** or engender a rapid escalation of tensions, which include, among others: non-constitutional change of government; events that spill over from a neighbouring country, including armed hostilities or mass displacement; internal uprisings or unrest; and contests for political power.

### B. Policy options for atrocity crimes prevention

An **environment conducive to atrocity crimes can take years or decades**. Thus, numerous entry points for action to prevent these crimes ought to be undertaken, such as actions by states to address these risk factors, including with the support of partners, in order to reduce the underlying sources of risk and build resilience to navigate periods of stress (p. 8). Among the relevant policy options identified in the Report are as follows:

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## 1. Building national resilience through (pp. 8-11)

- **Constitutional protections against discrimination**, protection of fundamental human rights, and protection of different populations, including cultural, ethnic or religious minorities.
- **Electoral processes that help manage social tensions** through public dialogue, constructive debate, and the selection of leaders through agreed rules.
- **Laws that criminalise genocide, war crimes and crimes against humanity**, and investigate and prosecute perpetrators.
- Existence of **national accountability mechanisms**, which ensure that personnel under the control of the State, including the security forces, do not commit acts that could amount to atrocity crimes.
- In societies that have lived through atrocity crimes, a **fair and inclusive transitional justice process** that can prevent relapse into further violence.
- An effective **security sector reform process** that can contribute to mitigating the risk of atrocity crimes by controlling the means to commit atrocity crimes and deterring instances of misconduct or abuse.
- Development or strengthening of national institutions that contributes to **good governance, rule of law, democratic principles and values, and accountability**.

## 2. Promoting human rights protection (p. 12)

- A national infrastructure for the **promotion and protection of human rights** strengthens State resilience to atrocity crimes and improves its capacity to address underlying sources of tension.
- An **active, diverse and robust civil society** that is allowed to operate freely and openly, which contributes towards ensuring accountability of leaders, rule of law, and participatory decision-making processes.
- The **independence and plurality of the media** should be encouraged, including the right of national, racial, religious and ethnic minorities to have their own media.

## 3. Adopting targeted measures to prevent atrocity crimes (pp. 13-15)

- Designation of an **atrocity prevention or 'responsibility to protect' focal point** or an **inter-agency mechanism**, which can contribute to the integration of an atrocity prevention perspective in national policies and strategies.
- **Effective early warning mechanisms** with a specific atrocity prevention focus and which are linked to policy development that could help detect, assess and respond to sources of tension and points of risk or identify vulnerable populations.

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- Institutionalised processes for **dialogue between the State and different communities** in order to maintain open channels of communication and build trust, including mechanisms to support the early resolution of tensions.
- **Education** that promotes **tolerance** and an **understanding** of the **value of diversity**. Changing the behaviour, attitudes and perceptions of youth can contribute to creating a society resilient to atrocity crimes.
- **Commemoration acts and memorials** to past atrocity crimes are also elements of preventive action.

### 4. Challenges in fulfilling R2P commitments made in the 2005 World Summit (p. 15)

- First and foremost, **political will and leadership are required to translate this commitment into practice**. It is sometimes difficult to demonstrate the added value of prevention, particularly early preventive action, which may not have immediate, visible outcomes.
- Second, as atrocity crimes stem from a range of risk factors, it can be hard to discern what needs to be addressed and at what stage. **Lack of capacity, expertise and understanding** of the causes and dynamics of these crimes, or of the severity of certain risks, can be further **barriers to preventive action**.
- Third, the **responsibility to protect entails both a national and international responsibility**. Atrocity prevention must be rooted in national efforts to **create a society resilient to atrocity crimes** and in international efforts to assist other States, should the need arise.

### 5. Building partnerships for prevention (p. 15)

- **Partnerships**, including with the United Nations, other member states, regional or subregional organisations and civil society can help states strengthen atrocity prevention efforts and overcome the above challenges.
- Partnerships, **rooted in national ownership of atrocity prevention efforts**, can provide member states with technical assistance and resources to strengthen national capacities, and also pave the way for strengthened regional and international collaboration for atrocity prevention.

### C. The Way Forward

The Report identified a number of concrete steps that States could undertake in partnership with the UN, other member states, and civil society (pp. 15-16). This includes:

1. Appoint a senior-level **focal point with atrocity prevention responsibilities** and adequate resources, or establish other national mechanisms to implement this mandate.

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2. Conduct a **national assessment of risk and resilience**, using the Analysis Framework developed by the Special Adviser on the Prevention of Genocide, as appropriate, as well as the risk factors outlined in this report and tools developed by civil society. The review should be system wide and include **identification of vulnerable populations** and an assessment of existing structures for resilience. **Civil society should be included in the review process.**
3. **Sign, ratify and implement relevant international legal instruments.**
4. Engage with and support other Member States and regional or sub-regional arrangements to share experiences and enhance cooperation to promote the effective use of resources.
5. **Participate in peer review processes**, including the Universal Periodic Review of the Human Rights Council, as well as regional peer review processes and other options for monitoring effectiveness of measures taken.
6. **Identify and form partnerships** with other Member States, regional and sub-regional arrangements or civil society for technical assistance and capacity building purposes, exchange of lessons learned and mobilisation of resources.
7. **Participate in international, regional and national discussions** on the further advancement of the responsibility to protect and its implementation.

### D. Conclusion

The Report concluded that failure of states to protect their populations were evident in the past century and continues to haunt the international community today (pp. 16-17). It pointed out that:

- **Direct consequence of failure of states to take preventive action resulted in atrocity crimes** in Africa (Cote d'Ivoire, DRC, Kenya, and Sudan), South Asia (Sri Lanka), and the Middle East (Syria).
- The **prevention of atrocity crimes requires continuous efforts by states and engagement of the international community** through assistance, or by action, when States manifestly fail to protect their populations.
- In order to be effective, **atrocity prevention requires a concerted, comprehensive and inclusive review of risks and vulnerabilities** and the action that could be taken to address them in a timely fashion.

The Report also said that the SG intends to call a follow up meeting with member states, regional organizations, and civil society groups on the status of implementation of the recommendations on atrocity prevention. It will focus on parameters and effective policy options in various contexts, good governance, and lessons learned; promote partnerships; as well as identify steps for the way forward.

### **ASEAN and the Importance of the UN GA Interactive Dialogue on R2P**

Southeast Asia is home to multi-ethnic societies that are still in the process of nation-building and where some member states of ASEAN continue to face armed challenges to the state or ongoing

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experience with violent armed conflict, and struggle to consolidate post-conflict peace. The region has suffered from humanitarian crises resulting from unresolved communal and identity-based conflicts, such as those in Indonesia, Burma/Myanmar, southern Thailand, and Mindanao in the Philippines. Cambodia under the Khmer Rouge in the mid-1970s witnessed the region's worst atrocity crimes and is still in the process of healing from these. In Burma/Myanmar, the Rohingya issue that erupted in Rakhine state in June 2012 has not only expanded into a Buddhist-Muslim communal tension within the country but also spilled over into other neighboring ASEAN members. Likewise, at present, the government of Myanmar is involved in twenty ceasefire and peace negotiations to bring to an end protracted conflict with ethnic groups. Indonesia has yet to confront the human rights violations and atrocity crimes during the military campaign in the 1960s against communist supporters, even as the government has to address current problems related to protection of religious minorities in the country. In the Philippines, the wheels of justice have been slow against the perpetrators of the Ampatuan/Maguindanao massacre in 2009 where some 57 civilians that included 37 journalists were killed. The prospects for a peaceful end to the armed rebellion in Mindanao appears to have improved in recent years as the government and the Moro Islamic Liberation Front (MILF) adopted the Basic Framework Agreement in 2012. In southern Thailand, violence in the three Malay-Muslim provinces since 2004 continue even as the central government in Bangkok for the first time this year started to explore peace talks with separatist rebels.

Against this backdrop, however, some ASEAN members have individually taken efforts to prevent mass atrocity crimes within their borders. Cambodia set up the Extra-ordinary Chambers in the Courts of Cambodia (ECCC) to try leaders of the Khmer Rouge responsible for mass atrocities. The Philippines enacted a law against genocide and crimes against humanity following the 2009 Ampatuan/Maguindanao massacre, while Cambodia recently passed a law against denying the atrocity crimes committed by the Khmer Rouge. Vietnam likewise has a special penal code that addresses atrocity crimes (Articles 341-344 of the Vietnamese Penal Code). Thus far, Cambodia and the Philippines are the only members of ASEAN that are parties to the Rome Treaty that created the International Criminal Court. With regard to human rights protection, five ASEAN members—Indonesia, Malaysia, Burma/Myanmar, the Philippines, and Thailand—have their respective national human rights institutes, but with varying degrees of conformity to the Paris Principle. With regard to elimination of discrimination against women, all members of ASEAN have acceded to the Convention on the Elimination of Discrimination against Women (CEDAW). Four ASEAN members—Indonesia, Malaysia, the Philippines, and Thailand—have been alternating as elected members of the UN Human Rights Council since 2006. Some ASEAN members have also acceded (Cambodia, Malaysia, Singapore, and Vietnam) or ratified (Burma and the Philippines) the 1948 the Genocide Convention and other Geneva conventions against torture, enforced disappearance and international humanitarian law. Indonesia has signed the 1949 Geneva Conventions on international humanitarian law and international human rights law.

The Philippine government has been at the forefront of promoting civilian protection in armed conflict by agreeing to setting up a Civilian Protection Component in the International Monitoring Team (IMT) that monitors ceasefire agreements between armed rebels and government soldiers in Mindanao. It has also adopted a National Action Plan on Women, Peace and Security (2011-2016) to implement UN Security Council Resolutions 1325 and 1820 to contain crimes specifically targeted against women. Indonesia is in the process of developing a similar national action plan.



Civil society groups in the region have no doubt played an active role in encouraging state responsibility and augmenting state capacity for prevention through promoting human rights protection, civilian protection, and mass atrocity prevention in various ways. In Cambodia, for example, a number of NGOs—notably the Documentation Center of Cambodia (DC-CAM)—have worked alongside the Ministry of Education to train teachers on curriculum educating Cambodian youth about the Khmer Rouge atrocities. In the Philippines, several women’s and community-based NGOs have leveraged the National Action Plan on 1325/1820 to encourage the participation of women in the government-MILF peace process and to launch an all-female civilian peacekeeping team under the civilian protection component monitoring the peace agreement. The SG report notes that the Indonesia National Human Rights Commission is ‘equipped with extensive legal powers and a mandate to investigate possible human rights violations’ (p.12). The capacity and determination to carry out this mandate is indubitably strengthened by Indonesia CSOs, including, for example, Indonesia’s NGO Coalition for International Human Rights Advocacy (HRWG). In Indonesia and Thailand, there are also civil society groups that actively promote human rights education and protection of minorities, including refugees and internally displaced persons. Many of these groups are part of various regional networks of civil society advocates promoting human rights, conflict prevention and peace, and protection of minorities. A number of them have engaged in dialogues with national governments or partnerships with local governments in the region to help build capacities of states to prevent and respond to crisis situations that could escalate into mass atrocity crimes.

Clearly, while there have been efforts amongst ASEAN members to exercise their responsibilities in preventing mass atrocity crime, there are still significant risks in the region that need to be addressed at the national and regional levels. It is therefore important for ASEAN member states to continue building their capacities to minimize these risks and demonstrate their commitment to the principle of R2P by implementing prevention measures identified in the SG’s Report.

The interactive dialogue in the UN GA on 11 September is a good opportunity for ASEAN members to present their views on the SG’s Report on atrocity prevention. In particular, they could focus on highlighting the following:

1. Existing structures, frameworks, legislation, and mechanisms already in place that demonstrate government efforts in preventing atrocity crimes. Some ASEAN members already have existing domestic laws against genocide and crimes against humanity, and are parties to international conventions (Geneva) and treaties (Rome Treaty) dealing with atrocity crimes.
2. Action plans to strengthen the state’s capacities in preventing atrocity crimes, specifically in mitigating existing risks identified in the SG’s Report. For example, some member states in ASEAN have adopted a national action plan on Women, Peace and Security, that include specific plans for direct and structural prevention measures to curtail atrocity crimes against women including enhancing women’s representation in the judiciary, legislative bodies, and the security sector.
3. National efforts in promoting human rights protection, security sector reform, rule of law, good governance, and addressing identity-based conflicts and all forms of discrimination in partnership with other stakeholders.
4. Measures adopted or being contemplated that signify the state’s commitment to atrocity prevention through mainstreaming and operationalizing R2P, such as the creation of a national focal point or an inter-agency committee, developing an early warning system,

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dedicated training programs on atrocities prevention within government ministries or agencies and setting up a dialogue process or mechanisms between the state and communities at risk or vulnerable to atrocity crimes. Some ASEAN member states for example have set up civilian protection and/or early warning mechanisms in conflict areas and adopted inter-faith dialogue as part of preventing atrocity crimes.

5. Partnerships with the UN, other member states, regional organizations, and civil society groups in developing state capacity to prevent atrocity crimes.
6. A response to the set of recommendations in the SG's Report on atrocity crimes prevention and, if possible, indication of their commitment to contribute to the follow-up meeting that will be organized in relation to implementing these recommendations.

It bears mentioning the important role ASEAN has in encouraging and bolstering state responsibility and prevention in the region. At the regional level, it will be useful to consider the recommendations made by the Council for Security Cooperation in the Asia Pacific (CSCAP) Study Group on R2P on atrocity crime prevention within the context of the ASEAN Regional Forum (ARF). As well, the critical role of the ASEAN Inter-Governmental Commission on Human Rights (AICHR) and the ASEAN Institute for Peace and Reconciliation (AIPR) can be identified as important regional mechanisms already in place that can help enhance member states build their capacities in prevention of atrocity crimes.

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