



Breaking the Cycle: Costa Rica, the Arms Trade Treaty and the Responsibility to Protect¹

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Introduction

Costa Rica is among the strongest supporters of the Responsibility to Protect (RtoP) doctrine and has been a leader in the development and implementation of this principle to date, always with an emphasis on prevention. Costa Rica also performed an integral role in catalyzing negotiations for and securing the eventual adoption of the Arms Trade Treaty (ATT), which establishes common international standards for the international trade of all conventional arms.

The unchecked proliferation of conventional arms not only provides the tools with which atrocities may be carried out, but also fuels political and socio-economic conditions that increase the risk that such

violence may occur. Therefore, without effective regulation of the international trade in conventional arms, the ability of States to fulfill their responsibility to protect is fundamentally undermined. In this way, the ATT can play an important role in helping the international community to operationalize RtoP.

Part II of this article provides a brief summary of the development and legal foundations of RtoP. Part III discusses key elements of Costa Rica's approach to the responsibility to protect as an international legal norm and what steps it has taken to operationalize RtoP. Part IV discusses Costa Rica's prominent role in the negotiation and adoption of the ATT and highlights important complementarities between the ATT and RtoP. Part V concludes by advocating that in addition to continuing to promote RtoP at the United Nations level as well as through national and transnational initiatives, Costa Rica should advocate for the universal adoption and implementation of the ATT as an essential tool for preventing the commission of atrocity crimes.

Background and Legal Basis of the Responsibility to Protect

The responsibility to protect (RtoP) is an emerging norm of international law. It received formal recognition in the 2005 World Summit Outcome Document, adopted by the United Nations General Assembly in its Resolution 60/1 of 2005, which provides in relevant part that:

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 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 organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail 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.²

In 2009, the General Assembly resolved to continue its consideration of RtoP, despite the reservations expressed by some states—namely Venezuela, Iran, Ecuador, Nicaragua, Cuba, Syria and Sudan.³

Since 2009, UN Secretary General Ban Ki-moon (“the Secretary General”) has presented several reports to facilitate Member States’ continued consideration of RtoP. Although these reports are not themselves binding, they provide useful guidelines for Member States in understanding and applying RtoP as an international norm. The “Report of the Secretary General – Implementing the Responsibility to Protect,” issued in 2009, sets forth the three interrelated pillars that have come to define subsequent analysis and development of the RtoP doctrine, namely the protection responsibilities of the State (“Pillar I”), the commitment of the international community to provide international assistance and capacity-building to assist States in fulfilling their protection responsibilities (“Pillar II”), and the responsibility of the international community to take timely and decisive action when States manifestly fail to meet their responsibilities (“Pillar III”).⁴

Subsequent reports have shed additional light on these three pillars. In 2010, the Secretary General presented a second report, “Early warning, assessment and the responsibility to protect,” which focused on the need for early warning and assessment capacities to facilitate the implementation of RtoP.⁵ In 2011, the Secretary General reported on “The role of regional and sub-regional arrangements in implementing the responsibility to protect,” which focused on the role of regional and sub-regional organizations in operationalizing all three pillars and explored opportunities for collaboration.⁶ The Secretary General’s 2012 Report, “Responsibility to Protect – Timely and Decisive Response,” discussed how international, regional, national and local actors can respond to threats or occurrences of atrocities in a timely and decisive manner.⁷ The 2013 Report on “State Responsibility and Prevention” examines risk factors that have been identified in situations where atrocities have been committed in the past, and provides examples of preventive measures drawn from the experiences of Member States.⁸

In spite of its infancy, RtoP is gaining traction in international law. Indeed, the UN Security Council has reaffirmed the doctrine in a number of binding resolutions. For example, Resolutions 1674 and 1894 on protection of civilians in armed conflict “[r]eaffirm[] the relevant provisions of the 2005 World Summit Outcome Document regarding the protection of civilians in armed conflict, including paragraphs 138 and 139 thereof regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.”⁹ Resolutions on situations of concern with respect to protection of civilians in specific countries have also reaffirmed RtoP, such as Resolution 2063 on the situation in Sudan,¹⁰ Resolution 2009 regarding Libya,¹¹ and Resolutions 2069 and 2120 regarding Afghanistan,¹² among others. Also of particular significance is Resolution 2117 on small arms and light weapons, which highlights a specific link between RtoP and the misuse of small arms and light weapons to commit atrocity crimes.¹³

These reaffirmations at the Security Council level point to the strengthening of RtoP as an emerging norm of international law. Nevertheless, Member States continue to debate the legal and political status of RtoP.¹⁴ One thing, however, is clear: the substantive content of RtoP and how it should function in practice, are still in flux. Costa Rica has and should continue to voice its vision of a robust interpretation of

RtoP, not merely as an abstract point of legal doctrine but rather as a guiding operational principle for its efforts at the national, regional, and multilateral levels.

Costa Rica and the Responsibility to Protect

Costa Rica has strongly affirmed the legitimacy of RtoP, which it understands to flow from the fundamental responsibility of States to protect their citizens.¹⁵ Moreover, it interprets RtoP as being, to draw from the words of the Secretary General, “narrow but deep.”¹⁶ Narrow in that its legal scope is limited to instances of genocide, war crimes, ethnic cleansing, and crimes against humanity only; deep in that it goes to the very core of sovereignty. These limitations notwithstanding and in accordance with its long-standing commitments to human rights, humanitarian law, and disarmament, Costa Rica has been amongst the strongest supporters of the RtoP doctrine. It is important to recognize, however, that Costa Rica does not understand RtoP to amount to a *carte blanche* for humanitarian intervention. Rather, consistent with the language of Resolution 60/1, collective action under RtoP must adhere to the parameters set forth in the UN Charter.¹⁷

Costa Rica understands RtoP to be first and foremost a doctrine of prevention. As articulated by former Director General of Foreign Policy, Danilo González, in his capacity as Costa Rica’s RtoP Focal Point,

[t]he best way to prevent mass atrocities and large scale humanitarian crises, is to prevent conflict...investment in democracy, strengthening the rule of law, and promoting the protection of human rights in a context of human development, remain the best way to avoid social tensions and the signs of intolerance that are often cited as causes of those conflicts that have erupted into the gravest humanitarian crises of our times.¹⁸

This focus on prevention—on eradicating the seeds of conflict before they take root—is consistent with Costa Rica’s unflagging commitment to promoting peace, democracy and human dignity, both domestically and in the international arena. Costa Rica has demonstrated its com-

mitment to RtoP through its actions within the sphere of the United Nations, as well as through national initiatives and participation in transnational networks dedicated to the promotion and application of RtoP.

Promotion of RtoP within the United Nations

Costa Rica supported both General Assembly Resolutions on the subject of RtoP: Resolution 60/1 containing the Outcome Document of the 2005 World Summit,¹⁹ and Resolution 63/308,²⁰ by which the General Assembly resolved to continue its consideration of RtoP. Moreover, Costa Rica has been an active participant in the ongoing General Assembly Interactive Dialogue on RtoP.²¹ Costa Rica voiced a particularly progressive stance with respect to the 2005 World Summit Outcome Document, voicing its faith in the Security Council as “the only legitimate mechanism for confronting threats to peace,” while advocating for significant reforms to the Security Council, including an expansion of the number of non-permanent members and an elimination of the veto right in matters of genocide, war crimes, crimes against humanity, and massive violations of human rights.²²

Indeed, recent events in Syria highlight the extent to which current Security Council structures may impede the kind of “timely” and “decisive” action that Pillar III of RtoP calls for.²³ As evidenced by the Syria situation, further analysis of how to facilitate robust application of Pillar III within the parameters of the UN Charter is needed. Although its suggested reforms to the Security Council were not ultimately reflected in the Outcome Document, they are indicative of Costa Rica’s active role in promoting a strong application of RtoP, even from its earliest stages. Costa Rica should continue to contribute to this dialogue.

Costa Rica also advocated for the development and application of RtoP during its recent term as a member of the Security Council, from 2008 to 2009. For example, Costa Rica requested that the Security Council consider humanitarian intervention in Myanmar, in response to evidence of massive human rights violations and an increasingly dire humanitarian situation.²⁴ Although the Security Council elected not to take such action, Costa Rica’s proposed response to circumstances

in Myanmar offers a useful example of how Pillar III can be put into practice in a way that is consistent with the UN Charter and the primacy of the UN Security Council in authorizing the use of force.

During its 2008-2009 Security Council term, Costa Rica was also a vocal advocate of the International Criminal Court (ICC). The ICC is a key tool for operationalizing RtoP because it provides an alternative to impunity or *ad hoc* prosecution arrangements for those found to have committed atrocity crimes.²⁵ In particular, Costa Rica expressed concern with what it perceived to be insufficient action by the Security Council to ensure the Sudanese government's compliance with Security Council Resolution 1593 of 2005, referring the situation in Darfur, Sudan to the Prosecutor of the ICC.²⁶ Costa Rica also expressed support for the warrant issued in 2009 for the arrest of Sudanese President, Omar Al-Bashir.²⁷ As a result of this firm stance, the Security Council approved a Presidential Declaration in June of 2009, demanding that Sudan turn over to the ICC two Sudanese accused of war crimes and crimes against humanity: Ahmad Harun, Former Minister of the Interior, and Ali Kushayb, alleged leader of the Janjaweed Militias.²⁸

Costa Rica's support for the ICC goes beyond its participation in the Security Council, particularly through its role in the Group of Friends of the International Criminal Court.²⁹ In that capacity, Costa Rica has focused on strengthening the relationship between international criminal law and human rights, attributing to the ICC an integral role in enforcing international human rights law where violations of those rights constitute crimes against humanity, war crimes and/or genocide.³⁰

By taking a decisive stance in support of RtoP in the General Assembly and during its recent tenure on the Security Council, as well as through continued support of international institutions critical to the implementation of RtoP such as the ICC, Costa Rica has demonstrated its commitment to the responsibility to protect not only in word, but also in deed. Costa Rica continues to implement this commitment beyond the UN context through its pioneering efforts at the national and transnational levels.

Transnational Cooperation

Costa Rica participates in a number of transnational networks dedicated to the promotion of RtoP through intergovernmental coordination as well as collaboration between governments and nongovernmental actors, including the RtoP Focal Points Initiative and the Latin American Network for Genocide and Mass Atrocity Prevention. Both of these innovative initiatives were highlighted in the Secretary General's 2013 Report.³¹

Costa Rica is one of four co-organizer States for the RtoP Focal Points Initiative, along with Australia, Denmark and Ghana.³² Launched in 2010 by the Global Centre for the Responsibility to Protect in association with the governments of Denmark and Ghana, the RtoP Focal Points Initiative seeks to encourage UN Member States to designate senior officials ("Focal Points") responsible for improving atrocity crimes prevention and response efforts at the national level, as well as to facilitate international coordination and cooperation by linking those focal points to form a global network.³³ The Secretary General's 2013 Report specifically noted that 28 States had appointed RtoP Focal Points as of July 2013 and encouraged other States to consider similar measures.³⁴

To date, there have been three meetings of RtoP Focal Points, focusing on issues such as what role the Focal Point can and should play, discussing experiences of promoting RtoP at the domestic level, and identifying challenges to the effective implementation of R2toP.³⁵ Furthermore, the first regional meeting of RtoP Focal Points, for Europe, was held in Slovenia in 2013, where the issues discussed included how to enhance cooperation on RtoP, such as through regional bodies such as the European Union (EU), the Organization for Security and Cooperation in Europe (OSCE) and the Council of Europe, what additional improvements are needed to strengthen capacities for atrocity crimes prevention, and the importance of consensus-building among States as to the content and operationalization of RtoP.³⁶

Along the same lines, Latin American States can build on their legacy of intergovernmental coordination through organizations like the Organization of American States (OAS) and the Inter-American Commission on Human Rights, as well as sub-regional bodies such

as the Andean Community (CAN) and the Union of South American Nations (UNASUR), to pursue opportunities for regional coordination in clarifying and strengthening the role of RtoP Focal Points in those States where they have already been appointed, and encouraging designation of RtoP Focal Points in States where one has not yet been put in place.

The role of the RtoP Focal Point encompasses both internal and external dimensions.³⁷ At the domestic level, the main responsibilities are advocacy and socialization, institutionalization (such as training and capacity-building for relevant actors such as police and military forces), mass atrocity strategic planning and advice, and early warning and response coordination.³⁸ Focal points also engage externally, communicating and coordinating with one another through networks.³⁹

This dual approach facilitates the effective application of RtoP in two key ways. First, because implementing RtoP at the national level necessarily implies a wide range of actors, including different organs of government as well as civil society organizations and the private sector, the focal point acts as a “proactive ‘hub’ for analysis, policy input, and intergovernmental coordination,”⁴⁰ as well as promoting accountability at the national level. Second, coordination among focal points facilitates early warning communications as well as opportunities for the exchange of experiences and best practices.

The Latin American Network for Genocide and Mass Atrocity Prevention, another transnational venture dedicated to promoting RtoP, was formed in 2012 by the governments of Argentina, Brazil, Chile, Costa Rica, Ecuador, Panama, Paraguay, Peru, and Uruguay in collaboration with the Auschwitz Institute for Peace and Reconciliation (AIPR) and with the support of the Office of the Special Advisor of the UN Secretary General on Genocide Prevention (OSAPG).⁴¹ Network membership has since grown to 18 countries, with the addition of Bolivia, Colombia, El Salvador, Guatemala, Mexico, the Dominican Republic, Honduras and Venezuela.⁴²

The primary function of the Latin American Network for Genocide and Mass Atrocity Prevention is education, using seminars administered at sites of past genocide and mass atrocities to train first policy-makers and eventually future instructors, in order to institutionalize atrocity

crimes prevention training programs at the national level.⁴³ The Network also encourages its members to strengthen genocide prevention initiatives in their national government structures or to develop such programs where none exist, and aims to facilitate annual meetings to promote intergovernmental collaboration and information exchange.⁴⁴

These innovative inter-governmental and inter-sectorial collaborations are important steps toward the operationalization of the preventive dimensions of RtoP. Costa Rica and other regional leaders should continue to support their development and encourage the expansion of their membership.

National Implementation

Of course, transnational cooperation is meant to enhance, rather than to substitute for, domestic efforts to prevent atrocity crimes. For its part, Costa Rica has engaged in a variety of actions at the national level including, notably, the formation of the Costa Rican Commission on International Humanitarian Law and the Inter-Institutional Commission on Human Rights.

The Costa Rican Commission on International Humanitarian Law (CCDIH), formed in 2004, operates under the auspices of the Ministry of Foreign Affairs and is comprised of 16 members: 11 government agencies, 2 universities, the National Council of Rectors, the Bar Association, and the Red Cross of Costa Rica.⁴⁵ The Commission advises the Executive branch with regards to the adoption, application and dissemination of international humanitarian law. Among the Commission's most notable accomplishments is its role in making Costa Rica the first Latin American country to be a State Party to all international treaties on or related to international humanitarian law as of 2012.⁴⁶ The Commission also trains functionaries of relevant government agencies, such as the Congress and police forces, in international humanitarian law.

The Inter-Institutional Commission for the Oversight and Implementation of International Human Rights Obligations, also overseen by the Ministry of Foreign Affairs, was formed in 2011. This Commission is made up of twenty government agencies as well as a permanent consultative mechanism to facilitate direct civil society participation.⁴⁷

The Commission's main function is to ensure Costa Rica's compliance with its various human rights surveillance and reporting obligations under applicable international instruments.

These steps to operationalize international humanitarian law and international human rights law at the national level form the core of Costa Rica's current strategy for implementing its responsibilities under RtoP and provide useful examples for other UN Member States to consider. However, although Costa Rica's efforts to date are no doubt laudable, it is clear that additional tools are needed in order to effectively prevent and respond to atrocities.

Strengthening the RtoP Toolkit: The Arms Trade Treaty

The availability of conventional arms, particularly small arms and light weapons, is a significant risk factor for the commission of atrocity crimes. This relationship is highlighted in UN Security Council Resolution 2117,⁴⁸ as discussed above, as well as in the Secretary General's 2009⁴⁹ and 2013⁵⁰ Reports and the Genocide Analysis Framework promulgated by the Office of the UN Special Adviser on the Prevention of Genocide (OSAPG), which identifies the presence of illegal arms and armed elements, indicative of the "capacity to commit genocide," as one of eight factors used to determine whether there is a risk of genocide in a given situation.⁵¹ In addition to the integral role of arms as the literal instruments by which atrocity crimes may be committed, the unregulated flow of weapons may itself be a trigger for these crimes, insofar as it can aggravate underlying conditions of instability and conflict, such as ineffective institutions, inequality, and the marginalization of certain social groups, that have been shown to contribute to the outbreak of atrocities.⁵²

One conclusion to be drawn from this is that effective arms control mechanisms are essential to the successful application of RtoP. As such, support is growing around the Arms Trade Treaty ("ATT"), which establishes universal regulations for the international trade of all conventional arms and their ammunition. U.S. Permanent Representative to the United Nations, Samantha Power, recently highlighted the ATT as an example of "multilateraliz[ing]" efforts to prevent atrocities,

putting RtoP into practice by “help[ing] to prevent the illicit flow of arms to atrocity perpetrators.”⁵³ Shortly thereafter, the Security Council passed Resolution 2117, which not only reaffirmed RtoP and clarified its connection to small arms and light weapons, but even went so far as “[u]rg[ing] States to consider signing and ratifying the Arms Trade Treaty as soon as possible and *encourag[ing]* States, intergovernmental, regional and sub-regional organizations that are in a position to do so to render assistance in capacity-building to enable States Parties to fulfil [*sic*] and implement the Treaty’s obligations.”⁵⁴

The ATT can help prevent atrocity crimes both directly, by keeping weapons out of the hands of those who would commit them, and indirectly by reducing the extent to which the now under-regulated trade in conventional arms fuels conditions that present risk factors for the commission of atrocity crimes. Thus, the ATT should be at the core of future efforts to operationalize RtoP. Costa Rica, which has been at the vanguard of the international community in promoting both RtoP and the ATT, is poised to lead this endeavor.

The Arms Trade Treaty and Costa Rica’s Role

After some seven years of intensive negotiations, the UN General Assembly adopted the Arms Trade Treaty (“ATT”) on April 2, 2013, by a vote of 154 in favor, with only 3 votes against (Iran, the Democratic People’s Republic of Korea, and Syria), and 23 abstentions.⁵⁵ To date, 115 States have signed the treaty and 9 have ratified it.⁵⁶ Momentum for this landmark treaty can be traced at least as far back as 1997, when a group of Nobel Laureates led by former Costa Rican President Dr. Óscar Arias Sánchez proposed an International Code of Conduct on Arms Transfers.⁵⁷ Costa Rica, one of the “Co-Author” Countries that first proposed the ATT to the General Assembly in 2006, remained one of the treaty’s strongest advocates throughout the negotiation process and was among the first countries to sign it on June 3, 2013. On September 3, 2013, Costa Rica became the third country to ratify the ATT,⁵⁸ due in large part to the steadfast support and commitment of the administration of Costa Rican President, Laura Chinchilla Miranda.

The objectives of the ATT are to “[e]stablish the highest possible common international standards for regulating or improving the regulation

of the international trade in conventional arms” and to “[p]revent and eradicate the illicit trade in conventional arms and prevent their diversion.”⁵⁹ These objectives serve a threefold purpose: to contribute to international and regional peace, security and stability; to reduce human suffering; and to “[p]romot[e] cooperation, transparency and responsible action by States Parties in the international trade in conventional arms, thereby building confidence among States Parties.”⁶⁰

The ATT operates by establishing a set of criteria that States Parties must apply to all transfers of conventional arms, ammunition, parts and components that come within the treaty’s scope.⁶¹ The conventional arms covered fall into seven main categories: battle tanks, armored combat vehicles, large-caliber artillery systems, combat aircraft, attack helicopters, warships, missiles and missile launchers, and small arms and light weapons.⁶² The criteria to be applied to the decision of whether or not to authorize a transfer can be divided into two main categories: prohibitions and export assessments.

First, all States Parties are prohibited from authorizing a transfer of conventional arms (“prohibitions”) where the transfer would (1) violate the State’s obligations under measures adopted by the Security Council acting under Chapter VII of the UN Charter, (2) violate relevant international obligations under international agreements to which the State is party, particularly arms control agreements, and (3) if the State “has knowledge that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is party.”⁶³

The second set of criteria apply only to arms-exporting States (“export assessments”), obliging those States to conduct a risk assessment and, where there is an overriding risk that certain negative consequences would result from the export despite any efforts to mitigate the risk in question, decline to export. These negative consequences include that the arms will be used to:

- (i) commit or facilitate a serious violation of international humanitarian law; (ii) commit or facilitate a serious violation of international human rights law; (iii) commit or facilitate an

act constituting an offence under international conventions or protocols relating to terrorism to which the exporting State is a Party; or (iv) commit or facilitate an act constituting an offence under international conventions or protocols related to transnational organized crime to which the exporting State is a Party.⁶⁴

The treaty also confers responsibilities upon arms-importing States, to provide adequate and relevant information to exporting States to facilitate accurate export assessments,⁶⁵ and requires all State Parties to take measures, where appropriate and feasible, to regulate the transit and transshipment of conventional arms through their territory.⁶⁶ All States Parties must also take steps to prevent the diversion of conventional arms to anyone other than their authorized end user, and must comply with recordkeeping and reporting requirements.⁶⁷

The Arms Trade Treaty and RtoP

As discussed above, the ATT can serve the objectives of RtoP both directly and indirectly. Directly, in that the ATT expressly prohibits the transfer of arms not only where the State Party has knowledge that they will be used to commit atrocity crimes, but also where the transfer would violate Security Council decisions, particularly arms embargoes and other steps that may be taken under Pillar III of RtoP in response to a State's manifest failure to protect its people from atrocity crimes. Thus, the ATT would provide crucial support for a collective response taken under Pillar III, whether through the use of force or otherwise, by making all States subject to the same set of standards with respect to international arms transfers and thereby prohibiting certain States from circumventing attempts by the Security Council or other international bodies to prevent or halt atrocity crimes through arms embargoes or other coordinated actions. Recent events in Syria, where Russia has continued to supply arms to President Bashar al-Assad even as the civilian death toll continues to mount,⁶⁸ exemplify how an ATT that holds all States to the same set of prohibition and risk assessment standards for all international transfers of conventional weapons, could dramatically change the course of events in a situation where atrocity crimes have been or are at risk of being committed.

Furthermore, the insufficient regulation of conventional arms transfers that the ATT seeks to address, contributes significantly to factors of social, political and economic instability that place societies at increased risk of atrocity crimes taking place. The Secretary General's 2013 Report identifies a number of key factors influencing the risk of atrocity crimes, which preventive efforts should seek to address, including history of discrimination or other human rights violations against members of a particular group or population; an underlying motivation – often political, economic, military or religious – for targeting a particular community; the presence of armed groups or militia and their capacity to commit atrocity crimes, including the proliferation of arms; the existence of particular circumstances that facilitate the perpetration of such crimes; the incapacity of the government to prevent the crimes or the absence of structures and institutions designed to protect the population; and the commission of acts that could be elements of genocide, war crimes, or crimes against humanity as defined by the Rome Statute of the ICC.⁶⁹

It is now widely accepted that there is “a strong association between higher levels of armed violence and fragile institutional capacities,” as well as “a strong association between insecurity and underdevelopment.”⁷⁰ In other words, armed violence is both a cause and a consequence of institutional instability and underdevelopment, both of which can contribute to the risk of atrocity crimes.

The 2011 Global Burden of Armed Violence Report demonstrates the close and mutually reinforcing relationship between armed violence, defined as “the use or threatened use of arms to inflict injury or death,”⁷¹ and key development indicators. For example, higher incidence of armed violence is correlated with higher adolescent birth rates, higher child and infant mortality rates, higher percentage of persons living with HIV between the ages of 15-49, lower share of national income or consumption held by the poorest quintile of the population, higher population living off of less than USD \$1 per day, lower human development indices, and higher unemployment rates for both men and women between the ages of 15-24.⁷²

Coupled with the ready availability of conventional arms, particularly small arms and light weapons whose authorized transfers alone amounted to at least USD \$8.5 billion between 2009 and 2011, not to

mention their vast illicit trade,⁷³ such manifestations of socioeconomic instability provide fertile ground for atrocity crimes. Paired with underdeveloped or ineffective political institutions, the combination becomes even more combustible.

Thus, bringing the global trade in conventional arms under control is essential if RtoP is to be operationalized effectively. The ATT has the capacity to make a significant impact in that regard. However, the treaty's adoption and growing number of signatures are but the first steps in a much longer journey. The ATT will not even enter into force until fifty UN Member States have ratified it.⁷⁴ Then, once the treaty enters into force, each State Party must take the necessary measures to implement its obligations under the treaty, which in some cases will involve significant reforms at the national level that a State may or may not have the financial and technical resources to undertake. Moreover, anything less than universal accession and implementation will undermine the treaty's effectiveness, insofar as non-parties may continue to act as loopholes through which irresponsible arms transfers can pass unchecked.

Therefore, Costa Rica's work as a champion of the ATT is far from over: indeed, it is just beginning. In its continued efforts to promote the universalization and effective implementation of the ATT, Costa Rica should highlight the significance of these actions not only for their own sake but also as consistent with RtoP.

Conclusion

The development of a responsibility to protect in international law is an ongoing process. While the base of support for the RtoP doctrine continues to broaden among States, its legal contents and effect remain uncertain. Even for advocates of RtoP, the form that this emerging norm will ultimately take remains to be seen.

Opponents of the RtoP doctrine have framed it as creating a right to *ad hoc* intervention and, as such, presenting a threat to state sovereignty. This mischaracterizes RtoP in two key ways. First, RtoP is not, at its core, a new right or obligation: it is merely an expression of the inherent

responsibilities that accompany the right of sovereignty. Second, this responsibility is not a threat, but rather, as articulated in the Secretary General's 2012 Report, "an ally of sovereignty, in that collective action by the international community to protect populations is not called for where a State fully discharges its sovereign responsibility to protect."⁷⁵ In other words, the best way for Member States to guard against outside intervention is to fulfill their fundamental responsibility to their own people by protecting them from atrocity crimes.

Costa Rica, a strong supporter of RtoP from its inception, has interpreted RtoP as a doctrine rooted in prevention and has taken significant steps to implement that understanding, as discussed in this article. However, it is important to recognize that a strong RtoP framework cannot be built on a foundation that is continually eroded by the ceaseless flow of arms and ammunition to vulnerable regions around world. Thus, to effectively operationalize RtoP, this tide simply must be stemmed. In this way, the recently adopted Arms Trade Treaty, or ATT, offers an important complement to RtoP.

To be sure, the ATT is no panacea for atrocity crimes. Indeed, the ATT has attracted its own set of detractors, echoing many of the same concerns with respect to infringement of sovereignty that have been voiced with regard to RtoP. Even States that support RtoP, the ATT, or both, may view the prospect of a linkage between RtoP and the ATT with some skepticism, particularly to the extent that such a linkage may provide additional ammunition for those States that oppose one or the other as an unacceptable infringement of their sovereignty. This is a legitimate concern in principle. However, highlighting the extent to which these two sets of international legal obligations can complement one another in their application does not imply expansion of the scope of the legal obligations set forth under either. To take advantage of the potential for synergies need not change the nature of the legal norms themselves.

Effective regulation of conventional weapons transfers is essential if States are to succeed in protecting their citizens from atrocity crimes and the conditions that foment them. The alternative, as former Costa Rican President and Nobel Peace Laureate Oscar Arias aptly stated in his 2006 General Assembly Address, is to be "condemned to walk to the edge of the cliff, to live in the wheel of eternal return, like Sisyphus with each summit reached only to walk the path over again."⁷⁶ If we are

to succeed in putting RtoP into practice for the good of the world's people we must commit ourselves to breaking this cycle, and the ATT is a vital tool in that struggle. As the first Latin American country to ratify the ATT and one of its most vocal champions from the outset, Costa Rica can and should lead this charge.

NOTES

1. The views expressed in this article are the authors' own and do not necessarily reflect official positions or opinions of the Government of Costa Rica.
2. G.A. Res. 60/1, 138-139, U.N. Doc. A/60/L.1 (Sept. 15, 2005) (emphasis added). *See also* Ministerio de Relaciones Exteriores y Culto de Costa Rica, *Memoria Institucional 2005-2006*, 47-49 (2006).
3. G.A. Res. 63/308, U.N. Doc. A/RES/63/308 (Oct. 7, 2009).
4. U.N. Secretary-General, *Implementing the Responsibility to Protect: Rep. of the Secretary General*, U.N. Doc. A/63/677 (Jan. 12, 2009) [hereinafter 2009 Report]. *See also* International Coalition for the Responsibility to Protect (ICRtoP), *Core Documents: Understanding RtoP*, <http://www.responsibilitytoprotect.org/index.php/publications/core-rtop-documents> (providing a summary of core documents relating to RtoP, including the Secretary General's Reports).
5. U.N. Secretary General, *Early warning, assessment and the responsibility to protect: Rep. of the Secretary General*, U.N. Doc. A/64/864 (Jul. 14, 2010) [hereinafter 2010 Report]. *See also* *Core Documents: Understanding RtoP*, *supra* note iii.
6. U.N. Secretary General, *The role of regional and sub-regional arrangements in implementing the responsibility to protect: Rep. of the Secretary General*, U.N. Doc. A/65/877-S/2011/393 (Jun. 27, 2011) [hereinafter 2011 Report]. *See also* *Core Documents: Understanding RtoP*, *supra* note iii.
7. U.N. Secretary General, *Responsibility to Protect – Timely and Decisive Response: Rep. of the Secretary General*, U.N. Doc. A/66/874-S/2012/578 (Jul. 25, 2012) [hereinafter 2012 Report]. *See also* *Core Documents: Understanding RtoP*, *supra* note iii.

8. U.N. Secretary General, *State Responsibility and Prevention: Rep. of the Secretary General*, U.N. Doc. A/67/929–S/2013/399 (Jul, 9, 2013) [hereinafter 2013 Report]. See also *Core Documents: Understanding RtoP*, *supra* note iii.
9. S.C. Res. 1674, para 4, U.N. Doc. S/Res/1694 (Apr. 28, 2006); S.C. Res. 1894, preambular para. 7, U.N. Doc. S/Res/1894 (Nov. 11, 2009).
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