



A FORTNIGHTLY BULLETIN OF CURRENT NTS ISSUES CONFRONTING ASIA

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### THE RESPONSIBILITY TO PROTECT IN SOUTHEAST ASIA:

#### ISSUES AND CHALLENGES

**Abstract:** *The doctrine of the Responsibility to Protect is a controversial and contentious one in Southeast Asia. It has been largely accepted in principle by most ASEAN states, which are generally supportive of the first two pillars, but are wary of the third, reactive pillar. Thus in exploring the advancement of the R2P agenda in Southeast Asia, our discussion will focus on the first two pillars of the R2P. We will examine the historical context of ASEAN with regard to how its member states view the R2P, where they stand on the doctrine, and how the regional bloc might evolve in its understanding and adaption of the norm to suit the region.*

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#### The Responsibility to Protect in Southeast Asia: An Overview

In Southeast Asia, calls for the use of the Responsibility to Protect (R2P) have been met with a high degree of caution. Debates in Asia in general, and the Association of Southeast Asian Nations (ASEAN) in particular, have centred on the coercive military interventionist aspect of the doctrine, and the stringent requirements needed before its application. The question then arises as to where and how ASEAN could apply the R2P. We will begin by exploring the position of ASEAN by examining the historical context and sovereignty concerns in the region.

*The perception of sovereignty with regard to the R2P*

The positions of ASEAN member states

are broadly informed by three historical developments. First is their belief and adherence to the UN Charter, of which Article 2(7) states that 'nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state.' Second, as formerly colonised territories, Southeast Asian states are very conscious of their relatively new-found independence and sovereign status. Third, in the political environment of the Cold War, countries were generally free to conduct their internal affairs, independent of the two superpowers, the USSR and the United States, within a bipolar international system. Hence, ASEAN states, in general, have been able to conduct their domestic affairs with little interference from the international community. Perhaps unsurprisingly, states in Asia generally have never had much enthusiasm for the R2P doctrine. There is a genuine concern in this continent that 'R2P principles might be misused by powerful states or groups of states to justify coercive interventions undertaken for other reasons', according to Edward Luck.

*Where do ASEAN states stand on the R2P?*

The principle of non-interference resonates with ASEAN member countries, and is reinforced by the principles of the ASEAN Charter, which has provisions for inter-state cooperation and respect for international humanitarian law (see info box on page two). However, the principle of non-interference is evolving towards one of constructive engagement and several guiding attitudes have emerged in ASEAN with regard to the R2P. According to the lat-

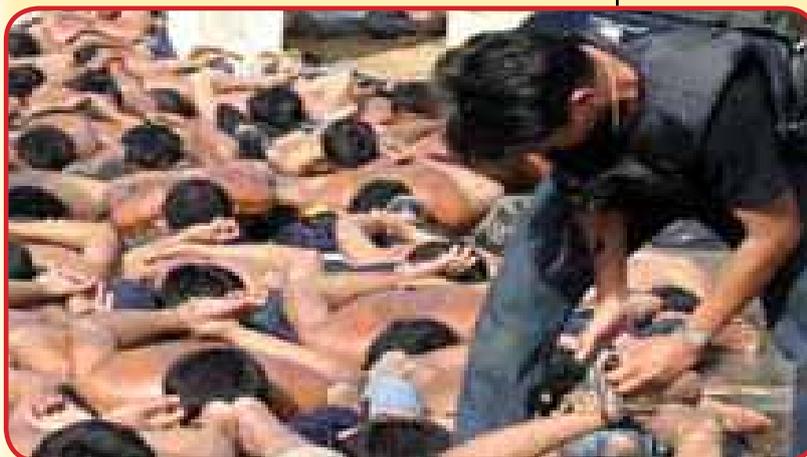
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## **ASEAN CHARTER - ARTICLE 2: PRINCIPLES (SELECTED)**

- (a) Respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States;**
- (b) shared commitment and collective responsibility in enhancing regional peace, security and prosperity;**
- (c) renunciation of aggression and of the threat or use of force or other actions in any manner inconsistent with international law;**  
...
- (e) non-interference in the internal affairs of ASEAN Member States;**
- (f) respect for the right of every Member State to lead its existence free from external interference, subversion and coercion;**
- (g) enhanced consultations on matters seriously affecting the common interest of ASEAN;**
- (h) adherence to the rule of law, good governance, the principles of democracy and constitutional government;**
- (i) respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice;**
- (j) upholding the United Nations Charter and international law, including international humanitarian law, subscribed to by ASEAN Member States;**

est Southeast Asia report of the Asia-Pacific Centre for the Responsibility to Protect, the doctrine should be applied in adherence to the principle of non-interference. Second, the R2P should be related closely to the interests of developing states, especially in the fields of development and capacity-building. Third, it should be noted that the region's governments take a broader view of protection of civilians than those in the West, insisting that 'populations are also insecure when they are unable to afford food, proper health care and access to basic education.'

There is support by ASEAN states for the first two pillars of the R2P, which include a range of non-coercive initiatives which can be used by the international community to assist states in fulfilling their responsibilities. There is almost no support for the reactive – in particularly the coercive military – component of the third pillar of the R2P, as noted by the Asia-Pacific Centre for the Responsibility to Protect (see info box on page four). This is due in part to the perceived conflation of the R2P doctrine with 'humanitarian intervention', and the contentious nature of the R2P itself.

### **R2P and the Evolution of an ASEAN R2P Framework**

The states of the global South, particularly in Asia, claim that conflict cases should be dealt with only by the individual state. However, Associate Professor Kamarulzaman Askandar, coordinator of the Southeast Asian Conflict Studies Network, has pointed out that there also exists a 'regional process of "intervention"' in Southeast Asia, involving ASEAN observers and peacekeepers in other ASEAN states. Moreover, governments in Southeast Asia have appeared to be receptive to some points raised about improving peacekeeping operations in documents such as the Report of the International Commission on Intervention and State Sovereignty (2001) and the Report of the UN Secretary-General on the Prevention of Armed Conflicts (2001).

#### *Developing new norms within the ASEAN Security Community*

Conflict prevention incidentally finds some congruence with ASEAN's emphasis on regional security. This state-centric conception of security includes some elements of human security, such

as the notion of 'comprehensive security' which goes beyond – but does not exclude – the military to embrace the political, economic and socio-cultural dimensions. Former ASEAN Secretary-General Rodolfo Severino has suggested that the development of an ASEAN Security Community could include 'new' norms that would govern the conduct of states within their own borders, as well as the treatment of their own populations. This would be in addition to cross-border and regional threats to security like environmental disasters and the spread of serious diseases across two or more countries. Although the principles of the Responsibility to Protect were not mentioned in Severino's document at that stage, he suggested that ASEAN could adopt 'common values and norms' that might comprise the 'collective rejection of genocide, torture, the overthrow of legitimate governments by military force...and other acts prohibited by existing UN conventions', as well as principles derived from the Universal Declaration of Human Rights and the 1993 Vienna Declaration and Programme of Action.

***“Despite the scepticism of several states, the formation of an ASEAN peacekeeping force would likely provide a source of support in the application of the security framework. In doing so, ASEAN could establish a comprehensive peacemaking and peacebuilding facility to train government officials and security personnel on the range of conflict resolution measures that do not entail the use of force...”***

### *Growing roots of the R2P in ASEAN*

More specifically, what could be the legitimate bases for an ASEAN-specific R2P norm? At least three possibilities exist, with varying degrees of legitimacy and practicality.

First, during the Vietnamese invasion of Cambodia in 1979, Vietnam attempted to justify its actions as a case of self-defence, even though gaining regional strategic advantage was most probably the reason for the invasion. Although Vietnam received widespread condemnation for this act, the invasion toppled the genocidal Khmer Rouge regime in Cambodia. As it is for other states, Vietnam's invocation of Article 51 of the UN Charter cannot be a direct source of legal authority for 'humanitarian intervention', but in practice does serve a useful purpose in protecting populations in another country. However, it is important to make clear that military invasions for the purposes of self-defence or humanitarian intervention should not be allowed or condoned, even though they may sometimes inadvertently serve humanitarian ends, as observed by Gareth Evans.

Second, ASEAN could develop R2P norms through the 'regionalisation' of peace operations in ASEAN. This involves primarily framing the ASEAN Security Community as a way of handling security issues and conflicts within the ASEAN framework, aimed at strengthening regional capacities. This would in turn aid ASEAN in responding to security problems such as human trafficking, drug smuggling, piracy and other transnational crimes. Despite the scepticism of several states, the formation of an ASEAN peacekeeping force would likely provide a source of support in the application of the security framework. In doing so, ASEAN could establish a comprehensive peacemaking and peacebuilding facility to train government officials and security personnel on the range of conflict resolution measures that do not entail the use of force, according to Caballero-Anthony and Chng (2009).

Third is the need to emphasise development and capacity-building to meet basic human needs, in order to help prevent conflict and protect civilians. This is part of the preventive aspect of

the R2P tailored specifically to Southeast Asia. In addition to supplying food, adequate healthcare and access to basic education, it includes good governance, proper training of peacekeepers, appropriate use of civil police forces – as opposed to the military – to keep the peace and maintain law and order, and also the disarmament, de-mobilisation and re-integration of former combatants after the end of civil conflicts. Capacity-building also extends to the role of non-governmental and civil society organisations in managing and resolving conflicts, not just in R2P-type situations, but also in peace monitoring during ceasefires, as in the case of Cambodia during the late 1990s.

### **Ways to Operationalise the R2P in ASEAN**

As reviewed thus far, the R2P doctrine has been accepted in principle by most ASEAN states, except Myanmar, in their endorsement of the 2005 World Summit Outcome Document. However, the challenge lies in turning acceptance into concrete actions. Some possible ways of doing so are: first, establish an early-warning capacity; second, enhance multilateral capacity to respond; third, reinforce the oversight mechanisms and authority of regional organisations' member states; fourth,

## **KEY POINTS IN ASEAN STATES' RESPONSE TO THE R2P**

**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.**

**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.**

**(Source: The Asia-Pacific Centre for the Responsibility to Protect)**

enhance strategic partnerships; and fifth, conduct research to ascertain specific causes, triggers, and indicators of R2P violations.

### *Early-warning capability*

ASEAN member states could support the Secretariat in establishing an early-warning and assessment capability in order to fulfil the commitment made in paragraph 138 of the World Summit Outcome Document. This involves compiling and assessing information on situations at risk. An effective early-warning system would enable an early and flexible response, tailored to the circumstances of each case. Assessments could also be country-specific and conducted in consultation with government agencies and civil society organisations. Various UN bodies and centres of conflict studies could provide training on early-warning signs of conflict and R2P situations, with emphasis on political, economic, social and psychological indicators. If a network of non-governmental organisations, research institutions, other

groups and individuals on the ground can be successfully established to provide timely and accurate information, the network would likely help prevent R2P-type situations in the region.

### *Multilateral response*

Like the UN, ASEAN needs to develop robust linkages among various ASEAN entities, particularly those that operate under the aegis of the proposed ASEAN Security Community, and establish a clear focal point that can formulate a carefully calibrated response in the very complex South-east Asian political environment. Linkages can be formed with the coordinating office of the ASEAN Regional Forum, as well as UN bodies such as the Office for the Prevention of Genocide. This could help to bring together early-warning information and alert the relevant departments and agencies to fashion appropriate responses to protect civilians in cases of imminent R2P situations. ASEAN states and their strategic partners could also contribute to a special fund that provides financial resources for humanitarian and peace-keeping efforts.

### *Reinforce member states' oversight and input*

If the ASEAN Security Community adopts the R2P agenda in Southeast Asia, or at least its first two pillars, member states could establish a mechanism for oversight. Oversight would be needed for several reasons, especially for controversial decisions taken in response to or in preventing conflicts from erupting or escalating. Member states could also form expert panels with specialised functions within the Security Community that could, among other tasks, advise the ASEAN Secretariat, look into internal as well as cross-border problems among states in Southeast Asia, and coordinate with external bodies at the UN.

### *Enhance strategic partnerships*

Also important are establishing substantial linkages with UN bodies, inter-governmental organisations and other regional bodies such as research and policy institute networks, regional civil society and non-governmental organisations, sub-regional actors, and the donor community. The advantages of such partnerships are manifold. Different international, regional and sub-regional actors contribute to different aspects of the R2P agenda, as they have varying interests, strengths and capacities, and influences in a given crisis. Much of these can be utilised depending on the specific situation, and these organisations tend to be seen as more legitimate and credible as they would al-

ready have built up relationships with crisis-affected populations, or segments of these groups, on the ground. It should also be noted that proximity to affected groups may have certain drawbacks as well as benefits. Comparative advantages and capacities of these bodies should be mapped in areas such as: first, information gathering and assessment for early warning; second; communication and information-sharing; third, mediation and assistance in building state capacity to prevent conflict and protect their populations from mass atrocities; fourth, military and civilian assets for peace operations, and civilian expertise for post-conflict peacebuilding.

### *Conduct ongoing studies of the R2P*

The particular features of R2P violations are an area that needs to be further studied. For example, there could be substantial overlap between the causes and triggers of R2P violations and armed conflict. What is needed is to separate the causes and analyse the possible trajectories,

and understand what indicators might foreshadow a situation leading to mass atrocities. Under the second pillar of the R2P to support and build the capacity of states to uphold their protection responsibilities, UN Secretary-General Ban Ki-moon has identified several critical capacities. These include conflict-sensitive development analysis, indigenous mediation capacity, and local dispute-resolution capacity. However, more work needs to be done to identify the activities that would enhance these capacities.

### **R2P-type situations in Southeast Asia**

Although Southeast Asia may not exhibit explicitly the characteristics of a region that requires immediate or urgent R2P action, two salient country cases may be relevant when looking at potential R2P-type situations or in exploring a non-coercive variant of R2P.

#### *Insurgency in Southern Thailand*

The low-intensity conflict in Thailand's 'Deep South' has very deep roots, stretching back to relations in the 14th century between the kingdoms of Siam and the Malay-Muslim tributary state of Patani. Historical grievances have evolved to

questions regarding the legitimacy of the Thai state to rule over its southernmost provinces of Pattani, Narathiwat and Yala. The territorial boundaries of these three provinces, as a whole, map approximately onto the territory of the old ethnic Malay Patani kingdom.

The start of the recent violence in Southern Thailand can be immediately traced back to late 2001, with a major flare-up in 2004. Duncan McCargo has argued that the insurgency is fuelled mainly by doubts about the political legitimacy of the Thai state, as seen through the eyes of the militants. This was caused by a series of policies and practices throughout Siam's, and then Thailand's, history of variously accommodating, co-opting and

repressing ethnic Malay-Muslim identity and rights. As Malay-Muslims make up less than three per cent of Thailand's population, they were 'structurally doomed to impotence within the country's Buddhist-dominated political order', as McCargo puts it.

***"The particular features of R2P violations are an area that needs to be further studied. For example, there could be substantial overlap between the causes and triggers of R2P violations and armed conflict. What is needed is to separate the causes and analyse the possible trajectories, and understand what indicators might foreshadow a situation leading to mass atrocities..."***

#### *A complex conflict with no simple solutions*

By the middle of 2008, over 3,000 people had been killed and nearly 5,000 injured, and from 2004 to mid-2007 there was an average of 40 shootings per month in the South. Major causes of the conflict include the mishandling of political relations by successive Thai governments; the worldview of 'Thai virtuous rule' by a bureaucratic and royalist central administration; the ineptitude of and abuses by Thai security forces, including ill-trained paramilitaries; the continuing political turmoil at the national level; and the activities of the militants themselves. Other salient issues include ethnic identity, language policies, the lack of political participation, the culture of impunity visited onto the Deep South by state authorities, and the over-arching concept of legitimacy with regards to the Thai state's rule over these provinces, as summarised by McCargo and Aphornsuwan.

The challenge of the Southern Thai conflict lies in it being a complex and 'messy, awkward, in-your-face conflict' whose primary cause is a political one, according to McCargo. A purely traditional security or military solution would likely not be feasible or sustainable. Also, the current political

impasse at the national level, as well as the growing societal divide in Thai society at large, would need to be addressed as part of the solution to the southern Thai conflict.

### *Use of the R2P's first two pillars*

The state has a responsibility to prevent exacerbation of the situation in the Deep South. At the same time, it should use appropriate methods to counter the militants, and utilise the assistance of civil society and community organisations in addressing the political, social and cultural grievances of its Malay-Muslim citizens. If the situation deteriorates, or is in danger of deteriorating, it may be useful to seek assistance from the broader ASEAN community to create mediation mechanisms to build trust and reconciliation between various communities, and between the people in the South and the state. Both of these strategies are found within the first two pillars of the R2P doctrine.

### *Advancing the R2P agenda: a benign approach for Southeast Asia*

The humanitarian crisis caused by the devastating cyclone in Myanmar in 2008 due to the lack of immediate action by the military junta renewed debates on the utility of the R2P in humanitarian crises. In Southeast Asia itself, there were calls from within some governments and regional civil society organisations for states to act on protecting the people of Myanmar and to alleviate their plight. The leading proponents of invoking the R2P were those from Europe and North America, who argued that the Myanmar government's inaction, particularly during the first three weeks after the cyclone hit, amounted to neglect which could constitute a crime against humanity – one of the four mass atrocity crimes to which R2P applies.

However, rhetoric aside, the legal definitions of a 'crime against humanity' do not cover neglect by a state in the case of natural disasters. Hence, analysts in the region have mooted the concept of 'R2P-Plus' which is devoid of coercive measures, and could help advance the application of R2P by concentrating on natural catastrophes and conflict situations that are on a lighter scale in terms of widespread and deliberate physical violence, but addressing situations that might be similarly dire in the degree of human suffering (Caballero-Anthony and Chng, 2009).

### *R2P-Plus framework for ASEAN*

The R2P-Plus focuses on prevention and can be incorporated within the ASEAN Security Com-

munity. The concept entails building on ASEAN's existing efforts, especially in line with three of the Security Community's five strategic priorities – conflict prevention, conflict resolution and post-conflict peacebuilding. This concept uses three essential conditions of conflict prevention: developing an early-warning capability, preventive toolbox and political will.

The first involves setting up a regional web of civil society actors such as the ASEAN Peoples' Assembly network, think tanks and academic institutions to monitor and identify imminent humanitarian crisis situations, and enable ASEAN to act quickly to prevent them from escalating. In the longer term, ASEAN could develop effective domestic early-warning capabilities through technical assistance targeted at improving the rule of law, the structure and functions of government ministries, and the security forces.

Second, the preventive toolbox could use the proposed ASEAN human rights body as the central mechanism, ideally with the mandate and resources to carry out a monitoring and investigative role.

Third, the political will that should be generated to address a potential conflict situation or natural catastrophe would include: the ability to generate multi-faceted arguments based on morality, national interest, economics and domestic politics; institutional processes that are capable of translating knowledge and concern into relevant action; and a sense of confidence that timely reaction would make a positive difference to the region's progress towards security, economic and social integration.

### **Internalising 'sovereignty as responsibility'**

Ultimately, it should be recognised that the R2P has deep roots not only in human rights, humanitarian, and refugee law, but also in the very notion of sovereignty. As Edward Luck has stated, the R2P 'seeks to reinforce one of the essential elements of statehood and sovereignty - the protection of people from organised violence.'

ASEAN states can take comfort in understanding that the best way to prevent undue coercive interference is to internalise the concept of 'responsibility as sovereignty' as a core value. This will go a long way in helping ASEAN states with basic developmental issues, and also the capacity to prevent mass atrocity crimes from occurring.

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