



NGOs and the Prevention of Mass Atrocity Crimes:
A practical workshop for NGOs to develop and share strategies to implement the
Responsibility to Protect in the Asia Pacific Region

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NGOs and the Prevention of Mass Atrocities Crimes:

**A Practical Workshop for NGOs to Develop and Share
Strategies to Implement the Responsibility to Protect in the
Asia-Pacific Region, 23-24 November 2009**

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Executive summary

A participatory workshop *NGOs and the Prevention of Mass Atrocities* was held at Oxfam Australia's head office in November 2009. The Workshop's purpose was to build consensus around R2P, and how NGOs could apply R2P to their work with the aim of preventing genocide and crimes against humanity.

Five key themes emerged from the workshop.

1. R2P was seen to be both a benefit and a threat to NGOs' advocacy efforts. It can be a benefit as it provides a framework of legal and moral internationally agreed obligations for States to act in the face of atrocity crimes. This is helpful when advocating with States and other stakeholders to act for the benefit of vulnerable populations. On the other hand, the highly political nature of R2P, and its perceived alignment with an ultimate use of force, means that applying the language of R2P can be offensive to States whose populations are at risk of atrocity crimes. This in turn politicizes any advocacy efforts to the point where NGO staff and operations may be threatened.
2. There is the need for significantly improved early warning mechanisms, and the establishment of response strategies and protocols for when early warning is given. Improved means for sharing information and using NGO complementarity and confidentiality should be developed. A part of this process is establishing risk management systems in order to protect information, sources of information, and access to information. Closely aligned to early warning is the work that needs to be done to prepare vulnerable communities for violence. There is much that NGOs can learn and provide in terms of community preparedness so that if violence does occur populations have the strongest possible chance of survival.
3. NGOs need to engage much more actively with those in the concert of R2P crimes. This includes international, regional, national and local stakeholders all of whom can be better engaged by NGOs, familiar with circumstances in the field, to protect vulnerable populations.
4. NGOs should familiarise themselves with international legal issues more proficiently. This includes the relationship between R2P and the UN Security Council thematic issue of Protection of Civilians in Armed Conflict, and R2P and other international human rights, refugee, and international humanitarian law. NGOs need to clarify their position on R2P and the use of force (for those times when prevention has failed) and should also take into consideration their role as witness to international crimes. NGOs need to resolve their relationship with the International Criminal Court (ICC) and the risks associated with bearing witness.
5. Communication and education are key to the success of R2P and improved guidelines and materials on R2P, on what activities may constitute Pillar I and Pillar II elements of the principle and how R2P relates to other humanitarian practice. Communication involves the collection and dissemination of early warning data – not only to the international community but also to populations at risk. How NGOs communicate about the potential for a situation to deteriorate into R2P crimes without being seen to be overtly political and partial is an issue that also needs to be resolved. Education involves ensuring that States understand the different

elements of R2P and are not threatened by the idea of R2P only as the use of force.

These key themes kept re-emerging throughout the two day workshop and highlighted the fact that there are theoretical vs practical difficulties in the implementation of R2P.

The workshop considered practical activities that could be undertaken as measures to prevent R2P crimes. Out of that workshop session, four areas were identified as requiring more work to effectively contribute to prevention efforts these are listed as recommendations 1-4 below. In addition there were three further areas which continually presented as ideas for further investigation. These are recommendations 5-7 below.

1. There is a need for R2P Pillar I and Pillar II guide and materials for education and training purposes.¹
2. NGOs should investigate how they can better engage with regional organisations to promote the prevention of R2P crimes.
3. Improved early warning systems should be developed to warn both communities and the international community, and protocols ensuring effective and efficient response.
4. Disaster preparedness for communities in areas prone to violence and at risk of R2P crimes was an important element of protection and strategies and methodologies should be further developed.
5. There was a proposal for a Humanitarian Ombudsman – a neutral, impartial, and universal office that could speak out on R2P and other controversial issues without risking NGO staff or presence could be useful and should be explored. This may serve to address the highly charged and political nature of R2P, which makes R2P high-risk for NGOs and was a recurring concern throughout the workshop.
6. How NGOs engage with the ICC should be addressed. Questions of witness, presence and impunity need to be resolved.
7. Further education regarding the preventive aspects of R2P should serve to address the political nature of R2P and the corresponding risks to involved NGOs.

¹ The three pillars of R2P developed by the Secretary General in 2009 are now commonly used to refer to states' responsibilities to protect their own citizens (pillar 1), states' responsibilities to assist other states to protect their own citizens (pillar 2) and the international community's responsibilities to take timely and decisive action to intervene where states are failing to protect, as a last resort (pillar 3). See annex 4 for more on the three pillars.

Rationale

The *NGOs and the Prevention of Mass Atrocity Crimes* workshop held at Oxfam Australia in November 2009 was designed to promote discussion amongst participants regarding the Responsibility to Protect (R2P). It had two key objectives:

1. To build greater consensus around the meaning and applicability of R2P within the civil society/NGO sector in Australia and identify ways to deal with conceptual difficulties with the norm.
2. Document recommendations or new strategies, systems, tools, approaches and/or initiatives that can be undertaken within the Australian NGO sector to make the preventative aspects of R2P a more practical reality.

The workshop project was designed in response to a call for projects from the *Asia Pacific Centre for R2P* as a part of the Australian Government's R2P Fund.

Oxfam Australia recognised that NGOs, on the whole, were not engaging with R2P and the issues it presented to civil society. Recognising that R2P is predominantly concerned with States' responsibilities it is important to note that NGOs are often in the concert of R2P crimes and that it may be possible for them to play an important role. Oxfam Australia determined that the best way to engage the NGO sector was to develop and run a participatory workshop that would provide an opportunity for NGOs to discuss R2P issues.

R2P is a broad and wide-ranging topic and workshop organisers recognised that for the workshop to be successful it was important to focus the participants on one or two aspects of R2P. It would not be possible to cover all its elements in just two days.

At the same time there was concern that much of the dialogue regarding R2P is concentrated on the use of force, and coercive interventions in the face of atrocity crimes – whether those interventions be through sanctions or military in nature. This is problematic because in preliminary discussions there was wide agreement that the use of force was well beyond the mandate of NGOs.

Workshop organisers were attracted by the idea that NGOs may be well placed to assist in the *prevention* of the R2P crimes of genocide, crimes against humanity and war crimes. The workshop was therefore designed to concentrate on what NGOs could do to work towards the prevention of R2P crimes.

Methodology

Preliminary consultations

Once the broad parameters for the workshop had been decided a wide range of consultations took place in order to determine whether NGOs themselves were going to be interested in exploring how they might be able to work to prevent R2P crimes. Academics and NGO staff were interviewed with the intent to identify collective recognition of areas of difficulty regarding R2P that would then be useful to explore as a group.

As part of this process, there was widespread recognition that the divergence and convergence between R2P and 'Protection of Civilians' was not well understood and that within the framework of 'humanitarian protection' more generally there was some confusion about when R2P applied and how it added value to the work of NGOs. This element of common interest consequently comprised the first day of the workshop.

At the same time, those consulted were unclear as to what NGOs could feasibly do to prevent mass atrocity crimes and how they should respond when faced with emerging and developing situations of insecurity. This became the focus for the second day of the workshop.

Participants

Participants were drawn from many of those consulted and were predominantly emergency, development or advocacy practitioners in Australian head offices of international NGOs. It was intended that the workshop would remain very activity-oriented and so the workshop focused on practitioners however, there were representatives from research institutions and one government department.

Workshop sessions summary

Introductory session

The aim of this session was to develop a baseline of common knowledge on R2P and the work of participating NGOs.

A brief overview was provided by Oxfam, World Vision, ICRC, ActionAid, and the Asia Pacific Civil Military Centre for Excellence on their current engagement with R2P.

The education session consisted of three brief presentations:

- Origins of Protection, including Protection of Civilians in armed conflict and protection and protective programming
- Development and current status of R2P
- Elements of the R2P crimes of Genocide, Crimes against Humanity and War Crimes [ethnic cleansing is not a crime in its own right but was addressed as an element of a crime against humanity].

Overview on protection, R2P, and the nature of the R2P crimes

The second session was derived from many of the consultations and aimed to identify the divergence and convergence between Protection and R2P. This involved both group and plenary work. Ultimately, while many activities were classified as both R2P *and* protection it was broadly agreed that the main differences were

- Context – in the sense that if there was high risk of R2P crimes then a project which had been a general protection programme may evolve and have an R2P focus; and
- Objective – if a project's objective is directly related to R2P, or R2P crimes, then it becomes an R2P protection/prevention activity rather than more generalised humanitarian protection work.
- Legal obligations – The difference in States obligations that apply in the face of R2P situations as opposed to more generalised human rights protection issues.

SWOT analysis of R2P

Participants undertook a Strengths, Weaknesses, Opportunities and Threats analysis [SWOT] of R2P from an NGO perspective.

One of the greatest strengths of R2P, from NGOs' perspective, is that it provides a clear framework of responsibility where mass atrocity crimes are occurring or are likely to occur. This is significant because before the emergence of R2P there was no international consensus on what was the responsibility of States when a State was unable or unwilling to protect its own citizens from atrocity crimes.

However, NGOs felt that R2P is diminished by its gender blindness, and failure to be people-centered. R2P has been so focused at the normative and political levels at the UN, that the promoters of R2P have not addressed how R2P will make a difference to the protection of individuals and communities on the ground.

There was some concern that R2P legitimizes the use of force on a policy level which is subject to the interests of the five permanent members of the UN Security Council. There were questions around whether the coercive use of force can ever result in a better outcome for the majority of people or whether it contributes to greater insecurity than before.

Participants recognised that R2P represents opportunities for action in terms of leveraging internationally agreed responsibilities to ensure greater protection for vulnerable communities. For NGOs, this was an attractive aspect of R2P, and there was agreement that there could be much more engagement at an advocacy level with media, with international and regional organisations, and with UN Rapporteurs and Human Rights mechanisms. Such engagement may provide avenues for NGOs to take advantage of the concept of R2P in order to enhance their protection work.

Finally, the inherently political nature of R2P and the impact that can have on the way NGOs are perceived in the field should they decide to use 'R2P language' in their advocacy and programming was concerning.

Workshop notes for this session can be found at Annex I.

R2P and the prevention of mass atrocity crimes – a role for NGOs?

The Workshop Participants received a presentation on the preconditions for genocide and mass atrocities. Once sets of preconditions for mass atrocity had been identified (social divisions, regime weakness, economic weakness, upheaval to mobilization and imminent emergency)² participants were asked to identify NGO activities that might address those preconditions, and therefore mitigate against prospective mass atrocity crimes.

A wide range of activities were identified. These included, by way of example:

- advocacy with the UN, business, the media, and human rights mechanisms,
- programmes working on breaking down social and economic divisions between different ethnic groups to create an interdependence that may forestall the types of divisions that lead to atrocity crimes, and
- more effective state and regional organisation accountability mechanisms.

These activities were then re-organised through both group and plenary sessions to identify activities that address different actors in R2P environments. The purpose of this exercise was for NGOs to determine whether there were any ‘players’ in R2P contexts that were not being addressed by the NGO community and whether the activities that had been identified could address all those in the concert of mass atrocity crimes.

Key themes

It was clear, very early in the workshop, that most of the participants and participating organisations had not grappled with R2P to the extent that would be required to participate in the implementation of the principle in order to fully protect vulnerable communities. There was some uncertainty as to whether R2P would benefit NGOs work in the field, or whether it duplicated the commitment and work NGOs are already doing with regard to the Protection of Civilians in Armed Conflict, and humanitarian protection work more generally. There was a strong need to explore whether R2P could value-add to NGOs and provide some benefit to them, or whether it was more about what NGOs could do to advance the principle itself.

R2P – An opportunity and a threat to advocacy

NGOs recognised that R2P provides a framework for conversations with governments and responsible authorities regarding their responsibilities to protect vulnerable populations and prevent atrocity crimes from occurring. These responsibilities enable NGOs to talk to States about their obligation to act and become involved in projects and activities that could serve R2P through pillars I and II. By way of example this might involve

- advocacy in encouraging States to pressure a neighbouring or aberrant State to ‘do the right thing’ and address increasing and developing tensions/violence/signs of emerging R2P conditions;
- the existence of an agreed set of responsibilities may allow for NGOs to pressure states to fund more NGO programmes promoting inter-community harmony, peace-building, and other activities that may contribute to the prevention of R2P crimes; and

² Preventing Genocide and Mass Atrocities: Causes and Paths of Escalation Asia Pacific Centre for the Responsibility to Protect (June 2009)

- R2P has the potential to make it easier for NGOs to talk to the media in a way that pressures States to 'do the right thing' and not turn away from emerging or developing crises.

On the other hand, the political nature of R2P and the perceived threat that the principle can bring to an NGO's neutrality and impartiality is problematic when NGOs are considering engagement with R2P. Since its inception the language of R2P has been commonly dominated by States concerned by the provision for the use of force, military or otherwise, in the protection of populations from R2P crimes. Unsurprisingly, many states are concerned by the possibility of the principle being abused resulting in military action claiming to protect vulnerable populations in the name of R2P when military force is being applied for quite different motivations.³

From an NGO perspective, the use of R2P language can be highly charged with assumptions around any preventive intervention at all escalating, ultimately, to the use of force. States see the potential violation of their sovereignty, and so NGOs can be perceived as crossing the bounds of NGO propriety and violating the Red Cross Code of Conduct to which most international NGOs are signatory. Despite the three pillar formulation of R2P, and general consensus with pillars I and II, there is still much anxiety about an escalation of activity which makes any use of the language of R2P fraught with difficulty for humanitarian NGOs.

Early warning

Information sharing

Common in R2P literature, including the Secretary-General's report to the General Assembly⁴ and raised by many States in the General Assembly Debate of 2009⁵, is recognition of the need for an effective early-warning monitoring system. It is better to prevent the commission of atrocity crimes than respond to them, but to prevent such crimes, early warning systems, at the international, regional, national and local levels, need to be improved and consolidated.

There are currently various early warning systems in place. Many of them are listed as Annex 4 to this document.⁶ However, there has not been effective coordination and compilation of information. The quality of research, documentation and of analysis is not universally adequate and there is little consideration of complementarity with regard to different organisations' interests, capacities and potential contributions. There are also no protocols relating to warnings and information that may be obtained through these

³ For example Russia's invasion of Georgia in August 2008. See Global Centre for R2P "The Georgia-Russia Crisis and the Responsibility to Protect: Background Note". Available from: <http://www.globalr2p.org/pdf/related/GeorgiaRussia.pdf>

⁴ *Implementing the Responsibility to Protect: Report of the Secretary General to the General Assembly*, UN GAOR, 63rd sess, Agenda Items 44 and 107, UN Doc A/63/677 (2009)

⁵ See General Assembly Debate on the Responsibility to Protect and Informal Interactive Dialogue (updated 29 September) at <http://www.responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/2493-general-assembly-debate-on-the-responsibility-to-protect-and-informal-interactive-dialogue-> accessed 15 March 2010.

⁶ Some of the early warning systems are mentioned on the International Crisis Group's webpage at <http://www.crisisgroup.org/home/index.cfm?id=3397&l=1> (last accessed 15 February 2010)

avenues, and so even if mass atrocity crimes are identified as a probability, there is no system in place to ensure a response.

NGOs at the workshop were interested in working towards better and more effective early warning mechanisms, and the need for corresponding systems and strategies allowing for effective response to early warning notices. NGOs need to have better awareness about what is currently available and how they can feed information safely into those systems in order to maximise international awareness and early warning without undermining principles of independence and impartiality.

At the same time, very often the information NGOs collect, or have access to, may be highly sensitive, controversial and may, if passed on, put staff members, project participants, and even entire NGO operations in jeopardy. This is relevant when providing information to international bodies, but also providing information horizontally at a local level. Ensuring that free flowing information is not used, and abused, by parties to the conflict is an important aspect of risk management in early warning systems. How NGOs should deal with such information in a way that does not threaten the people involved, or their capacity to work, is an issue that requires significantly more thought and investigation and is raised again in this paper in the section addressing legal issues.

Community preparedness

Community preparedness is critical to the success of any programme to prevent mass atrocity crimes. Very often, by the time communities are under immediate threat of violence international NGOs have been evacuated for security reasons. Consequently, in the face of violence, communities will most likely have to rely on their own initiative and resources.

In areas prone to violence it is fundamental that communities are aware of what they need to do to prepare for violence and, in all probability, flight. This may include agreed meeting points among family and friends and an easy access 'go bag' with identity papers and any legal documents such as land ownership papers. Such preparedness may also involve hoarding food in safe places, or simple agreement among communities, friends and families about who will carry what if an immediate evacuation is necessary for survival.

Community preparedness is also about how vulnerable communities survive in-situ. Whether they agree to light fires only at night, work in the fields in the dark, and camouflage their existence throughout the day are questions and decisions communities need to make. Some communities may chose to hide signs of wealth and transfer assets in order to create a picture that may be less attractive to parties of the conflict who may be inclined to loot local villages to fund their war. Casey Barrs has written an article on this topic and suggests many ways that communities can be prepared for violence and how NGOs can assist in that process.⁷ There is much NGOs can learn from existing survival techniques developed by communities, and much work that can be done in this area.

⁷ Casey Barrs *Preparedness support: Helping Brace Beneficiaries, Local Staff and Partners for Violence Under the Auspices of the Cuny Centre*, October 2009.

Engaging actors

The process of identifying actors who are present or have influence over the commission of atrocity crimes was intriguing as it became clear through the workshop that perpetrators could also be victims, e.g. child soldiers, or that those assigned to protect can also become perpetrators, e.g. the military, police and even UN peace-keepers. Consequently, actors who may have influence in zones prone to atrocity crimes were identified as having influence in either the international, regional, national and local environments, and projects were identified to target each in turn.

Having identified actors in the concert of R2P crimes, the NGOs identified activities they could feasibly implement that might influence those actors, leading to an improved outcome for the potential victims of atrocity crimes. This section will now address each of those groups, identify some of the suggested activities, and also the gaps in NGO capacity to effectively contribute to the prevention of R2P crimes.

International community

Advocacy was identified as a key strategy to influence actions and activities in order to effect a change of behaviour, or draw attention of the international community to populations at risk of R2P crimes. Early warning re-emerged as an important function at an international level with a much greater need for coordination, improved monitoring and expert evaluation.

Under the rubric of R2P, NGOs can call on States to uphold a responsibility they have agreed, and this provides a solid foundation for advocating a change in behaviour and a change in policy, ultimately working towards the prevention of R2P crimes. It can be useful to encourage diaspora groups to become involved in lobbying governments and international organisations such as the UN. International and transnational businesses should also be engaged as they are often operating in zones prone to violence and their significant economic power may be able to bring influence to bear on recalcitrant governments and local authorities.

Regional organisations

NGOs' engagement with regional organisations was minimal, and fewer activities were identified targeting regional organisations than any other category of actors. The way in which NGOs can interact and engage with Regional Organisations such as the Association of Southeast Asian Nations (ASEAN), the African Union (AU), ASEAN Regional Forum (ARF), Council for Security Cooperation in the Asia Pacific (CSCAP) or the Pacific Island Forum (among many others) was identified as an area for further study and investigation as most NGOs were admittedly weak in this area.

Certainly some of regional organisations are likely to have more influence over R2P concerns than others. For example the African Union provided, in its Constitutive Act, for "the right of the Union to intervene in a member state... in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity"⁸ and is subsequently

⁸ *Constitutive Act of the African Union*, opened for signature 11 July 2000 (entered into force 26 May 2001) Art 4 (h)

establishing peace and security architecture that can contribute to the prevention of R2P crimes.⁹ In contrast, ASEAN have a policy of non-interference and work done in that region should be framed within that context and will inevitably concentrate on capacity building under the rubric of Pillars I and II of R2P. However, in the Asia Pacific, it is often possible to gain more traction with individual states because of the non-interventionist policies of umbrella organisations in the region.

It may be useful for NGOs, governments, academics and other stakeholders, to advocate and lobby for regional state-to-state accountability mechanisms – to include peer-to-peer accountability for atrocity crimes as part of Regional and International human rights monitoring programmes. This would assist in the promotion of R2P and may influence the prevention of atrocity crimes.

The fact that NGOs do not broadly engage with regional organisations suggests several things. The first is that NGOs may be fundamentally ill-informed about regional structures, capacities, and influences. The second, that regional organisations are not perceived to be effective and therefore NGOs concentrate their efforts at either a national or international level. Thirdly, that regional organisations are not receptive to, or adequately providing for, interaction with NGOs and civil society at large. Whatever the situation, further investigation is required to determine whether regional organisations can, or should be engaged at a more active level on the prevention of atrocity crimes and how NGOs can do that more effectively.

National and local

A fundamental tenet of R2P is that a State has primary responsibility to protect its own population. This means that national governments, authorities, law enforcers and military, academic institutions, religious groups, NGOs and broader civil society groups should all be working in concert for the protection of human rights generally, and in particular the prevention of R2P crimes.

International NGOs usually have relationships with the governments and authorities in countries where they work, as do international businesses and the UN. Working with all sectors of Government and civil society to build stronger human rights respecting community is an important function for NGOs. Confidence building measures, establishing alliances, trust, developing relationships between different ethnic groups or religious groups, and holding government accountable to its responsibilities under international human rights mechanisms and the R2P principle are all critical to the long term success of R2P.

At a local level there is much that NGOs can do particularly with regard to developing a level of awareness and education about fundamental human rights and obligations. By working with communities and targeting projects and programmes that increase economic and social interdependence between different ethnic and social groups NGOs can harness a spirit of community that forestalls a descent into violence over economic or social resources.

⁹ K Aning and S Atuobi, Responsibility to Protect in Africa: An analysis of the African Union's Peace and Security Architecture (2009) 1 *Global Responsibility to Protect* 90-113.

NGOs can and should target marginal and vulnerable groups thereby providing opportunities that turn competition between groups into interdependence. They can target youth, in particular male youth, who are more susceptible to violence when life opportunities are missing.

It is also important that NGOs explore whether a gender lens will lend R2P greater credence and provide for more success in the prevention of R2P crimes. This may include greater investment in empowering women to participate in peacebuilding activities thereby linking the R2P agenda to the pursuit of Security Council Resolution 1325.¹⁰ It may also involve ensuring gender analysis underpins activities designed to prevent the commission of R2P crimes, or when working with the perpetrators or victims of those crimes.

Within this framework it is important to recognise that NGOs involved in human rights work correspondingly increase their political thermometer. Human Rights activities are inherently political as they relate directly to a Government's obligations and responsibilities. If fundamental human rights are not being met, it is generally the responsibility of government to change policy or practice. Therefore advocating for human rights is often politically charged and highly sensitive. This can be a high risk strategy for NGOs.

Legal issues

There is a wide range of legal issues concerning R2P that require clarification and consolidation. There is little understanding of the scope of R2P in relation to the UN Security Council thematic concern regarding the Protection of Civilians in armed conflict. How R2P then relates to international humanitarian law, human rights law, refugee law and the guiding principles on internally displaced is also unclear.

There are some differentials. For example, R2P relates only to the four crimes of genocide, crimes against humanity, war crimes and ethnic cleansing. Protection of Civilians refers to a much wider range of protections outlined in the Fourth Geneva Convention on the Protection of Civilians in Armed Conflict. In addition, R2P crimes do not require the threshold of armed conflict required by international humanitarian law. However, there is still room for clarification of these issues and until they are resolved, the political nature of R2P means that NGOs are more inclined to use other less contentious international legal mechanisms for their lobbying and advocacy purposes than R2P.

The controversial use of R2P, and lack of clarity concerning authority for the use of force vis-à-vis humanitarian intervention, has meant that the legal and moral imperative for States to act to prevent the commission of R2P crimes has become increasingly political. In some ways it is the moral imperative, the 'never again' sentiment, that has provided for the success of the R2P principle to-date, however, it is now important to ensure consistency and credibility around R2P by applying the principle only when international law is respected. NGOs and other members of the international community have a responsibility to ensure that whenever R2P is abused or misused, that there is a unified condemnation that reverberates around the world and protects the R2P principle for the purpose for which it is intended.

¹⁰ *Resolution on Women in Armed Conflict*, SC Res 1325, UN SCOR, 55th sess, 4213rd mtg, UN Doc S/Res/1325 (2000).

When prevention of R2P crimes has failed, then the international community has an obligation to punish those responsible for such crimes. The role of the International Criminal Court is central to this. How NGOs interact with the ICC is still far from clear and raises some extremely difficult issues. By their nature and presence NGOs are often privy to information not readily available to outside sources. NGOs also, can bear witness to events that may or may not constitute international crimes, or they may have information that could lead to witnesses or the discovery of evidence pertinent to international crimes. As a result NGOs can be seen as unwanted witnesses, threats to the perpetrators of crimes, and organisations and their staff may, therefore, be in danger.

If NGOs, in order to protect their neutrality and impartiality, concede to withhold information from the ICC they could then be perceived as protecting impunity. If on the other hand they provide information to the ICC, they could be perceived as violating their code of conduct, their impartiality and neutrality and ultimately, their license to operate if a State decides they do not want such an organisation working in conflict-sensitive areas. In some instances NGOs have directed staff not to cooperate with ICC investigators raising extremely difficult questions and issues and they are ones which need to be addressed if NGOs are to work with integrity in conflict zones in the future.

Communication and Education

Communication and education are vital to the success of R2P. There is a clear need for information and the provision of guidelines on what Pillar I and Pillar II of Ban-Ki-moon's formulation of the R2P principle involve. There is a need to de-mystify R2P and educate States and practitioners on the differences between R2P and humanitarian intervention. The prevention phases of R2P require much more attention, and practical implementation strategies for prevention oriented programmes should be developed.

Education also relates to communities at risk of R2P crimes, it relates to how actors and stakeholders in R2P environments are engaged and mobilised for the prevention of crimes, how early warning mechanism are developed and effectively used and warnings communicated. It involves lines of communication between the field, national and international authorities, regional organisations and the ICC.

By strengthening communication lines, and general understanding of the principle, advocacy and lobbying efforts will have a greater likelihood of being effective. It is possible to minimize and even to prevent the commission of R2P crimes, however education and effective communication between all stakeholders is of paramount importance.

Recommendations

Seven specific areas requiring further development were identified at the *NGOs preventing mass atrocities* workshop. These were:

1. R2P pillar 1 and pillar 2 guide and materials

Practitioners, Governments, authorities, and civil society need much more information in order to fully understand the intricacies of R2P and implement it to the maximum benefit of local populations. The development of Pillar I and II Guide materials suited to the education of a broad range of stakeholders would be enormously beneficial. Such materials could assist to de-politicize the principle, to emphasize the importance of prevention and lead to a much wider acceptance of a variety of preventive measures short of the use of force.

2. Engage with regional organisations

Regional organisations have not been well engaged by the NGO community, and more should be done with Regional organisations in order to encourage States to fulfill their responsibility to protect. How and at what entry point NGOs should engage with Regional Organisations is an area for further exploration.

3. Early warning

While much material is gathered, and work is already done on early warning, systems could be significantly improved through enhanced assessment, and more reliable reporting on patterns and trends. Directly related to information provided by early warning systems, is the need for a response mechanism ensuring that early warning is not then met by cool inaction or indifference.

4. Disaster and conflict preparedness

NGOs work at the grass roots with local communities and yet very often, at the time of crisis, international NGOs are absent from the concert of R2P crimes. More work could usefully be done in terms learning from communities' own protection mechanisms, and in preparing communities for violence.

5. Humanitarian Ombudsman

It is possible that a neutral, independent unaligned Humanitarian Ombudsman may resolve some of the issues around the politicisation of NGOs working in early warning and human rights fields. Such a position would provide an independent, central point for gathering information, coordinating early warning mechanisms, and representing concerns of the NGO community without attribution.

This may be an important role as it has the potential to provide NGOs with an anonymous and independent avenue for advocacy and lobbying with States and is a concept that should be explored further.

6. NGO engagement with ICC

NGOs cannot be seen to support impunity. They also cannot be seen to be gathering evidence, or possibly providing evidence, to the ICC. How this can be reconciled is an extremely complex and difficult question that needs resolution if the international infrastructure working to prevent and punish international crimes is to function effectively.

7. Political nature of R2P – high risk for NGOs

For many States, R2P is still synonymous with Humanitarian Intervention and the use of force. More education regarding the important preventative Pillars I and II of R2P needs to take place along with greater clarification as to how the different elements of the principle will be implemented. Effectively done, this should provide some assurance to those States afraid of military intervention. In the meantime the use of R2P language can be threatening, and NGOs, in many instances, are choosing not to refer to States obligations under the principle because they are afraid of being seen to be highly political and potentially scaling up responses to crises to the point of military intervention.

Enhanced education and acceptance of the *preventive* aspects of R2P and the role that NGOs can play in that will serve to address the politicisation and subsequent avoidance of the principle by the NGO sector.

Conclusion

The *NGOs and the Prevention of Mass Atrocity Crimes* workshop highlighted a need for significantly more research. NGOs are willing enough to engage with R2P if and where it value-ads to their existing operations and capacities. Where there is duplication (for example with parts of the Protection of Civilians framework) R2P is likely to be sidelined, unless the principle demonstrates its usefulness over and above what is already being done.

In some instances the workshop raised more questions than it resolved. The complex relationship between NGOs and stakeholders in the concert of R2P crimes (communities, governments, peacekeepers and the international community) was highlighted. A lack of clarity around R2P and what is the substance of Pillars I and II of the principle was identified. NGOs and their difficult relationship with the ICC was raised, and the need for greater engagement with regional organisations was recognised.

Generally, NGOs were willing to engage with R2P but there are many barriers to be overcome before that engagement can be truly effective. Whether NGOs will continue to invest time into developing strategies that are R2P specific, or whether they will concentrate on the broader protection frameworks that already exist, is yet to be seen.

Annex I – Strengths, Weaknesses, Opportunities and Threats workshop

<p>Strengths</p> <ul style="list-style-type: none"> • Sovereignty as Responsibility • Defines 4 crimes/clarity • Counters political indifference • Normative framework • High on international agenda • Consensus about core elements • International responsibility • Clearly identifies prevention as key • Role for regional organisations and arrangements • Supporting and enabling • Impetus for SC reform 	<ul style="list-style-type: none"> • Provides focus for NGO advocacy on the four crimes • Call attention/educate States as to their responsibilities and hold them accountable • Combine to raise alarm bells in order to counter political indifference • Assist governments in preventing the four crimes • Increase understanding of R2P/ NGOs speaking with one voice • NGOs to articulate comparative advantage in prevention / value added • Promoting Australia's R2P – acknowledging mutual responsibilities to victims or potential victims of mass atrocity.
<p>Weaknesses</p> <ul style="list-style-type: none"> • Only deals with 4 crimes • Gender Blind • Still resistance • Ability to operationalise in question • Legitimizes use of force on policy level – can be misused? Seen as a threat • Invoking use of force could create more instability • Subject to interests of P5 • Use of R2P language can narrow debate • Politicised • Lack of resources to implement • Lack of integration into existing frameworks • Media 	<ul style="list-style-type: none"> • Make R2P more people/human centered • Gender mainstream concept of R2P – ensure gender sensitivity • NGOs can provide advocacy materials to various/variety of stakeholders • Get our own NGO houses in order • Specific attention to gender-based violence (GBV)/Sexual crimes in NGO intelligence/information gathering • Shifting focus to 1 and 2 pillars and use of force could be seen as deterrent • Taskforce to apply gender lens in R2P • Reaffirm? Neutrality? And independence of NGOs • Advocate that IHL/HR law are broader/comprehensive R2P / 4 crimes • Focus on prevention in research outputs • Strengthening local NGOs in gender issues/analysis far more effective prevention/mitigation • Address gender blindness by strengthening gender analysis including collecting disaggregated data; work with people working on R2P to engender the strategy around operationalisation

<p>Opportunities</p> <ul style="list-style-type: none"> • We can develop Tools to minimize risks of exposure • Resourcing for our work to prevent • Peacebuilding and stopping genocide cycle • Opening up dialogue on sovereignty • Leverage off states emphasis on prevention • Another accountability mechanism for communities • Role for NGOs and networks to complement each others action to prevention • Norm internationalisation • Political Momentum • Media 	<ul style="list-style-type: none"> • Develop a guide for States to fulfill R2P obligations • Training for media on R2P • Education and awareness of what R2P is • Strengthen partnerships with international organisations and UN agencies • Advocacy and lobbying for Australia to support govts to uphold their R2P • Further strengthen umbrella/peak organisations in their advocacy role • NGOs can provide monitoring and evaluation of situations • NGO can increase engagement with UN Rapporteurs • Being aware of strengths of your org – and leveraging those in specific issue areas • Disseminate more information about R2P and prevention to States and NGOs by utilizing resources of APCR2P • Encourage States to report on implementation in UN periodic review • Identifying NGOs who complement mandates or address limitations in given NGO's mandates • Analysis of early warning – preconditions for widespread abuse – and include R2P in early warning assessment • NGOs core business – conflict prevention/mitigation/protection • Early warning mechanisms for NGO sector • Seize opportunity – Australia Security Council seat and raising R2P awareness
<p>Threats</p> <ul style="list-style-type: none"> • States misuse of R2P • Double standards • States threatened by it • Could be seen as impotent construct • Access and presence • Expose NGOs to perception of bias • Right to Protection? • Very low level of awareness in domestic sphere • Marginalise broader aspects of human security field • Gender blindness • ICC can prolong conflict <ul style="list-style-type: none"> • ICC compromising safety and security of Staff • Media 	<ul style="list-style-type: none"> • Public education (Australia and overseas) • Innovative advocacy • Training staff on dealing with media on R2P • NGOs need to be familiar with ICRC protection standards – data collection • NGOs Need to look at how to interact with ICC • R2P dialogue not to prevent NGO access and presence • Providing deep analysis to show misuse • Prevent R2P from becoming irrelevant • NGO increase dialogue with government to assist/influence Government perceptions around the role of NGOs CBMs – between governments and NGOs • NGOS can advance, improve levels of awareness • Training and Education for NGOs and Governments on R2P • Focus Development programmes on conflict prevention and community resilience • Advocate/lobby for regional state to state accountability (eg advocate to AU) • Capitalize on political momentum and lobby for peer to peer accountability • Address access/presence challenge by sharing information – private dialogue – eg. ICG, ICRC, HRW etc.

Annex 2 – List of Attendees

Conference Participants

- Beth Eggleston – Oxfam Australia (Humanitarian Advocacy Coordinator)
- Ben Murphy – Oxfam Australia (Humanitarian Advocacy Officer)
- Catherine Drummond – Asia-Pacific Centre for the Responsibility to Protect / University of Queensland (Researcher/Student)
- Claire Busse – Oxfam Australia (Sri Lanka Senior Program Officer)
- Deborah Leaver – ActionAid Australia (General Manager International Programs)
- Denise Cauchi – Humanitarian Crisis Hub (Coordinator)
- Danielle Atkins – Caritas Australia (Program Coordinator South Asia)
- Dianne de Silva – ACFID (Policy Officer, ACFID Sri Lanka Working Group)
- Ellen Field – ActionAid Australia (Protection Program Officer)
- Frederique Lehoux – Oxfam Australia (Humanitarian Program Coordinator, East Asia)
- Helen Durham – Australian Red Cross (Strategic Advisor, International Law and Special Projects)
- Kelisiana Thynne - ICRC (International Legal Advisor for Asia-Pacific Region)
- Lisa Gibson – AusAid (Humanitarian and Emergency Response Section)
- Louise Searle – World Vision Australia (Humanitarian Protection Advisor)
- Lucy Berry – Oxfam Volunteer (Note taker)
- Michele Lipner – Asia Pacific Civil Military Centre of Excellence (NGO Advisor)
- Nalini Kasynathan – Oxfam Australia (Program Coordinator Sri Lanka and Bangladesh)
- Nick Ireland – Care Australia (Senior Program Officer, Humanitarian and Emergency Response)
- Nicole Breeze – Oxfam Australia (Advocacy Manager)
- Noel Morada – Asia-Pacific Centre for the Responsibility to Protect (Research Director)
- Phoebe Wynn-Pope – Conference Coordinator (contracted by Oxfam)
- Rohan Kent – Plan International, Australia National Office (Disaster Management Program Manager)
- Sandya Manickam – Caritas Australia (Program Officer, Humanitarian Response)
- Sanwar Ali – Oxfam (Emergency Response Coordinator)
- Sarah Teitt – Asia-Pacific Centre for the Responsibility to Protect (Outreach Director)
- Steph Cousins – Oxfam Australia (Humanitarian Advocacy Officer)

Represented Organisations

World Vision Australia Plan international ActionAid Australia CARE Australia Ausaid Caritas Australia Oxfam Australia	International Committee of the Red Cross (ICRC) Australian Red Cross Humanitarian Crisis Hub Asia pacific Civil Military Centre of Excellence Australian Council for International Development Asia pacific Centre for the Responsibility to Protect
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Annex 3 – List of Early Warning Centers as per the International Crisis Group website

[CrisisWatch Database](#) - provides succinct month-by-month updates on the state of play in all the most significant situations of conflict or potential conflict around the world. The database contains the entries from the current and all past editions of CrisisWatch (beginning 1 September 2003).

[FAST Early Warning System](#), Swisspeace - FAST enhances political decision makers' ability to identify critical developments in order to formulate coherent political strategies to either prevent or limit violent conflict, or recognise chances for peace building.

[Conflict Early Warning and Response Mechanism \(CEWARN\)](#), Intergovernmental Authority on Development (IGAD) - provides early warning information on cross-border pastoral conflicts currently in the IGAD region, monitoring violent incidents, social impacts, small arms proliferation and environmental pressures.

Early warning - Humanitarian and natural disasters

[UN Humanitarian Early Warning Service \(HEWSweb\)](#) - a global one-stop shop for humanitarian early warnings and forecasts for natural hazards and socio-political developments.

[Famine Early Warning System](#) (USAID) - provides early warning and food security information to prevent famine and ameliorate food insecurity.

[Respond](#) - A consortium of European and international organisations sharing geographical information to support humanitarian crises.

[Centre of Excellence in Disaster Management and Humanitarian Affairs \(DMHA\)](#) - provides through its Pacific Disaster Management Information Network (PDMIN) reports on the humanitarian and public health situations in the Asia-Pacific region (in particular its [Asia-Pacific Daily Reports](#)), Afghanistan and Iraq.

ADDITIONAL EARLY WARNING MECHANISMS NOT ON ICG WEBSITE

Continental Early Warning System (CEWS) currently being established by the African Union.

Annex 4 – Background to the Responsibility to Protect

Origins

The Responsibility to Protect (R2P) is a principle born from a desire to protect the world's most vulnerable communities and populations from the most heinous international crimes. Debate concerning the right to humanitarian intervention in the 1990s had been controversial with widespread disagreement about when an intervention could be justified either morally, politically or under international law. In 2001 the International Commission on Intervention and State Sovereignty (ICISS) handed down its seminal report entitled 'A Responsibility to Protect'. This report built on the African Union's efforts to change "non-interference" into "non-indifference" and turned the debate on its head by discussing, not the right of powerful states to intervene in other states, but the right of vulnerable communities to be protected from international crimes. The Commission focused on the responsibility of States to protect their own populations, and noted that when States were either unable or unwilling to protect their own people then the international community had not a right, but a responsibility to do so.

R2P gained support in the coming years and in 2004 was endorsed by the High Level Panel on Threats, Challenges and Change in their report entitled "A More Secure World". It was also supported by Annan in his "In Larger Freedom" report which was the precursor to the World Summit in 2005 where he urged the international community to embrace the principle of R2P as a basis for 'collective action against genocide, ethnic cleansing, and crimes against humanity'.¹¹

At the World Summit in 2005, the largest gathering of Heads of State and Government in history, the General Assembly adopted the principle of R2P in paragraphs 139-140 of the World Summit Outcome Document.

Responsibility to Protect populations from genocide, war crimes,, ethnic cleansing ad crimes against humanity.

138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

139. The International Community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organisations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.

140. We fully support the mission of the Special Adviser of the Secretary-General on the Prevention of Genocide.

This formulation was not a complete reflection of the ICISS report, but provided for the essential elements of the principle to continue to be developed into the future.

¹¹ Kofi Annan, *In Larger Freedom* UN Doc A/59/2005 para 7b, 132, 135

Implementing the Responsibility to Protect – Report of the Secretary General

In February 2009, Secretary-General Ban Ki-moon handed down his report on the Implementation of R2P which was presented to the General Assembly for debate in July 2009. In that report the Secretary General made three general statements about R2P and identified three equally important and parallel ‘pillars’ that represent R2P and critical to its success.

First, the Secretary General stressed that R2P is an ally of sovereignty, not an adversary” and that encouraging States to fulfill their ‘*Responsibility to Protect*’ is seeking to strengthen their sovereignty, not weaken it.

Second, the Secretary General reaffirms that R2P should remain narrow in the sense that it applies only to the four crimes specified in the World Summit Outcome document: genocide, crimes against humanity, war crimes and ethnic cleansing.

Third, the scope of R2P should be kept narrow while the response should be deep. The narrowness refers to the crimes applicable to R2P and the depth refers to the myriad of ways that States and the international community can fulfill their responsibility to protect. The Secretary General noted that “Appropriate diplomatic, humanitarian and peaceful means” under Chapters VI and VIII of the charter and ‘collective action’ under Chapter VII are all available.¹²

The **three pillars of R2P** developed by the Secretary General have become common parlance and are a useful means to refer to different aspects of the principle.

Pillar 1 refers to the responsibility of States to protect their own populations from genocide, crimes against humanity, ethnic cleansing and war crimes. It refers to the World Summit Document where States agreed that “we accept that responsibility and will act in accordance with it”¹³

Pillar 2 refers to the commitment States have made to assist other States to protect their own populations. The Secretary General notes that this responsibility could be fulfilled in four ways:

- a) encouraging States to meet their responsibilities under pillar one;
- b) helping them to exercise this responsibility;
- c) helping them to build their capacity to protect; and
- d) assisting States ‘under stress before crises and conflicts break out’.¹⁴

The third pillar of R2P is to ensure Member States respond collectively and in a timely manner when a State is ‘manifestly failing’ to provide protection. The Secretary General notes that Kofi Annan’s timely intervention in Kenya following the breakout of ethnic violence in that country after elections in 2008 is a good example of a Pillar 3 R2P intervention. However this pillar is often understood narrowly with many R2P skeptics focusing on the possibility and ramifications of military intervention. The Secretary General notes that while collective military action in accordance with the UN Charter is an option it is only a last resort.

There is often discussion about what may ‘trigger’ an R2P intervention or situation, however the Secretary General rejects the notion of arbitrary triggers and suggests that the international community should focus on saving lives.

¹² *Implementing the Responsibility to Protect* Report of the Secretary General UN Doc A/63/677 (2009)

¹³ World Outcome Document para 138

¹⁴ *Implementing the Responsibility to Protect*, p.15.

Debate in the General Assembly – 23,24 and 28 July 2009

While the debate opened with the President of the General Assembly introducing R2P in a skeptical manner,¹⁵ it is encouraging to note that there was a clear commitment from the vast majority of states to the prevention of atrocity crimes. Only four countries tried to roll back the R2P principle from the agreement already reached.¹⁶ The Global Centre for R2P has undertaken a general assessment of the debate with analysis of the 94 statements made in the General Assembly.¹⁷ At least two thirds of the respondents supported the Secretary General's report and more than 40 explicitly welcomed it. Over 50 states endorsed his formulation of a three pillar strategy and agreed most firmly with the first two pillars which provide for the fundamental obligation to prevent mass atrocity crimes.

There was general agreement that the scope of R2P should be limited to the four crimes enumerated in the World Outcome document: genocide, crimes against humanity, war crimes and ethnic cleansing and that such crimes committed within a State's borders can be considered a threat to international peace and security.

Concerns

There were some areas of concern. Several members noted that R2P should not be implemented selectively or with double standards and over 35 members called for the Security Council to refrain from using the veto in decisions related to R2P crimes as the threat of a veto had resulted in inaction by the Security Council in the past. There were some calls for reform of the Security Council and others who argued that the coercive use of force was unacceptable in any circumstance. Some States supported pillars one and two without supporting pillar three of the Secretary General's formulation as they saw Pillar 3 as allowing for violation of sovereignty and the prohibition on the use of force which are fundamental principles of the UN Charter.

There was concern among several States that R2P was open to misuse and they asked under what circumstances and who would decide when R2P would apply. Most members agreed that the General Assembly was the venue for dialogue on R2P although they could not agree on whether the GA could guide the SC on when to use Chapter VII.

Specific Measures for Implementation

Interestingly, there were many statements that suggested specific measures to help stop atrocity crimes. These include ratification of HR treaties; adoption of accountability measures; education; public awareness; strengthening UN and Regional Organisation early warning mechanisms, stand by abilities and mediation capacities; and ensuring the Peace-Building Commission fulfills its role of effective post-conflict reconstruction and stabilization.

Where to now?

On 14 September 2009 the General Assembly adopted by consensus its first resolution on R2P and agreed to hold further discussions on the international understanding to intervene to stop atrocities from taking place. The resolution noted "with appreciation" Secretary General Ban Ki-moon's report and called for speedy action "to turn the promise of the responsibility to protect into practice." The Responsibility to Protect is a new principle supported by both the Security Council and the General Assembly. As mentioned in the GA resolution the most important thing now is to turn the principle in reality so vulnerable populations can live free from fear.

¹⁵ The President of the General Assembly raised concerns regarding the potential abuse of R2P citing Iraq as an example, whether R2P will be applied equally to all nations, whether it really will prevent another Rwanda and whether it will ensure respect for international law. "I wonder whether we are ready for R2P?" he asked.

¹⁶ Venezuela, Cuba, Sudan and Nicaragua

¹⁷ GCR2P Report, August 2009 at

http://globalr2p.org/media/pdf/GCR2P_General_Assembly_Debate_Assessment.pdf