

Civilian Protection and Human Security:
Implementing the Responsibility to Protect in the Asia-Pacific Region

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The Policy Challenge

It is often said that there is a sharp contradiction between new ideas such as human security, the Responsibility to Protect (RtoP/R2P) and protection of civilians and the core principles – such as non-interference and consensus-based decision making -- that guide international relations in Southeast Asia. Until recently, however, there has been little effort by those outside the region to understand how governments inside the region understand principles like R2P, what their concerns are and how they might be assuaged. Indeed, all too often, the region's governments are dismissed simply as R2P sceptics and spoilers, or as authoritarians blindly clinging the vestiges of absolutist sovereignty to protect their own power and status. This is both unhelpful and inaccurate. It is unhelpful, because without consensus among governments, there is little chance of translating the R2P from words to deeds. It is inaccurate because with the exception of Myanmar and North Korea, all the region's governments have endorsed the R2P principle, none have actively attempted to block the progression of R2P at the UN.

Moreover, there is in fact a significant amount of activity underway aimed at understanding and implementing the principle. Institutions like CSIS in Jakarta, the Non-Traditional Security Centre in Singapore, ISDS in Manila as well as countless NGOs have worked tirelessly over many years to place the protection of vulnerable people onto the policy agenda. Although progress has been slow, often frustratingly so, much has been achieved. For example, although much weaker than many had hoped for – especially in its retention of consensus decision making and lack of enforcement provisions – the ASEAN Charter formalizes and legalizes the region’s commitment to human rights and calls for the establishment of a Human Rights Body. In relation to R2P, the Steering Committee of CSCAP recently agreed unanimously to establish a Study Group on R2P which will work towards the drafting of a memorandum for submission to the ASEAN Regional Forum.

The purpose of this presentation is to look a little more closely at the relationship between one aspect of the protection of civilians agenda – R2P – and Southeast Asian principles collectively referred to as the ‘ASEAN Way’. I want to suggest that a proper understanding of what R2P is (and is not) and a more nuanced understanding of its relationship to regional principles opens up spaces for thinking about appropriate processes for advancing the protection of civilians in the region, and the region’s contribution to protection worldwide. We often ignore this latter aspect, but it is important to recognize that today Indonesia contributes more troops to UN peace operations than Australia, Canada, the Netherlands, UK and Germany – all vocal supporters of R2P – *combined*. Thus Indonesia, along with others in the region, make a vitally important contribution to the global effort to protect civilians.

None of this is meant to downplay the profound obstacles that lay in the way of implementing R2P in the region, but it should provide those from outside the region with pause for thought and illuminate pathways for progress inside the region. I proceed in three parts:

1. A brief discussion of the so-called ‘ASEAN way’
2. A similarly brief overview of R2P
3. A discussion of how the two might be reconciled.

The ‘ASEAN Way’ (cover v. briefly)

In order to understand ASEAN’s commitment to the principle of non-interference, it is worth reminding ourselves of Michael Leifer’s point made in relation to the formation of ASEAN that, ‘the prime object of the regional exercise was the promotion of a structure of relations which would serve to reinforce the domestic basis of conservative-minded governments by reducing external frictions between them’.ⁱ ASEAN was formed in 1967 against a background of ongoing disputes about borders and regime legitimacy. The paramount concern of ASEAN leaders was the consolidation, legitimization and security of new states and ruling elites. It has been phenomenally successful. ASEAN has established a rules-based regional order that has prevented conflict between its members and created the space for rapid economic development. To comprehend just how successful ASEAN has been, it is worth briefly pausing to compare the post-independence fates of Southeast Asia and sub-Saharan Africa.

The common glue that brought the state leaders together in 1967 lay not in shared history or culture but in their shared experiences of trying to govern fragile states. The leaders of the new ASEAN members recognized that regional peace and security depended on stability and security *within* states. Thus, at the first ASEAN summit at the heads of government level (held in Bali, 1976), the closing declaration maintained that, ‘the stability of each member state and of the ASEAN region is an essential contribution to international peace and security. Each member state resolves to eliminate threats posed by subversion to its stability, thus strengthening national and ASEAN resilience’. ASEAN’s primary goal was therefore the promotion of regional peace and security through the collective legitimization of states and limited cooperation to protect the security of the region’s regimes from the *internal* challenges stemming from secessionist movements and communist groups. As well as providing mutual support for sovereigns in the region, ASEAN was also the framework for the establishment of a security community that has helped ensure that not once since ASEAN’s formation in 1967 have two members gone to war. Security communities are groups of states that have developed dependable expectations of peaceful change.

Under the auspices of ASEAN, Southeast Asian states have built a framework of norms known as the ‘ASEAN way’ to enhance regional security. There are three principal norms organized around procedural norms of informality and an aversion to institutionalism and legalism that prevented the organization from assuming a legal character until very recently. The three principal norms at the heart of the ‘ASEAN way’ are: (1) non-interference in the domestic affairs of other states; (2) a consensus based style of decision-making; (3) the non-use of force to settle disputes.

Non-interference: The principle of non-interference in the domestic affairs of other states is the cornerstone of the 'ASEAN way'. The principle is restated in virtually every significant ASEAN document including the ASEAN Charter. The founding Bangkok declaration of 1967 gave the association the job of promoting co-operation in the spirit of sovereign equality laid down in the UN Charter. In a classic restatement of the pluralist conception of international society, the subsequent ZOPFAN Declaration recognized the right of all states 'to lead its national existence free from outside interference'. Paramount amongst the principles identified in the Treaty of Amity and Cooperation in 1976 were mutual respect for sovereign independence, territorial integrity, sovereign equality, national identity, and the freedom of every state to lead its own national existence. According to Acharya, the non-interference norm has four primary aspects:

- Refraining from criticizing other member governments in public;
- A commitment to criticizing states deemed to have breached the non-interference principle;
- Denying recognition, sanctuary or any other kind of support to any rebel group seeking to destabilize a member state.
- The provision of political and material support to member states in their campaign against subversive rebel groups.ⁱⁱ

The centrality of the principle of non-interference is unsurprising given that the primary goals of Southeast Asian elites were state consolidation and regime legitimization. As well as fulfilling the community's internal purposes, the non-interference principle also contributed to the development of regional autonomy. The norm of non-interference provided a justification for

the establishment and global recognition of the region. This recognition contributed to the external legitimization of the region's states and regimes (because it contributed to establishing an image of independence) and made it more difficult for outside powers to interfere in the region's affairs

Consensus Decision-Making This style of decision-making focuses on building consensus through extensive consultation. According to many writers on ASEAN and ASEAN leaders themselves, these norms were built on the traditional Javanese village practices of *musyawarah* (consultation) and *muafakat* (consensus). The best interpretation of the *musyawarah* process is that it is the practice of consultation 'on the basis of equality, tolerance and understanding with overtones of kinship and common interests'. Such consultations ought to take place away from the gaze of the media and other states and in a non-hostile setting. This has two important effects. First, the prolonged nature of the negotiations has allowed officials from different states to get to know each other personally. Second, in cases where *musyawarah* is practiced, states proposing particular initiatives can be almost completely certain about what the reaction of other state leaders will be because of the extensive consultation and negotiation that precedes its development.ⁱⁱⁱ

Muafakat involves taking decisions on the basis of consensus through a process of *musyawarah*. This consensus is arrived at through debate and deliberation wherein negotiators do not try to coerce others into consent but rather seek to find a compromise that all can agree on. As Acharya points out, the region's proclivity for decision-making by consensus was not the product of abstract idealism but a reaction to the practical problems confronting the region at the time of

ASEAN's formation. *Muafakat* flows directly from the fact that the association was meant to legitimize the member states and create conditions conducive to state-led economic development. Rather than allowing one state to pursue its narrow self-interests at the expense of all others, *muafakat* demands that all participants in a debate search for common ground as the basis of agreement.^{iv}

The third set of norms that underpin the 'ASEAN way' is the non-use, or threat, of force to settle international disputes—though the use of force to settle internal disputes has sometimes been encouraged. Since the organization's genesis, against the background of *konfrontasi* and many other internal disputes, the non-use or threat of force to settle international disputes has been one of its guiding principles. Moreover, given this turbulent history, the fact that there have been no wars between Southeast Asian states is undoubtedly one of the region's greatest achievements. This principle, which like the principle of non-interference is reaffirmed in all the association's key declarations, was an important component in asserting the independence and sovereignty of the region's smallest states (particularly Singapore and Brunei), provided an important source of collective legitimization by freezing the region's borders, and allowed state leaders to concentrate on internal consolidation.

Although these principles have undoubtedly helped to establish regional order, it is not difficult to see why they might be thought to be in tension with principles such as the R2P:

- Non-interference seems to contradict the idea that sovereigns be accountable for the treatment of their citizens.

- Consensus decision-making slows progress to a snail's pace and allows the perpetrators of grave abuses to scupper international engagement with humanitarian crises.
- The non-use of international force seems to rule-out the use of force to end genocide as in Rwanda.

What is the Responsibility to Protect?

One of the few real achievements of the UN's 2005 World Summit was the adoption of the 'responsibility to protect' (RtoP) principle. As agreed by UN Member States, the RtoP principle rests on three equally important and non-sequential 'pillars'.

First, the responsibility of the state to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement.

Second, the international community's duty to assist the state to fulfill its responsibility to protect.

Third, the international community's responsibility to take timely and decisive action, through peaceful diplomatic and humanitarian means and, if that fails, other more forceful means, in a manner consistent with Chapters VI (peaceful measures), VII (enforcement measures) and VIII

(regional arrangements) of the UN Charter, in situations where a state has manifestly failed to protect its population from the four crimes.¹

In April 2006, the UN Security Council reaffirmed RtoP and indicated its readiness to adopt appropriate measures where necessary (Resolution 1674, 28 April 2006).

RtoP's intellectual and political origins lay in older ideas about 'sovereignty as responsibility'. Sovereignty has always entailed both rights and responsibilities. For example, the first duty of the State of Indonesia, according to its own constitution, is the protection of all the people of Indonesia. Even theorists most associated with the defence of unbridled sovereign power conceded this point. Thomas Hobbes, for example, insisted that the sovereign's authority was based on an unwritten contract between the state and the individual whereby the individual sacrificed his/her natural freedom in return for security. This social contract was voided if the sovereign posed an existential threat to the individual or failed to provide for the individual's security. In China, the 'Mandate of Heaven' principle established by the Zhou dynasty linked the legitimacy of the ruler to its capacity to rule justly and protect the people. Between the eighteenth and twentieth century's, this idea was enumerated as the principle of 'popular sovereignty' – the idea that sovereignty derives from 'the people', who have a fundamental right to determine their own form of government. First enunciated in the English, American and French revolutions, this basic idea provided the basic legitimising principle for decolonisation and opposition to white minority rule in Rhodesia and South Africa. Sovereignty as

¹ A/60/L.1, 20 September 2005, paras. 138-140. See Ban Ki-moon, *Implementing the Responsibility to Protect: Report of the Secretary-General*, A/63/677, 12 January 2009

responsibility therefore rests on the idea that the state is responsible to the people and has a duty of care towards them. In other words, sovereignty entails domestic responsibilities as well as rights.

These ideas were given new impetus in the 1990s as a result of the emergence of a number of decidedly ‘uncivil’ wars and developed in three different contexts – the emergence of human or ‘non-traditional’ security, a discussion about sovereign responsibilities in the face of internal displacement, and a debate about the so-called ‘right’ of humanitarian intervention. Because I am speaking alongside one of the region’s foremost experts on, and champion of, human security, I will focus briefly on the two other elements.

The contemporary idea of sovereignty as responsibility was developed by the UN’s Special Representative on Internally Displaced Persons (IDPs), Francis Deng and Roberta Cohen a Senior Fellow at the Brookings Institution, in the 1990s. Their principal challenge was how to persuade governments to improve protection for IDPs and they developed the idea of sovereignty as responsibility to fit this purpose.² The concept’s starting point was recognition that the primary responsibility for protecting and assisting IDPs lay with the host government.³ No legitimate state, they argued, could quarrel with the claim that they were responsible for the well-being of their citizens and in practice no governments did in fact quarrel with this proposition. Where a state was unable to fulfil its responsibilities, it should invite and welcome international

² Deng, ‘Impact of State Failure on Migration’, p. 20.

³ Roberta Cohen and Francis M. Deng, *Masses in Flight: The Global Crisis of Internal Displacement* (Washington DC: The Brookings Institution, 1998), p. 275.

assistance.⁴ Such assistance helped the state by enabling it to discharge its sovereign responsibilities and take its place as a legitimate member of international society.⁵ During major crises, troubled states faced a choice: they could work with international organisations and other interested outsiders to realise their sovereign responsibilities or obstruct those efforts and sacrifice their good standing and sovereign legitimacy.⁶ As such, sovereignty as responsibility focused on the responsibilities of host governments and maintained that effective and legitimate states were the best way to protect vulnerable populations. This left unanswered the problem of what to do when a state refused to request assistance or itself committed genocide and mass atrocities, pitting a sovereign's right to non-interference—enshrined in Articles 2(4) and 2(7) of the UN Charter—against a sovereign's putative responsibilities.

This dilemma was most pointed in relation to the question of humanitarian intervention and in the midst of the highly contentious global debate about the legitimacy of NATO's 1999 intervention in Kosovo, the concept of sovereignty as responsibility was picked up by UN Secretary-General Kofi Annan.⁷ Mindful of the apparent contradictions between the rights and responsibilities of sovereignty, Annan challenged international society to develop a way of reconciling the twin principles of sovereignty (and protection of self-determination) and fundamental human rights. That challenge was taken up by the Canadian government, which created the International Commission on Intervention and State Sovereignty (ICISS). Chaired by

⁴ Deng, 'Impact of State Failure on Migration', p. 20.

⁵ Francis M. Deng, Sadikiel Kimaro, Terrence Lyons, Donald Rothchild and I. William Zartman, *Sovereignty as Responsibility: Conflict Management in Africa* (Washington DC: The Brookings Institution, 1996), p. 1.

⁶ Deng et al, *Sovereignty as Responsibility*, p. 28.

⁷ Annan 1999

Gareth Evans and Mohammed Sahnoun, the Commission developed the phrase 'RtoP', set out the case for it, and focused on developing ideas in relation to humanitarian intervention.⁸

Although UN Member States adopted the language of RtoP in 2005, they chose to not adopt the ICISS' recommendations wholesale and to frame the new principle around the idea of sovereignty as responsibility. As Edward Luck has argued, it is important not to confuse what we would like the R2P principle to be with *what it actually is*.⁹ In particular, Member States rejected the ICISS' calls for RtoP to include criteria to guide decision-making about when to intervene; a code-of-conduct for the use of the veto; and the potential for coercive interference in the domestic affairs of states not authorised by the UN Security Council. In short, *there is nothing in the 2005 World Summit agreement that expands the scope for coercive interference in the domestic affairs of states. Instead, R2P represents a political commitment to implement duties that States already have.*

But we should not succumb to the view that the RtoP principle that emerged from the 2005 World Summit was too weak or insubstantial to make a positive contribution to strengthening human security and the protection of civilians.

⁸ ICISS 2001, Bellamy 2006, 2008

⁹ See Edward C. Luck, 'The Responsible Sovereign and the Responsibility to Protect', *Annual Review of United Nations Affairs 2006/2007* (New York: Oxford University Press, 2008), vol. 1, pp. xxxiii-xliv.

First, the World Summit clarified the scope of this important new principle. At the request of Pakistan, it was agreed that RtoP applies to genocide, war crimes, ethnic cleansing and crimes against humanity. Each of these has fairly precise legal meanings grounded in existing international law.

Second, the World Summit has clarified relevant roles and responsibilities. In line with the doctrine put forth by Deng and Cohen, all states have a primary responsibility to their own populations. All other states have a responsibility to assist their peers in fulfilling this primary responsibility. Should a state manifestly fail in its responsibility, the various bodies of the UN in partnership with relevant regional arrangements have a responsibility to use whatever means it determines as necessary and appropriate. Significantly, all measures should be consistent with the UN Charter.

Third, the agreement clarified that there is no such thing as an 'RtoP event or crisis' in that there is no moment at which something becomes relevant to RtoP. A state's responsibility does not appear and evaporate; nor does the world's responsibility to assist and support that state or the Security Council's responsibility to take all necessary means when appropriate. In other words, it is not the nature of the responsibility that changes, but the most appropriate means of preventing genocide, war crimes, crimes against humanity and ethnic cleansing and protection vulnerable populations in any given situation.

Finally, it is important to stress that as a product of the largest ever gathering of heads of state and government, the agreement produced by the 2005 World Summit carries immense political weight.

What, then, does this mean in relation to ASEAN's core principles? In short, properly understood R2P is broadly consistent with them.

From Words to Deeds

Although there are obviously some points of disconnect between conservative definitions of the 'ASEAN way' and R2P, Southeast Asia is more open to the R2P principle than has hitherto been acknowledged. Most of the region's states are either: 1) engaged in the principle, in that they have endorsed the R2P and participated in dialogue about its implementation (whether positively or not); or 2) sitting on the fence, in that whilst they have acquiesced or in some cases endorsed the principle (whilst noting some concerns), they have not contributed to ongoing debate about its implementation. Regional consensus on the principle is possible but much work needs to be done on the way in which the principle is articulated and advanced to take better account of the region's concerns and priorities. In particular, it is important that advocates reconcile R2P with regional norms as far as possible.

The region's states have tended to welcome cooperative initiatives such as capacity-building, and there are clear linkages between building the capacity of states and societies to prevent genocide

and mass atrocities and supporting economic development – a core priority for many, if not all, states in the region. Likewise, emphasis on regional organisations promotes regional ownership and allays fears about the potential for the R2P to erode cherished local norms such as non-interference. Moreover, by emphasising ways in which the UN can help build regional capacity, this approach promises to deliver practical benefits to populations in need.

Other policy areas such as early warning and assessment and measures to improve timely and decisive response are likely to require more consultation and dialogue before proposals likely to secure a consensus within the Asia-Pacific region can be brought forward. In relation to early warning, most of the region's governments are concerned about the potential expansion of international interference in domestic affairs. Because early warning has traditionally been associated with monitoring and reporting on domestic affairs, it is unlikely that a consensus on an institutional form for the commitment made in 2005 will emerge in the short-term.

Nonetheless, governments in the region have committed to strengthening early warning as part of their commitment to the R2P and none have walked away from that commitment. Dialogue should canvas a variety of potential forms designed to minimise the perception of interference and should include investigation of how regional organisations might contribute. Finally, most of the region's states remain deeply cautious about the potential for 'timely and decisive' response mechanisms to legitimise coercive interference. On the Security Council, China and Viet Nam have repeatedly argued that R2P-related matters only become appropriate subjects for Council consideration when they impact on 'international peace and security'. Others, such as Indonesia and the Philippines, have taken a slightly softer view whilst sharing the basic sentiment. As seen most clearly in relation to Myanmar, but also to an extent in relation to

Zimbabwe and Darfur, attempts to persuade the Council to act in situations that fall short of this mark – especially when such attempts do not enjoy the support of the relevant regional organisation – are likely to attract opposition in the Asia-Pacific and may reinforce caution about the R2P. This suggests that a broad approach to ‘timely and decisive’ reaction should be adopted that identifies the potential contribution of other UN bodies, such as the Human Rights Council, Peacebuilding Commission, the Secretary-General’s good offices, and regional organisations.

There should also be more operational work on how to make peace operations – once deployed – both under the mandate of the UN and other inter-governmental agencies – better able to protect populations from genocide and mass atrocities.

This comes back to our final point which is that whilst a deepening consensus and progress towards operationalisation is possible in the Asia-Pacific region, advocates need to pay careful attention to process. Programmes that may be popular in the West because they speak to a security-focused agenda – such as early warning and timely and decisive response – should not be privileged over other equally effective programmes that are longer-term and more development focused. Such prioritisation, would only *confirm* existing concerns in the Asia-Pacific about the principle’s irrelevance to their primary concerns and the possibility of the R2P serving as justification for Western interference in Asia-Pacific affairs. Moreover, it is important that progress be made through dialogue and consensus. Almost every government in the region has endorsed or acquiesced to the R2P and can play a role in translating it from words to deeds both within the region and globally. To do so, however, they need to be granted ownership and a seat at the table. In other words, regional consensus on the principle is possible, but much work needs to be done on the way in which the principle is articulated and advanced to take better

account of the region's concerns and priorities. In particular, it is important to pay attention to both the process by which R2P is moved forward—ensuring that it is both inclusive and devolved to regional actors as far as possible—and to specific policy proposals that emanate from the Asia-Pacific region.

In relation to how the principle should be conceptualised and applied there are five key points:

1. R2P should be understood as only applying to the four crimes identified by the World Summit Outcome Document and not other sources of human insecurity such as natural disasters.

2. R2P should be carefully disassociated from any potential expansion of the international community's scope for coercive interference in the domestic affairs of states beyond the UN Charter.

3. International engagement to operationalise the R2P should be predicated on cooperation and the consent of the state as far as possible. It should be emphasized that R2P aims to strengthen state sovereignty and capacity and this should be met with practical assistance.

4. Such engagement should proceed with due regard for the attitudes and preferences of relevant regional and sub-regional organisations.

5. In Southeast Asia, this means that the R2P should be applied in a manner consistent with the principle of non-interference.

Finally, it is important to stress that: *regional organisations such as ASEAN and the ARF should be involved as far as possible in order to devolve ownership of the principle.* Ideas for doing this will be canvassed by other presenters and explored by the CSCAP Study Group mentioned earlier and on-going research by the NTS-Centre, CSIS and ISDS among others. Key initiatives suggested at different times by different governments in the region include:

1. Developing a conflict sensitive approach to development that tackles root causes;
2. Strengthening the control of the illicit trade in small arms and light weapons by (a) strengthening technical assistance to states and (b) strengthening the capacity to collect, store, destroy and register SALW.
3. Building a regional capacity to contribute to peacebuilding – potentially through training.
4. Supporting human rights by: (a) providing technical assistance to states; (b) supporting the universal periodic review mechanism (and possibly integrating it into the ASEAN HR body) and (c) supporting the establishment of national human rights institutions, and where institutions have been established, their strengthening.
5. Assisting states to build and maintain the rule of law.
6. Establishing a Risk Reduction Centre to provide early warning – there is not much support for including political risks into the ambit of the RRC but there is certainly the potential to do so.

7. Strengthening peace operations through better training, standby arrangements and standing capacities. There is particularly strong support for strengthening policing and civilian capacities.
8. Strengthening the capacity to provide timely humanitarian assistance. ASEAN has established a comprehensive policy in relation to natural disasters which remains largely unimplemented. This could be advanced and augmented.

ⁱ M. Leifer, 'The Role and Paradox of ASEAN' in M. Leifer (ed.), *The Balance of Power in East Asia* (New York: St. Martin's Press, 1986), p. 121.

ⁱⁱ Acharya, *Constructing a Security Community*, p. 68.

ⁱⁱⁱ M. Caballero-Anthony, 'Mechanisms of Dispute Settlement: The ASEAN Experience', *Contemporary Southeast Asia*, 20 (1), 1998, p. 11.

^{iv} Ibid and Acharya, *Constructing a Security Community*, p.69.