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The Responsibility to Protect in Southeast Asia: opening up spaces for advancing human security

Mely Caballero-Anthony

Abstract At the 2005 World Summit, ASEAN Member States contributed to an official global consensus that states do indeed have a responsibility to protect their populations from the four mass atrocity crimes of genocide, ethnic cleansing, war crimes, and crimes against humanity. As is the case in a number of regions, however, there is a strong sense of caution - if not hostility - in Southeast Asia (and East Asia more broadly) towards the Responsibility to Protect's provision for military interventions as a last resort, in order to protect populations from such harm. Furthermore, there is an accompanying, more general ambivalence towards the perceived relevance of the norm for Southeast Asia, due to the perceived nature and/or intensity of conflicts in the region. Against this backdrop, this article attempts to shed light on a sub-altern discourse in the region that argues that the RtoP is not only relevant, but that it is critical it be operationalised in light of the various manifestations of conflict that plague the region.

Keywords Responsibility to Protect (RtoP); Protection of Civilians (POC); human security; Association of Southeast Asian Nations (ASEAN); ASEAN Intergovernmental Commission on Human Rights (AICHR); ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC).

Introduction

In 2005, ASEAN member states were among 192 states that unanimously endorsed the principle of Responsibility to Protect ('RtoP'), the notion

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that states have a responsibility to protect their populations from genocide, ethnic cleansing, war crimes, and crimes against humanity. And despite some continuing hesitation – if not resistance, in some quarters – towards the principle’s implications for non-consensual intervention, ASEAN states have continued to reaffirm their support since 2005, at least in principle, for the RtoP norm. This has included in 2009, during a United Nations General Assembly (UNGA) debate, when they offered their cautious support for the understanding of RtoP as constituting three pillars, or types of responsibilities: the State’s own obligation to protect its citizens; the international community’s responsibility to engage in capacity building and assist States to build their capacity; and finally, the international community’s responsibility to respond when a State is manifestly failing to protect its population from these mass atrocity crimes (UNGA 2009). As mentioned however, in practice, ASEAN member states are still inherently cautious towards pillar three. Nonetheless, they have demonstrated particularly strong support for the preventive aspect of the RtoP, a position that is in alignment with the preventive culture that has developed in the region since the Association’s inception.

Yet, in spite of their tacit (if not conditional) support essentially for a reconceptualisation of state sovereignty into one derived from responsibility, there is still a degree of ambivalence regarding the principle’s relevance to Southeast Asia due to an assumption that conflicts in the region are not of the nature or intensity to warrant the RtoP’s invocation. Therefore, although states agree with RtoP in principle, there appears to be a widely held belief in the region that the R2P is ultimately a concept designed to address problems in other regions of the world; that the mass atrocity crimes that R2P addresses are not likely to occur in Southeast Asia’s own backyard. For instance, a number of countries, including the Philippines, Indonesia and Thailand face the problem of secession and it is generally believed that governments have the right to use force in dealing with such internal issues.

To the contrary however, there is an underlying, sub-altern discourse in the region that argues that the RtoP is not only relevant to the Southeast Asian and broader Asia-Pacific region, but that the numerous conflicts across the region demonstrate that it is both critical and timely that it be examined to see how its principles might be operationalised in the regional context. Conflict in its various manifestations is rife across different regions of the world, and Southeast Asia is no exception. From situations of armed conflict, to political violence, religious extremism, and communal violence, internal and cross-border conflict weighs heavily on the human security of communities and individuals in the region. The various conflicts that plague the region demonstrate that countries here are no less vulnerable to the possibility of mass atrocity crimes occurring than those of other regions.

It could be argued that recent developments within ASEAN not only indicate an awareness of the impact of internal conflicts and other non-traditional security challenges, but that a significant normative development

is occurring within ASEAN that can be seen to a large degree to be in line (in essence, if not in extent) with normative developments being witnessed at the global level. This normative transformation can be seen in the adoption of the ASEAN Charter in 2007; the development of an ASEAN Political Security Community (APSC) as one of the three pillars of an envisaged ASEAN Community by 2015; and the establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR) and ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC).¹ Underlying these developments in institutionalising mechanisms for conflict management into Southeast Asia is an increasing receptivity among various actors to notions of human rights and human security. In essence, they reflect a deeper normative shift towards – and the development of a capacity for – responses to NTS challenges as a means of ensuring both human and state security. At their heart, they demonstrate that the human security doctrine has mounted a significant challenge to the region's traditional notion of 'comprehensive security', with the referent of security therefore no longer understood to just be the sovereignty or territorial integrity of the state, but also the well-being, dignity and even survival of human beings, as both individuals and members of society.²

The contribution of this special issue

The papers that follow in this special issue demonstrate that not only is the question of RtoP relevant to Southeast Asia – and East Asia more broadly – but that it is both critical and timely that serious efforts be made at operationalising the concept. The issue of operationalising R2P is addressed in the second half of this chapter.

The first paper in the issue is by David Capie, and looks at how the RtoP norm might be localized in the Asian context. Over the last decade, there has been an explosion of scholarship on the role and influence of norms in international relations. Scholars have explored where norms come from, who presses for their acceptance, and how ideational variables redefine the interests and identities of actors. Clear lines of debate have emerged between materialist theorists who argue that norms merely reflect the views of the most powerful states, and constructivists and some liberals who accord independent influence to ideas and stress the crucial role of agents (including non-state actors) in promoting norm dissemination and influencing state behavior. Capie's paper explores the diffusion of the nascent RtoP norm in Southeast Asia against the backdrop of this literature, examining how the material and ideational features of the Asia-Pacific regional order are influencing the spread of the RtoP norm and essentially, how it is being accepted, contested, debated, and rejected. The author relies on a specific model of norm diffusion (localization) to frame his assessment and the insights provided by this framework will in turn help to illuminate new spaces

for developing and implementing strategies to advance the RtoP agenda in Southeast Asia.

Next, the papers by Rizal Sukma and Herman Kraft assess the possible opportunities for promoting RtoP principles that have emerged from two of the most ostensibly important developments in ASEAN's history: the ASEAN Political Security Community (APSC) and one of its key constituent elements, the ASEAN Intergovernmental Commission on Human Rights (AICHR). Originally conceived as the ASEAN Security Community (ASC) in the 2003 Bali Concord II, the ASEAN Political-Security Community (APSC), as it is now known is widely seen as the most promising platform for advancing the RtoP within Southeast Asia. As agreed in Bali during the Ninth ASEAN Summit in October 2003, the A[P]SC is to serve as the umbrella for bringing ASEAN's political and security cooperation to a higher plane and ensure that 'the peoples and Member States of ASEAN live in peace with one another and with the world at large in a just, democratic and harmonious environment'. It obliges ASEAN member states to create a 'cohesive, peaceful, stable and resilient region with shared responsibility for comprehensive security'. Arguably, this responsibility should include safeguarding their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. Sukma's paper therefore explores whether the APSC might provide the basis for implementing the RtoP in Southeast Asia, and outlines some of the key challenges and opportunities that exist in bringing about greater acceptance and implementation of the principle in Southeast Asia.

Kraft's paper complements this analysis by looking squarely at the ASEAN Inter-governmental Commission on Human Rights (AICHR), an initiative that had been in the pipelines for many years, finally being established in late 2009, and examines possible entry points it might provide for promoting the RtoP's civilian protection principles in the region. Kraft concedes that a straightforward consideration of how the R2P could fit into AICHR's mandate may lead observers to the conclusion that it is incompatible with the RtoP, given the AICHR Terms of Reference (TOR) stated adherence to the principles of sovereignty, non-interference, consultation and consensus, and its focus on the promotion rather than protection of human rights. However, he argues that if the question is tweaked to look at how AICHR could be used to advance the objectives of the RtoP – and not the RtoP per se – then there is actually much that can be done.

The subsequent papers by Liu Tiewa and Jun Honna provide important insights into the sentiments of China and Japan, respectively, two of the great powers in Asia, regarding the RtoP principle. Tiewa's examination is critical, given that China is one of the permanent members of the Security Council (which remains the only body authorized to implement – and veto – coercive actions in the name of the RtoP) as well as a rising power ostensibly willing to bear a greater responsibility in managing international conflicts. In order to assess China's position on the RtoP, this paper

considers the following questions: How does the Chinese government re-evaluate the principle of state sovereignty and non-intervention in order to balance the protection of human rights with that of survival rights and developmental rights? What is the Chinese view on the use of force and how does it choose between military or peaceful means? What is the Chinese attitude towards multilateral cooperation under the UN's authority and conversely, unilateral action outside of the UN? And finally, how does the Chinese government perceive the utility of international organisations and regional or sub-regional organizations vis-à-vis the RtoP? In addressing these key questions, this paper makes an important contribution to understanding how China, as a key player in the region, is likely to influence the evolution of the RtoP norm in Asia.

Similarly, Honna's paper aims to shed some light on the different positions taken towards the RtoP norm in Japan and the prospects for its promotion there. Honna suggests that broadly speaking, there are three schools of thought on the RtoP, amongst academics and policymaking circles in Japan. Firstly, the 'conservative' view finds no room for integrating Japan's traditional security thinking with the RtoP. Alternatively, the 'revisionists' approach the global acceptance of RtoP as opening up a window of opportunity for Japan to use its Self-Defense Forces (SDF) more widely beyond its borders. The third group, the 'silent majority', tends to support the fundamental principles and vision behind RtoP but is concerned about the nature of its implementation, particularly in regards to the politicized nature of Security Council decisions. The paper argues that it is this third group of opinion that will need to be empowered if RtoP proponents are to successfully integrate the doctrine into the scope/purview of Japan's human security diplomacy. This would essentially entail preventing 'revisionists' from hijacking the new doctrine in pursuit of their own agenda, and enlightening 'conservatives' about the prospect that RtoP may in fact strengthen Japan's human security initiatives rather than undermine or misplace them. First, the paper sheds light on how Japan has seen the emergence of the RtoP norm in the international community. Second, it identifies how the three components of RtoP – namely, the responsibilities to prevent, react and rebuild – can be contextualised in Japan's human security framework. Third, it assesses possible reflections of Japan's incorporation of the RtoP doctrine into its human security foreign diplomacy in Southeast Asia. Together, Tiewa and Honna's papers make a significant contribution in understanding how China and Japan, as key players in the wider Asian region, are likely to influence the continuing evolution of the nascent RtoP norm in Asia.

The issue concludes with country-specific papers on Thailand and Indonesia by Keokam Kraisoraphong and Lina Alexandra respectively. Although Thailand endorsed the RtoP at the 2005 United Nations World Summit, Kraisoraphong describes a general sense that the country has since gone quiet on the issue of RtoP implementation. Kraisoraphong's paper

carves through the different views on RtoP in the context of the separatist insurgency in Southern Thailand, a case viewed by some as constituting an RtoP-type situation, and Thailand's political context more generally. In order to examine where the country currently stands on the RtoP, Kraisoraphong's paper draws on in-depth interviews with those currently working most closely with RtoP-related issues: those within the Ministry of Foreign Affairs, the National Human Rights Commission, the Armed Forces, and NGOs. This paper makes an important contribution to the advancement of a regionally-appropriate strategy for implementing RtoP principles in Southeast Asia. It argues that given Thailand's resistance to the notion of intervention, a more promising approach would likely be to work through RtoP-related activities that could contribute to achieving the RtoP's actual objectives, instead of trying to gain acceptance of the RtoP principle *per se*.

Finally, Alexandra's paper explores the views of both the government, and civil society organisations (CSOs), regarding the RtoP norm in Indonesia. Her paper compares and contrasts the perspectives of these two parallel groups of actors in the context of the 'three pillars' of the RtoP: the primary responsibilities of the state to protect; the responsibility of the international community to assist in capacity building; and the responsibility of the international community to take timely and decisive action when faced by mass atrocity crimes. Alexandra examines what steps, if any, the government has taken to implement the norm, for instance through incorporating the principle into national legislation. She then delves into how civil society organizations, particularly NGOs working on human rights, view the principle, and their attempts, if any, to apply the RtoP principle in response to human rights issues in the country. Alexandra's insights into CSOs' understanding of and engagement with this nascent norm are extremely valuable in helping to plot a way forward for engaging non-state actors in a multi-level protection strategy at the national and regional levels.

The set of the papers in this special issue – although diverse and comprising both conceptual and empirical dimensions – offer valuable insights into various dimensions of the continuing development of the nascent RtoP norm in Asia. Together, the authors' contributions will help to provide for a more nuanced understanding of the region's views on the RtoP norm, in particular, the notion of intervention, than is currently available. Its various contributions will help to pave the way forward for plotting a more regionally-appropriate strategy for implementing – or perhaps localising – RtoP principles in the Southeast Asian region and for enhancing civilian protection for its almost 600 million people.

The RtoP in Southeast Asia: going beyond the discourse

Asia-Pacific states' receptiveness to the principles underlying the RtoP was demonstrated in 2005, when they were among 192 governments that

unanimously endorsed the principle of Responsibility to Protect during deliberations of the United Nations World Summit, following which the principle was elucidated in paragraphs 138 and 139 of the World Summit Outcome Document. The World Summit Outcome Document (WSOD) declared 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 . . . 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 of the United Nations, to help protect populations from 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, 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 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.

Another key marker in the RtoP norm's evolution came in 2009, when UN Secretary-General Ban Ki-Moon's report, *Implementing the R2P*, rearticulated the R2P as constituting three 'pillars': (1) the protection responsibilities of the State; (2) international assistance and capacity building; and (3) timely and decisive response (UNGA 2009). When this report was discussed by the United Nations General Assembly in an Interactive Informal Dialogue and Debate in July 2009, many states from the Asia-Pacific region, including ASEAN member states, participated in the debate. Besides from the Democratic People's Republic of Korea (DRK), the region overwhelmingly welcomed the report and reaffirmed its collective commitment to the 2005 WSOD. In principle, it largely endorsed the 'three pillars', although some states expressed concern with how 'timely and decisive response' might or should be operationalised. Due to their historical tendency towards a strict notion of state sovereignty with strong emphasis on non-intervention, states in the region have been consistently hesitant

towards the intervention implications of RtoP, now articulated as ‘Pillar three’. Nonetheless, their statements to the General Assembly reflected a high level of receptivity to the preventive aspect of RtoP, pillars and two.³ On the whole, the region’s continuing expressions of support for the principle led the Global Centre for the Responsibility to Protect, in the wake of the 2009 General Assembly debate, to declare that the Asia-Pacific region has seen the greatest positive shift in favour of the RtoP since 2005 (Global Centre for the Responsibility to Protect 2009: 10). In its assessment, the Global Centre contributed part of this positive shift to the increasingly constructive positions taken by two ASEAN Member States, Philippines and Vietnam.

That said, despite in-principle consensus about the merits of the RtoP norm, there is still an overriding perception that the Southeast Asian region and the particular problems faced by its countries should not be placed in the same basket as other region’s that are ostensibly more prone to RtoP-type situations occurring. A recurring theme that emanated from participants at the Regional Consultation on the Responsibility to Protect, organised by the RSIS Centre for Non-Traditional Security (NTS) Studies, was that Southeast Asia should not be compared to – or worse – placed in the same basket as Africa when talking about the RtoP.⁴ Nonetheless, perceptions of the principle’s irrelevance are misguided, as evidenced by the large number of complex, intra-state conflicts currently being played out in the region.

The RtoP and conflicts in Southeast and wider Asia

Between 2000 and 2009, Asia was home to nine major armed conflicts, with the only inter-state armed conflict being that between India and Pakistan (SIPRI 2010: 63). In 2009 alone, Asia recorded seven major armed conflicts, leading to the region being identified as the area with the highest number of armed conflicts for the seventh consecutive year (SIPRI 2010: 62). In Southeast Asia, all conflicts are intra-state in nature, with the Philippines, Thailand and Indonesia representing some of the countries facing continuing tensions with internal armed opposition groups. The toll that these conflicts have taken on the communities caught up in the violence has been immense in terms of the lives lost, and immeasurable in terms of their indirect impact on the human (in)security of these individuals. According to the 2009 Chart of Conflict, in Aceh, the conflict between the Free Aceh Movement and the Indonesian government between 1989 and 2005 cost the lives of around 11,000 people. The overall death toll between the mid-1970s to 2005 is believed to be 15,000, with most of these civilians. In Mindanao in the Southern Philippines, conflict between separatist insurgents and the central government has caused the deaths of an estimated 73,000 people since 1984. In southern Thailand, the death toll resulting from the internal conflict there between 2004 and mid-2008 reached 3000 people, most of

who were also civilians. Finally, in Sri Lanka, between 1983 and 2009, an estimated 80,000 to 100,000 died as a result of the conflict between the separatist Tamil Tigers and the Sri Lankan government (IISS 2009). In 2008, Sri Lanka was identified as home to the world's deadliest armed conflict (Stepanova 2009: 52).

Besides from situations of armed conflict that reach a high level of intensity with large scale loss of life, there are other forms of violence that impact upon the security of individuals and communities in the region. In recent years, the larger Asian region has seen the highest number of campaigns of one-sided violence, with most of them being in South Asia (including Afghanistan) (Stepanova 2009: 44). One-sided violence is defined as the intentional use of armed force against civilians by a government or formally organised group that results in at least 25 deaths in a calendar year (Stepanova 2009: 39–40). It is not armed conflict as such – although it does typically occur in the context of armed conflict – as it directly and intentionally targets civilians who cannot defend themselves with arms. It is also distinct from battle-related violence that incidentally harms civilians, for example when civilians are caught in crossfire between combatants, as well as from purely criminal violence (Stepanova 2009: 40).

The region is also prone to outbreaks of political violence. The political turmoil in Bangkok earlier this year led to at least 88 deaths – mainly civilians, with injuries estimated by various sources at around 1800–2000. Furthermore, the state of emergency that was put in place in response to the violent turn of the crisis was only recently revoked in a number of provinces in Thailand, and extended in three further areas, including central Bangkok (Al Jazeera, 1 October 2010). Recent bombings in Bangkok are thought to be related to political tensions that are yet to abate following this crisis. Indeed, there are concerns that the government's effective suppression of all opposition through the imposition of emergency rule, including through the use of new powers of arrest, may serve to strengthen grievances and increase the chances of future violent conflict (Al Jazeera, 5 October 2010). In Myanmar, clashes between government forces and pro-democracy, political opposition groups constitute only one violent conflict dynamic in the country, with the government security forces sporadically clashing with a number of armed opposition groups, including the Shan State Army (SSA), with an apparent militia of approximately 10,000 members (Ploughshares 2010).

The potential for such conflicts to escalate into mass atrocity crimes is evident. However, in light of prevailing regional consensus (or lack thereof) on RtoP's applicability to the Southeast Asian region – as well as continuing skepticism about pillar three's implications for coercive intervention – it is suggested that a comprehensive civilian protection agenda could at once take advantage of the shifting normative terrain in the region and provide the necessary entry point for expanding the concept (and operationalisation) of security and ultimately achieving the objectives behind the RtoP.

Why protection of civilians?

Aside from the more visible cases of violence discussed above, a gamut of other protection concerns plague Southeast Asia and the wider Asian region. Firstly, the sexual exploitation and abuse of women and children in armed conflict is of particular concern. There is a high prevalence of sexual and gender-based violence in situations of armed conflict in the region, including as a tactic of war, and in spite of efforts to address this practice, reports indicate that it continues unabated in certain countries. Therefore, the protection of women and children from physical and sexual violence remains one of the major challenges to civilian protection in the region. Refugees and internally displaced persons (IDPs) form another particularly vulnerable group that must be a focus of civilian protection. At end 2009, the wider South and Southeast Asia region was home to approximately 4.3 million IDPs as a result of armed conflict, generalised violence or human rights violations. This represented an increase of around 800,000 people (approximately 23%) since the end of 2008 (IDMC 2010). The largest displacement was by far in Pakistan. However, the Philippines experienced approximately 400,000 people fleeing their homes in the south during this period as a result of fighting between the army and MILF. In Sri Lanka, 280,000 civilians were displaced between October 2008 and June 2009. Tens of thousands were also estimated to be newly displaced in Myanmar (IDMC 2010) adding to the estimated one million Myanmar people who have been displaced over the past decade (Hedman 2009: 37). The case of Myanmar post-cyclone Nargis also brought to the fore the phenomenon of 'environmental' refugees. More broadly speaking, Thailand, Myanmar and Malaysia also recorded some of the largest numbers of refugees, IDPs, stateless persons and asylum seekers as of January 2009, at 3,625,510, 790,861 and 147,312 respectively (Hedman 2009: 35).⁵ Essentially, displaced populations all share similar limitations to the fulfilment of their human rights, with their vulnerability to many types of non-traditional security challenges also invariably heightened.

Human security is increasingly being seen by states in the region as an integral component/necessary factor for state stability and security, if not as an end in itself. However, in terms of promoting the RtoP agenda, the conflation of these distinct types of violence: armed conflict, one-sided violence, the sexual abuse of women and children, the plight of IDPs, political turmoil, and so on, under the broad umbrella of protection concerns does hold relevance. A list compiled by the UN Special Adviser on the Prevention of Genocide of possible warning signs indicating that a community might be at risk of genocide or similar atrocities reaffirms the inappropriateness of positing human rights violations, political unrest and violence, armed conflict, and possible mass atrocity crimes as distinct and unrelated phenomena. The list includes factors such as whereby a given country: has a totalitarian or authoritarian government where only one group controls power; the

country is at war or there is a lawless environment in which massacres can take place without being quickly noticed or easily documented; one or more national, ethnic, racial or religious group is the target of discrimination or is made a scapegoat for poverty or other serious social problems facing the country; there is a belief or an ideology that says the target group is less than human, dehumanizing the individuals and justifying violence against them; and, there is a growing acceptance of violations of the target group's human rights or there is a history of genocide and discrimination against them (UN and the Prevention of Genocide 2007).

These warning signs strongly support the assertion that human rights violations, political and communal tensions, armed conflict, and RtoP crimes might be seen as merely different manifestations of violence along a continuum of conflict and even more saliently, that the former can potentially lead to the latter. Certainly, the line between 'armed conflict' and the occurrence of 'RtoP'-type crimes is rarely clearly demarcated or meaningful, given that mass atrocity crimes often occur in the context of armed conflicts. Therefore, if the goal is to advance the RtoP's objectives in Asia, a comprehensive strategy for ensuring the protection of civilians could essentially help to prevent mass atrocity crimes from occurring by addressing and preventing the root causes of conflict and halting their escalation into RtoP-type situations.

Essentially, a comprehensive approach to civilian protection – based on a more normative understanding of protection that takes human security and human rights (and their violation), rather than the presence of armed conflict as its departure point – could be a good entry point for advancing RtoP principles in Southeast Asia. Being cognizant of the various manifestations of violence that plague the region, a broad – and proactive – civilian protection agenda would ideally lend to an exploration of the raft of preventive and capacity building measures inherent in the regional frameworks that have been established in the region – not least in the APSC, AICHR and ACWC – that might help to mitigate or prevent tensions from escalating. In doing so, POC could be seen as an entry point for preventing the commission of mass atrocity crimes.

That said, it is important to note that there has been some criticism regarding the increasing conflation of the concepts of POC, human security and the RtoP. For instance, de Carvalho and Lie (2009) argue that the distinction between POC and RtoP is important to maintain in order that POC not be 'entangled' in the 'RtoP controversy'. Furthermore, in response to a suggestion from a EU representative that we need to 'develop in parallel [to the POC] additional concepts based on the aim to protect civilian populations – human security and responsibility to protect' (European Union at United Nations 2009), Deschamp has argued that 'POC has a firm foundation in international humanitarian law, human rights law and refugee law, and has a "stand-alone" quality that does not require butressing by other concepts such as R2P or the notion of human security'

(2010: 12). However, while this position might make sense conceptually, operationally – or realistically, can the notions of human security and the protection of the most fundamental human rights really be disaggregated from the imperative for the protection of civilians in armed conflict, or the POC in armed conflict be separated from the RtoP agenda for preventing mass atrocity crimes, given the ostensible linkages between human rights violations, discrimination against particular social groups, armed conflict, and mass atrocity crimes?⁶ Rather than focusing on developing *parallel* concepts of RtoP, POC in armed conflict, and human security, a comprehensive POC agenda would instead tackle the causes of conflict at their root by exploring and building states' capacity to prevent the various manifestations of violence, thus working towards the RtoP's ultimate objectives.

Civilian protection: an entry point for advancing RtoP principles?

The POC theme can be seen to have first entered the United Nation's agenda in 1998, when then-Secretary General Kofi Annan presented a report to the UN Security Council on *The Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa*, in which he spoke of the humanitarian imperative of protecting civilians in armed conflict. Subsequently, since 1999, the theme of protection of civilians (POC) in armed conflict has been the subject of a twice-yearly open debate in the UN Security Council and of a report of the UN Secretary General every 18 months. The Security Council's first thematic resolution on POC was Resolution 1265 (September 2009), which noted that civilians account for the majority of casualties in armed conflicts and are increasingly targeted by combatants and armed elements; that only by addressing the causes of armed conflict in a comprehensive manner, through promoting economic growth, poverty reduction, sustainable development, national reconciliation, good governance, democracy, the rule of law and respect for and protection of human rights, would civilians be protected in the long-term; and that implementing appropriate preventive measures to resolve conflicts was of utmost importance.

Since the theme of POC became a part of the UN agenda in 1999, the concept has understandably become closely linked with the notion of UN peacekeeping operations. The first UN peacekeeping mission to be explicitly mandated with the task of protecting civilians under imminent threat of physical violence was the United Nations Mission in Sierra Leone (UNAMSIL) in 1999. Since then, at least 13 UN peace operations have been tasked with protecting civilians in some form, while ten have been specifically mandated to protect civilians in a manner consistent with UNAMSIL's mandate (Deschamp 2010: 19–20). Indeed, the UN's understanding of the POC norm as essentially applicable to situations of armed conflict reflects an understanding of the concept that is grounded in the Geneva

Conventions of 1949 and their additional protocols and has as its basis IHL, human rights law, and refugee law. For the UN, the POC concept is relative and it essentially derives its meaning from the distinction between combatants and non-combatants (civilians). The continuing evolution of peace operations into integrated and multidimensional missions – reflecting the more nuanced reality of conflict and post-conflict situations as well as the needs of civilians in order to ensure sustainable peace – however seems to be complicating even the UN’s conceptualization of POC in situations of armed conflict. It has been suggested that a lack of policy coherence regarding the POC is in part a symptom of this evolving nature of integrated peace missions (Holt, Taylor, and Kelly 2009: 70). As noted in the report, *A New Partnership Agenda: Charting a New Horizon for UN Peacekeeping*, UN missions and the Department of Peacekeeping Operations (DPKO) Secretariat are presently moving towards a more comprehensive definition of the POC concept that goes beyond mere physical protection (UN DPKO and DFS 2009: 20).

Nonetheless, in contrast to the UN’s prevailing understanding of the POC norm, what could be seen as a second school of thought focuses on the protection of human rights and thus adopts a more normative, rather than necessarily legalistic, approach. Within this interpretation, the POC is seen as a broader concept that involves ‘proactive protection’, requiring active intervention by third parties in certain circumstances to protect civilians, including the prevention of violent conflicts and post-conflict reconstruction, as well as responding to violations (Deschamp 2010: 13). For a broader interpretation of the POC norm’s applicability, we can look to the International Committee of the Red Cross’ (ICRC) definition of protection, which:

... in the broadest sense, aims to ensure that authorities and other actors respect their obligations and the rights of individuals in order to preserve the lives, security, physical and moral integrity and dignity of those affected by armed conflicts and/or other situations of violence.

For the ICRC, ‘protection includes efforts that strive to prevent or put a stop to actual or potential violations of international humanitarian law (IHL) and other relevant bodies of law *or norms* that protect human beings’ (ICRC 2008: 9). Indeed, the ICRC’s activities in Malaysia in the context of communal tensions are evident of its evolving role in the protection of civilians. Ultimately, a broad protection of civilians approach would encourage the development of the capacity of State’s to protect their populations, including through international assistance, in areas such as security sector reform (SSR), judicial reform, human rights training, building the capacity of police, early warning, enhancing the role of women, and so on.

Significant challenges still remain in terms of advancing a more people-centered ASEAN, more cognizant of and able to respond to protection concerns of its people. Traditional notions of state sovereignty and the principle

of non-interference are still central to how states shape their relations with both other states and their people. These norms continue to hinder the universalisation of civilian protection and human rights in the ASEAN region, with the principle of non-interference, a guiding principle of ASEAN ever since it was founded, often still constraining international jurisdiction in the context of international law (or even the imperatives felt by some of the older ASEAN members). Thus, differences persist between international standards and regional standards in the institutionalisation and implementation of human rights and civilian protection, but also between ASEAN Member States themselves. That said, while we must remain cognizant of the obstacles that lie ahead, these challenges are not wholly insurmountable and there are significant entry points that are beginning to emerge in the normative landscape of Southeast Asia. These new regional developments indicate a gradual but sure change in ASEAN's normative terrain, towards a more people-centered organization that takes human rights, democracy and the rule of law seriously.

Regional initiatives as 'gateways'?⁷

The recent regional developments that were mentioned at the outset of this chapter – the ASEAN Charter, APSC, AICHR and ACWC – arguably present latent opportunity for promoting a protection of civilians agenda in Southeast Asia, through, for instance, embedding a human rights culture and conflict prevention norms in the region, as well as encouraging the development of State's capacity to prevent and respond to the various protection concerns that might afflict their people. Although the immediate utility of these initiatives for improving civilian protection is not intended to be overstated, with obvious tensions between the relatively new priorities of human rights, democracy, transparency and rule of law, and the principles of the 'ASEAN way', including non-interference and a consensus style of decision-making, they nonetheless suggest a desire of ASEAN members to address the protection concerns of its people and the impact of NTS challenges on human and state security. Essentially, these new developments reflect a subtle but significant shift in ASEAN's normative terrain, one which was given impetus by the emergence of a new strategic and security environment in Southeast Asia since the late 1990s, brought on, not least, by a raft of new non-traditional security concerns, beginning with the Asian Financial Crisis of 1997–1999.

The devastating economic and social ramifications that the financial crisis had for the region and its people mounted a significant challenge to the region's conventional concept of 'comprehensive security',⁸ and acted as a catalyst for the transformation of the region's conceptualization of security into one more cognizant of individuals' and societies' protection needs. As a result of the financial crisis, and in the face of numerous other NTS challenges, including the haze that blanketed parts of the region in 1997–1998,

the scourge of infectious disease, transnational crime and terrorism, and sporadic and ongoing internal and cross-border conflicts, the idea of human security gradually began to creep into the security lexicon of ASEAN leaders and officials.

It is in this context that both state and non-state actors have increasingly begun to call for regional responses to regional problems – even at the risk of appearing to interfere in the domestic affairs of member states. It is clear that the rise of non-traditional security challenges that have gained particular prominence in the period since the Asian Financial Crisis has led to a gradual widening in the scope of what is considered a regional issue, and a narrowing of the notion of intrusion into a state's domestic affairs. As a consequence, the values and norms associated with the 'ASEAN way' should not be seen as rigid, but rather evolving in line with the Association's development of new directions and interests. While progress for change is likely to be incremental and gradual, I would suggest that (very) tentatively and incompletely, a consensus of sorts has begun to emerge in ASEAN on locating human rights at the core of a human security community for Southeast Asia.

The adoption of the ASEAN Charter by ASEAN Member States in Singapore in 2007, as a vehicle for bringing the ASEAN Community to fruition, represented the codification of ASEAN's rules, four decades after the association was created. However, while the Charter reaffirmed the traditional state-centred norms of respect for national sovereignty and non-interference – a limitation highlighted by RtoP advocates, it nonetheless included a commitment to people-centred principles, including respect for fundamental freedoms and the promotion and protection of human rights, as well as a commitment to international, and international humanitarian law (IHL) (ASEAN Secretariat 2008).

Similarly, the establishment of the ASEAN Political Security Community (APSC) and the adoption of the APSC Blueprint in 2009 have outlined a number of measures that – although not directly addressing RtoP crimes – could be seen not only to build upon the preventive culture in the ASEAN region but provide for capacity building measures that could eventually enhance the will and capacity of states to protect their civilians. The Blueprint sets out five strategic thrust aimed at bringing ASEAN's political and security cooperation to a 'higher plane' and ensure that the peoples and states of ASEAN live in peace with one another. These are conflict prevention, conflict resolution, post-conflict peace-building, political development and norm shaping and sharing.⁹

A close look at the measures outlines in the Blueprint indicate that the APSC is more than just an instrument of security cooperation, but is also fundamentally a political project, designed to shape the region according to the norms of democracy, the rule of law, transparency, good governance and respect for human rights. In this sense, the APSC is also an attempt to stretch regional cooperation from the mere functional to the normative

and can be seen to advance three key themes: democracy, human rights, and popular participation. As a political project, the APSC envisions an ASEAN Community that promises to be more receptive to – and capable of ensuring – the protection needs of its people.

In order to bring ASEAN's political development to a higher plane, and ensure the promotion and protection of human rights, the APSC Blueprint set the goal of establishing a regional human rights body. In October 2009, the ASEAN Inter-governmental Commission on Human Rights (AICHR) was finally established, many years after the idea had first been floated. In its first five years, AICHR is expected to focus on the following three priority areas: (1) the issue of migration in Southeast Asia, broadly defined to include refugees, trafficking of persons, asylum seekers, displaced persons, etc; (2) business and human rights, with corporate social responsibility already accepted as the third pillar of ASEAN (the socio-cultural pillar), and a focus on the aspect of accountability; and (3) women's and children's issues, with a focus on the rights of women during situations of conflict, based on the provisions of UN Security Council Resolutions 1325 and 1890.¹⁰ Contrary to speculation, AICHR's mandate and functions are not based on an ASEAN Human Rights Convention, which does not exist. Rather, its mandate is defined by its terms of reference, which is based on the following two principles adopted from the ASEAN charter: (1) adherence to rule of law, good governance, principles of democracy, and consultation of government; and (2) respect for fundamental freedoms and promotion/protection of human rights and of social justice. Finally, the scope of rights to be upheld by AICHR include: customary law, international law, the UN Charter, and international humanitarian law.

In regards to civilian protection, AICHR does not have an explicit protection function but is rather designed to be a 'consultative body'. It was initially suggested, during the formation of AICHR, that it have a peer review mechanism, an individual complaint mechanism and allow for country visits, however, not all ASEAN states were in agreement to such a structure. Nonetheless, ASEAN heads of state agreed that, in its first five years, AICHR would conduct a review on the promotion and protection of rights within the region, including on issues related explicitly to protection. For the time being, in its present form, within the fourteen functions listed in the AICHR terms of reference there are already several that could effectively be utilized in implementing a 'disguised protection function' (ASEAN Secretariat 2009). Article 4.8, for instance, states that the commission may conduct consultations with various entities within ASEAN, including civil society groups and victim's organisations. Similarly, Article 4.9 states that AICHR can work together with human rights institutions. AICHR can also request thematic reports on very urgent issues and table them as important issues to be submitted to the ASEAN Foreign Minister's Meeting. In this regard, in the spirit of dialogue and cooperation, AICHR is also mandated to obtain information from member states regarding the promotion and

protection of human rights (Article 4.10). This effectively provides ASEAN members with a platform and mandate for requesting updates on situations of concern in the region, something that it has clearly felt lacking. In terms of international human rights instruments, Articles 4.4 to 4.6 state that AICHR can encourage member states to accede to these, and can pursue the full implementation of ASEAN instruments related to human rights through the promotion of capacity building measures. Ultimately, although the AICHR is sometimes referred to as a 'toothless commission,' it clearly has a solid basis from which to grow and become stronger in terms of its potential to embed a civilian protection framework in the region. Kraft's analysis in this regard is therefore extremely salient. In promoting a human rights culture in the region, the AICHR could eventually work to encourage States to establish mechanisms for preventing the outbreak of tensions and crises into mass atrocity crimes.

In addition to AICHR, a parallel body, the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), first proposed in the Vientiane Action Program of 2004 (ASEAN Secretariat 2004: Measure 1.1.4.7), was brought into effect on 7 April 2010. Now considered part of the ASEAN socio-cultural pillar of the proposed ASEAN Community, the ACWC has very specific terms of reference in regards to the rights it shall monitor, which includes those covered by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention of the Rights of the Child (CRC). In this sense, ACWC's mandate can be seen to link the region's international commitments with local realities (Cook and Bhalla 2010). In seeking to promote and protect the rights of women and children, it aims to build capacities of relevant stakeholders at all levels, for example within administrative, legislative, and judicial streams, and among civil society, community leaders, women and children machineries, through the provision of technical assistance, training and workshops (ASEAN Secretariat 2010: Article 5.6). These capacity building measures could eventually go a way towards preventing human rights violations and their escalation into violent conflict.

Together, the AICHR and ACWC provide fertile ground for exploring new avenues for the more effective protection of civilians in the Southeast Asian region. Ultimately, it is envisaged that the ACWC will coordinate with and be complementary to the work of the AICHR. To do so, however, it will be necessary to understand the areas in which these two institutions might be able to cooperate and engage in information-sharing. It is important to note that a key difference between the ACWC and AICHR is that, given the AICHR's birth in the APSC and its mention in the ASEAN Charter, the institution is able to function cross-sectorally, enjoying a mandate that allows it to influence and engage with all three of the ASEAN Communities. In contrast, the ACWC will be operating as part of the socio-cultural pillar through its reporting to the ASEAN Ministers Meeting on

Social Welfare and Development (AMMSWD), with copy to the ASEAN Committee on Women (ACW) and other relevant sectoral bodies. With this in mind, Rafendi Djamin, Indonesian commissioner for AICHR, has suggested ways in which the two bodies could capitalize on their relative comparative advantages. For instance, since AICHR is mandated to provide technical advice on human rights to all ASEAN sectoral bodies, it could help ACWC in mainstreaming important women's and children's issues under both the socio-cultural and economic pillars of ASEAN. In turn, the ACWC could aid AICHR by providing specialized technical expertise on women's and children's protection issues in the region (Cook and Bhalla 2010). By establishing complementarities, the AICHR and ACWC might act to establish a more effective form of regional governance for the protection of civilians, particularly for vulnerable groups such as women and children.

Conclusion: RtoP, the POC and multi-level engagement

The new regional initiatives and mechanisms discussed in the previous section show a desire of ASEAN member states to engender a more people-centered ASEAN. However, while a regional framework for civilian protection is important, the role of states in bringing regional commitments to fruition is often not given sufficient attention. States not only have the primary responsibility to protect their civilians, they are also typically the principal (if not necessarily sole), agent of protection. As stated in the AICHR's TOR, 'the primary responsibility to promote and protect human rights and fundamental freedoms rests with each Member State' (ASEAN Secretariat 2009: Article 2.3). We must therefore remain cognizant of the need to embed a regional framework for civilian protection in the dynamics of the domestic politics of ASEAN Member States.

Furthermore, above and beyond the role (and capacities) of states, in order to promote a civilian protection agenda, utmost importance must be placed on identifying and building at all levels of governance the capacity to protect populations and individuals from serious forms of violence that impinge upon their security. This multi-level approach would need to stretch cooperation from the international level right down to the grassroots level. Thus, regional consensus and a framework for civilian protection will be crucial in pushing the POC agenda forward, but the whole gamut of actors will be necessary in really bringing about changes on the ground, by implementing and complementing one another's measures for enhancing human rights and civilian protection at the level of local populations.

In conclusion, as this chapter has shown and argued, Southeast Asia is a region vulnerable to the occurrence of the mass atrocity crimes that the RtoP agenda seeks to prevent, or at least mitigate. However, although States in the region have in-principle accepted the norms underlying the

RtoP, they are nonetheless both still skeptical about claims that pillar three of the RtoP represents anything more than humanitarian intervention in disguise, as well as ambivalent towards the principle's relevance, in practice, to the Southeast Asian region.

In this special issue, the aim is to shed light on a counter discourse in the region that suggests that the RtoP is not only relevant, but that it is timely that the range of actors in the region have a collective conversation on how it might be operationalised and implemented in the local context. This chapter in particular suggests that a broad POC approach could go a long way towards ultimately preventing the occurrence of mass atrocity crimes, by addressing the wide range of protection concerns of people in the region. Essentially, by embedding a comprehensive POC agenda in the region, countries would hopefully develop both the will and *capacity* to prevent RtoP crimes, in accordance with pillars one and two of the RtoP norm, and in line with the region's strong culture of prevention.

Notes

- 1 See Rizal Sukma, 'The ASEAN Political and Security Community (APSC): opportunities and constraints for the R2P in Southeast Asia', and Herman Kraft, 'RtoP by increments: the AICHR and localizing the Responsibility to Protect in Southeast Asia', in this volume.
- 2 For elaboration on the characteristics of NTS issues in Asia, see Emmers, Caballero-Anthony and Acharya (2006) and Caballero-Anthony (2006). The RSIS Centre for Non-Traditional Security (NTS) Studies understands non-traditional security as comprising the security concerns of both people and states, as they can essentially be seen as intertwined in the face of emerging transnational challenges. That is, while human security places individuals as the only security 'referent', NTS studies addresses both human and state security concerns.
- 3 Statements of the 92 state parties and two observers to the 2009 UN General Assembly Debate on the Responsibility to Protect can be accessed from the website of the International Coalition for the Responsibility to Protect (ICRtoP): <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->
- 4 The proceedings from the Regional Consultation can be found in report form on the RSIS Centre for Non-Traditional Security Studies' website at <http://www.rsis.edu.sg/nts/resources.asp>.
- 5 These figures include several categories (refugees, asylum seekers, returned refugees, internally displaced persons, returned internally displaced persons, and stateless persons).
- 6 See, for instance, Parlevliet (2009) for reference to the literature on the link between human rights violations and the occurrence of violent conflict.
- 7 This was a term used by Fikry Cassidy to refer to the opportunities presented by the APSC specifically (and other recent ASEAN initiatives by association) for enhancing civilian contributions to peace operations and thus also civilian protection during a joint workshop organised by ISIS Malaysia, SIPRI and the Asia-Pacific Civil Military Centre of Excellence on *The Civilian Contribution*

to Peace Operations: Addressing Progress and Assessing Gaps, Kuala Lumpur, 26–27 September 2010.

- 8 For an account of ASEAN's evolving security discourses, including the region's traditional notion of 'comprehensive security', and the growing influence of the human security discourse, see Caballero-Anthony (2004).
- 9 See Rizal Sukma's article in this volume.
- 10 For more on this, see Herman Kraft's chapter in this volume.

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