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Roadmap for the Responsibility to Protect (RtoP) in Asia: Personalities, Institutions and Processes

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It is over six years since the 2005 UN World Summit endorsed the Responsibility to Protect (RtoP), thus recognising an individual state's responsibility to protect its citizens from four mass atrocities – genocide, war crimes, crimes against humanity and ethnic cleansing. While the 2005 *World Summit Outcome* document passed by consensus, regional differences have emerged as individual states and regional organisations sought to translate word into deed. This NTS Perspectives investigates the RtoP's traction in Asia (focusing on Southeast Asia), identifies key stakeholders in the region and offers pathways forward.

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Executive Summary

Overview

Since the 2005 UN World Summit, the UN Secretary-General has sought to promote the Responsibility to Protect (RtoP) worldwide. He has appointed a Special Adviser on the Prevention of Genocide as well as a Special Adviser on the RtoP; and, in 2009, he issued a report on *Implementing the Responsibility to Protect*.

The 2005 *World Summit Outcome* document places emphasis on an individual state's responsibility to protect its citizens from four mass atrocities – genocide, war crimes, crimes against humanity and ethnic cleansing. The document also outlines the three pillars of the RtoP doctrine. The first pillar reaffirms the responsibility of the individual state for the protection of its population. The second pillar suggests that the international community's role is to support the state in delivering on its duty of care to its population, through assistance and capacity-building activities. Finally, when a state is unwilling or unable to protect its population, the international community has a duty to intervene to protect populations, through diplomatic, economic or, as a *last resort*, military means.

While the *World Summit Outcome* document passed by consensus, regional differences emerged in the process of individual states and regional organisations translating word into deed. This *NTS Perspectives* investigates and evaluates the reception to, and relevance of, the RtoP with particular focus on Southeast Asia and the prospects for concrete actions on the RtoP mandate in Asia.

Discussion

At the international level, the RtoP is gaining traction and attention, whether it is through the success or failure of its application to various incidents, or its misapplication. Across Asia, non-intervention has historically prevailed among

policy and academic communities. However, states, shaped by their common yet differentiated experiences, have also shown themselves to be committed to humanitarianism. Asian states have been engaged in civilian protection worldwide, from the military contributions of ASEAN members to the UN Transitional Administration in East Timor (UNTAET), to India's large peacekeeping contribution. It is therefore important, in discussing the RtoP in Asia, to recognise that the policy decision-making process is complex, combining historical experience with the self-interest of states and legitimate actions to protect civilians from mass atrocity crimes.

The operationalisation of the RtoP has been characterised by a running debate between those who focus on the RtoP as an escalating alert system, and those who view it more comprehensively as a series of longer term, capacity-building measures. The debate ignores the reality that the RtoP is a complex web of largely preventive and overwhelmingly pacific measures. The focus on capacity-building measures highlights the need for a credible early warning system that identifies situations conducive to mass atrocity crimes to ensure a timely response. Indeed, in Asia, there are a range of mechanisms available to individuals and organisations wishing to file human rights-related complaints – the RtoP concerns itself with mass atrocity crimes, and thus falls within the broader human rights framework. These mechanisms, which include UN Rapporteurs, National Human Rights Commissions (NHRCs) and states' courts, vary widely in scope and credibility, which means that a key challenge is to identify those that are strategically important to the effective promotion of the RtoP.

ASEAN is well-suited for the role of facilitating interactions between states with a view to achieving a balance of local understandings and international obligations. However, the framework has historically been preventive in orientation, relying on informal diplomacy to push forward its agenda. There are nevertheless positive developments in the region that could have an impact on the operationalisation of the RtoP, such as the renewed interest in

ASEAN peacekeeping training centres. In addition, with the recently established ASEAN Intergovernmental Commission on Human Rights (AICHR) collecting comprehensive documentation on civilian protection issues to fulfil its mandate, there could be expansion of its capacity – at present limited – to access such information.

While the state remains the primary actor, non-state actors also play a significant role in civilian protection. The Documentation Center of Cambodia (DC-Cam), for example, has been instrumental in disseminating information to the public on the Khmer Rouge trials. At the track two level, the Council for Security Cooperation in the Asia Pacific (CSCAP) produced a memorandum in September 2011 calling for the establishment of a regional risk reduction centre and the strengthening of cooperation between regional mechanisms and the UN. The memorandum also suggests the development of diplomatic and mediation capacity at the regional and national levels to act as part of a broader early warning system.

In addition to the abovementioned avenues, there are three main international legal frameworks complementing the RtoP, namely, international humanitarian law (notably through the Geneva Conventions), international human rights law and general international law. In Asia, however, institutional capacity and structural governance issues need to be addressed first.

Internationally, there are several non-state networks, such as the International Coalition for the Responsibility to Protect (ICRtoP) connecting groups worldwide to promote the RtoP. Unfortunately, the majority of non-governmental organisations (NGOs) in Asia, reflecting the low traction of the RtoP at the grassroots level, lack prior knowledge of the RtoP per se.

Summary of recommendations

As the discussion section highlighted, there are several avenues conducive to promoting the RtoP in Asia, and Southeast Asia in particular. However, they require capacity development at the national, regional and international levels.

National level

- Across Asia, there are 15 NHRCs that uphold the Paris Principles. These NHRCs could, through the Asia Pacific Forum, work with their counterparts in the region to facilitate and develop their capacity, and to encourage the establishment of NHRCs in states currently without them.
- While consensus on the RtoP had been achieved at the UN, the execution of the norm at the national level is vital to its success. Thus, across Asia, states need to focus on implementing civilian protection strategies – paying particular attention to those most vulnerable including women and children – through engaging with stakeholders to assess RtoP situations on the ground, and through collaborating with stakeholders at the regional and international levels thus ensuring that communication channels remain open.
- As a region host to many internal conflicts, it is important that adherence to international humanitarian law is effectively communicated to states' security forces. This could be achieved through awareness and education programmes. These programmes could be conducted in collaboration with relevant organisations (the International Committee of the Red Cross, for example).

Regional level

- In Southeast Asia, ASEAN is currently developing a regional human rights convention in accordance with international obligations. To assist in its formulation, comprehensive documentation of the challenges faced around the region, and in particular the susceptibility of various countries to escalatory RtoP situations, is needed to ensure that the convention suitably addresses local dynamics.

- The development of an ASEAN-led network of peacekeeping centres will provide a new mechanism through which the promotion of the RtoP and awareness raising of international humanitarian law and other relevant international laws can be achieved. The network, with its diversified technical capabilities, could also provide a framework through which to monitor potential RtoP situations in the region.
- A tripartite structure drawing on the experiences of stakeholders – the UN, ASEAN and national governments – to develop an effective response network could facilitate increased awareness of the RtoP through knowledge sharing and communication across and between levels of government.

International level

- There is already an established body of international humanitarian law, international human rights law and customary international law that Asian states subscribe to. However, the difficulty remains in implementation and awareness. While the *World Summit Outcome* document reaffirmed previous commitments, and subsequent UN Secretary-General's reports (in 2010 and 2011) outlined a broad strategy, there remain gaps in communication and awareness between UN officials and those responsible for capacity development at the regional and national level. With the increasing reliance on regional groupings to legitimise intervention in escalatory RtoP situations, there is a need to build up capacity to provide adequate response.

Introduction

It is over six years since the 2005 UN World Summit endorsed the Responsibility to Protect (RtoP). The 2005 *World Summit Outcome* document places emphasis on an individual state's responsibility to protect its citizens from four mass atrocities – genocide, war crimes, crimes against humanity and ethnic cleansing. The document also outlines the three pillars of the RtoP doctrine. The first pillar reaffirms the responsibility of the individual state for the protection of its population in the first instance. The second pillar suggests that the international community's role is to support the state in delivering on its duty of care to its population, through assistance and capacity-building activities. Finally, when a state is unwilling or unable to protect its population, the international community has a duty to intervene to protect populations, through diplomatic, economic or, as a last resort, military means (UNGA, 2009).

Since the inclusion of the RtoP in the 2005 *World Summit Outcome* document, interest has been growing in the RtoP as a pledge for ending mass atrocity crimes. While the conceptual development of the RtoP continues, and strategies are developed to turn it into an 'action mandate', the debate continues between those who advocate it, those who reject it, and those who are largely indifferent to it.

This NTS Perspectives investigates the normative development of the RtoP and its interaction with the prevailing dynamics in Asia, with a particular focus on Southeast Asia. Through illuminating the interaction between the UN and ASEAN member states, this NTS Perspectives seeks to understand the relationship between the two at the national, regional and international levels. It also seeks to identify key stakeholders, their potential roles in the application and dissemination of the RtoP, and their relative influence in terms of promoting the RtoP in the region.

While there has been success in implementing the RtoP in Kenya in 2007 following post-election violence, there have also been failures, notably

in Darfur and in the Democratic Republic of the Congo. Also, the RtoP has been invoked incorrectly in the cases of the US and UK invasion of Iraq, the Russian invasion of South Ossetia and the French use of the RtoP in the wake of Cyclone Nargis in Myanmar (Badescu and Weiss, 2010). More recently, a UN Security Council resolution invoked the RtoP to respond to the situation in Libya but not Bahrain or, to date, Syria, which raises poignant questions and illustrates the constraints surrounding the application of the RtoP. However, it appears clear that the RtoP notion is gaining traction and attention, whether it is through the success of its application to various incidents, its failure, or its misapplication. This NTS Perspectives looks at the development of the debate and identifies the challenges and prospects for the RtoP norm in Asia.

Normative evolution

Balancing responsibilities: Intervention and state sovereignty

In the wake of the 1994 genocide in Rwanda, and the failure of the international community to adequately respond to or prevent it, UN Secretary-General Kofi Annan asked this question: if humanitarian intervention is unacceptable, then how does the international community respond to a Rwanda or a Srebrenica? In response to this, the Canadian government established the International Commission on Intervention and State Sovereignty (ICISS) in September 2000. The ICISS released a report titled *The Responsibility to Protect* in 2001, in which it proposed that individual governments were the primary actors in ensuring the protection of populations. The ICISS, through its report, effectively argued for the notion of sovereignty as responsibility. It essentially focused on three components: the *responsibility to prevent*, the *responsibility to rebuild* and the *responsibility to react*.



Srebrenica massacre memorial gravestones.

In posing the question, the UN Secretary-General aimed to move the debate beyond humanitarian intervention and towards the ways in which the international community is able and willing to prevent another mass atrocity. The ICISS report identifies the individual as the referent object rather than the state, while still recognising the state as the primary actor. Although the norm shares with humanitarian intervention the same premise, namely, that sovereignty is no longer absolute, it de-emphasises the ‘right to intervene’ and takes a more comprehensive view of state responsibility in line with the concept of human security (Arbour, 2008:448). Indeed, it could be argued that the norm reflects the more globalist language of the UN Charter. As Annan pointed out in 1998, the Charter was issued in the name of the ‘peoples’, not the ‘governments’ (Lyon, 2009:44).

One criticism that has been levelled against the RtoP doctrine is that it is used as a key normative justification for more informal intervention associated with state-building where Western responsibility is much more limited and indirect, in contrast to humanitarian intervention where it is more open and direct (Chandler, 2010:164). Nevertheless, in dealing with, or preventing, mass atrocities, the RtoP approach does offer a more comprehensive and accepted notion of sovereignty.

The RtoP: More than mass atrocities?

The shift from absolute to responsible sovereignty has been a long time in the making; the RtoP restated the responsibility of the state to its people but operationally, it continues to be refined. The RtoP definition in the *World Summit Outcome* document omits two key provisions initially outlined in the ICISS (2001:33) report:

- ‘situations of state collapse and the resultant exposure of the population to mass starvation, and/or civil war.’
- ‘overwhelming natural or environmental catastrophes, where the state concerned is either unable or unwilling to cope, or call for assistance, and significant loss of life is occurring or threatened.’

The extension of the right of protection to those affected by natural or environmental disasters or civil war was seen as a bridge too far and did not make it into the *World Summit Outcome* document. That said, many proponents of the RtoP still regard the main principle of the norm to be the protection of persons whose own governments are unwilling to provide such protection (Martin, 2010:42). Indeed, the evolving roles of various agencies and institutions suggest that the need to protect such persons is increasingly recognised.



Environmental displacement: RtoP or Not RtoP?

Under the 2001 International Commission on Intervention and State Sovereignty (ICISS) report, forced displacement as a result of overwhelming natural or environmental disasters and/or state collapse leading to mass starvation was included in the Responsibility to Protect (RtoP) definition. In fact, the RtoP, with its roots in the UN's Guiding Principles on Internal Displacement, was seen by many as a further development of the international response to mass internal displacement. However, subsequent negotiations at the 2005 World Summit excluded the two scenarios from the RtoP definition. Within the scholarly community, there are advocates for a return to including such scenarios as well as those who subscribe to the more restrictive definition that is currently used. The above picture illustrates the pervasive flooding in Bangladesh that has caused the internal displacement of many in the country. The affected communities now live in temporary settings along the rivers. The plight of these communities would have invoked the RtoP under the original scope of the concept.

Martin (2010:56) points out that the functions of the UN High Commissioner for Refugees (UNHCR) now extends to the protection of such persons. Also, some non-governmental humanitarian organisations now go beyond assistance, entering the protection field even when they lack a mandate for protection (Schubert and Smith, 2007:34). This illustrates that many organisations utilise a broader understanding of the RtoP in the field when the formal RtoP definition is at present restricted to preventing mass atrocity crimes.

It should also be noted that the roots of the RtoP notion lie with broader protection issues, not just a concern with the prevention of mass atrocities – it in fact evolved from a need to protect internally displaced persons (IDPs). In the aftermath of the Second World War, the international community focused largely on refugees, and as the Cold War took hold, and made borders formally impenetrable, the rights of those displaced within national borders became increasingly ignored (Cohen, 2010:17). It was only after the Cold War that there was significant progress on IDP issues, with Francis Deng, as Representative of the Secretary-General on IDPs, introducing in 1998 a set of Guiding Principles on Internal Displacement based on the concept of sovereignty as responsibility (Cohen, 2010:20).

On the ground, it appears that the UNHCR is already implementing the broader ICISS conception of the RtoP, rather than the definition in the *World Summit Outcome* document. Thus, it seems as if there is a disjuncture between what is formulated in New York or Geneva and what is reflected in field operations. It is argued here that this is reflective of a difference between informal normative developments on the ground, where institutions are responding to the needs of individuals, and the political commitments made by states in the UN General Assembly or UN Security Council. While the hard politics of negotiation at the UN oftentimes waters down what is actually happening on a case-by-case basis on the ground, it is nonetheless a necessary requirement for legitimacy and formal normative acknowledgement and endorsement. Essentially, the RtoP ethos is:

part of a matrix that includes not just international laws and institutions such as the Security Council and the International Criminal Court, but the strength of the judicial and security systems within states. These in turn depend on good governance, which itself is grounded in social and economic development. (Power, 2009:20)

What the above observation highlights is that the RtoP as a norm is necessarily going to be implemented across and between different levels of governance, with the caveat that only the UN can mandate the use of force. Indeed, despite discussing the available options at length, the 2001 ICISS report does not wholeheartedly endorse authorisation of the use of force by bodies other than the UN Security Council (Massingham, 2009:820).

Growing international prominence

With the RtoP rhetoric riding high in public, the UN General Assembly debated and drafted two paragraphs with specific reference to the RtoP for inclusion in the 2005 *World Summit Outcome* document (UNGA, 2005: paras 138 and 139). However, with the discussion having taken place behind closed doors, it is difficult to construct a greater understanding of the deliberations.

While the decision to include the two paragraphs has been praised by RtoP proponents, there are no institutional obligations flowing from it other than those that existed prior to the declaration, as no vote was held on the document (Chandler, 2009:31). Also, between the 2001 ICISS report and the inclusion of the two RtoP paragraphs in the 2005 *World Summit Outcome* document, a noticeable separation of the RtoP from the use of coercive force had occurred – there had been a shift from a focus on the responsibility of the Western states to intervene, to an emphasis on the responsibilities of the ‘failing’ state (Chandler, 2009:30). Nevertheless, the two paragraphs in the outcome document do represent an effort to endorse, through the ‘three pillars’ complex,¹ practices that were already prevalent on the ground in peace operations.

Contestations and confusion

Even though the previous developments represent endorsements of the RtoP norm, and illustrate its growing importance in international relations, it is also important to note that the norm remains contested and has been applied inconsistently. While the endorsements may serve to build awareness of the RtoP norm worldwide, the high profile gained by the RtoP also increases the likelihood of the misuse of the norm which could potentially lead to a negative ‘norm cascade’² that could choke the RtoP at birth (Badescu and Weiss (2010) paraphrasing Gareth Evans).

Further, confusion over the definition and application of the RtoP remains, with opinions divided between those who see it as an escalating alert system and those who view it more comprehensively as a renewed focus on a series of longer term, capacity-building measures.³ These conversations reflect the long-standing debate between positive and negative human rights. Essentially, pillars one and two of the RtoP support positive human rights and pillar three represents negative human rights. This difference is best encapsulated by the relationship between the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights which sought to implement the Universal Declaration of Human Rights. Bellamy (2010:160), however, posits a different cause for the confusion, arguing that ‘many commentators and some diplomats switch between the first mode (RtoP as policy agenda informed by [longer term] commitment to normative principles) and the second (RtoP as a speech act [invoked in particular in times of crises] and catalyst for [decisive] action)’ when ‘the two are in fact incompatible’. These debates continue even though the particularities of the three pillars of the RtoP are clear, and despite the RtoP being in reality a complex web of largely preventive and overwhelmingly pacific measures.



While the rhetoric of non-intervention remains prominent in Asia, the reality is that Asian states contribute to UN peace operations around the world, and notably in Asia. Pictured here are members of the Malaysian contingent of the Formed Police Unit (FPU) of the UN Integrated Mission in Timor-Leste (UNMIT) during a rapid deployment exercise in Timor-Leste in 2008.

Diffusing the RtoP in Asia: Challenges

The RtoP and the non-intervention norm in Asia

Across Asia, the norm of non-intervention has prevailed – at least discursively and rhetorically – among decision-makers and the policy and academic communities since the Second World War. However, on close inspection, while states may favour non-intervention in their rhetoric, they have in fact shown a commitment towards humanitarianism in their actions; a commitment shaped by their common yet differentiated experiences of colonialism, independence movements, modern industrialisation, penetration by the major religions, rapid shifts from rural to urban populations and associated industries, and strong local identities not solely associated with the nation-state (developed from Neher (2002)). There are a multitude of examples of Asian states providing support for civilian protection efforts both within and outside Asia – from the

military contributions of ASEAN members to the UN Transitional Administration in East Timor (UNTAET), to India being a major provider of personnel for UN peace operations.

Indeed, to suggest that the debate over intervention in Asia is simply a matter of traditional versus popular sovereignty norms misrepresents the complexity of the policy decision-making process, which combines historical experience with the self-interest of states and legitimate actions to protect civilians from mass atrocity crimes. While states in the region frame their roles and responsibilities largely through the language of self-interest, they do as mentioned earlier still contribute to the universal goal of preventing mass atrocity crimes. Such participation, both as provider and recipient, is often overlooked by policymakers and academics. Thus, it could be seen that non-intervention does not in practical terms form a barrier to the diffusion of the RtoP norm in Asia. One of the main hindrances, discussed in the next section, is how to ensure that, in the process of policy dissemination, little is lost in translation.

Policy dissemination and global governance

When a global agreement on a norm is reached, the general challenge is the drift that could occur as the norm traverses the channels of communication between government officials in international settings and those based at home. When a norm drifts, it makes it difficult to understand the traction it holds at the sub-national, national and regional levels.⁴ The flashpoint of the drift tends to be where global considerations meet local realities surrounding implementation. At this point, the effectiveness of the translation from the international to the national level determines whether a norm sinks or swims, and in turn determines (1) policies in the field; (2) agendas at ministerial meetings; and (3) motivations for subsequent UN resolutions.

This type of implementation-feedback mechanism makes it easy for a new norm to be manipulated, as was demonstrated by the invasion of Iraq by the US and UK and the Russian invasion of South Ossetia (Badescu and Weiss, 2010). Thus, to advance a norm after it has global endorsement – and to ensure that the parties responsible for putting the norm into practice are aware of the new mandates given to them through the UN – appropriate institutions and champions, as well as checks and balances, need to be identified.⁵

The RtoP references in, for example, the *2005 World Summit Outcome* document, define what is expected of the international community writ large, and provide the UN with the necessary information on how to act in cases of specific mass atrocity crimes. As a result – and through the necessary relationships built within the UN system and at the regional, national and sub-national levels, but more importantly *across* and *between* these – words can be turned into deeds.

While states are not the only stakeholders in international affairs, they certainly remain the most important. Whether states are democratic, semi-authoritarian or authoritarian, they remain the main decision-makers at the international level. That said, non-state actors such as businesses, trades unions, influential individuals and non-governmental organisations (NGOs)



It was at the 2005 World Summit, the high-level plenary meeting of the 60th session of the UN General Assembly, that the Responsibility to Protect (RtoP) was agreed upon.

play an important role in framing debates and raising awareness in order to influence individual and collective decision-makers. In some instances, these roles are formalised, such as within the International Labour Organization and its tripartite representative structure (Symons, 2011:5). Within the RtoP context, there are several avenues through which the norm can be implemented internationally, regionally and nationally. In the following sections, each of the three governance levels is addressed in turn.

Diffusing the RtoP in Asia: Implementation

National mechanisms

In Asia, individuals and organisations could turn to a range of mechanisms to file a human rights-related complaint, including state courts, ombudspersons, National Human Rights Commissions (NHRCs), human rights committees on particular issues, public hearings, social movements and NGOs. However, there are significant differences in the various mechanisms, both in their scope and credibility. It is therefore critical to identify the strategically important ones, and work together with those to more effectively promote the protection of civilians under the rubric of the RtoP.

The ECCC

Up to 1.7 million Cambodians – amounting to nearly a quarter of the country's population – died of extrajudicial executions, starvation, overwork and disease as a result of the social engineering policy implemented by the Khmer Rouge between 1975 and 1979. Efforts to return justice to victims and their families have been protracted. It was not until the establishment of the UN-backed hybrid genocide tribunal, the Extraordinary Chambers in the Courts of Cambodia (ECCC), in 2007 that legitimate judicial proceedings to hold the Khmer Rouge accountable for their crimes began.



NHRCs

National-level, statute-based NHRCs are the main form of human rights mechanism in the Asia-Pacific. In a survey, NHRCs across the Asia-Pacific indicated that they carried out activities such as visiting detention facilities and receiving complaints from detainees (OHCHR, 2009). Notably, some NHRCs identified promotional and awareness-raising activities rather than protection work. However, the extent and effectiveness of their work varied across the region (OHCHR, 2009). It has been noted that limitations in their effectiveness include questions of accountability, public confidence, (in)sufficient engagement with government institutions and NGOs, mandate, financial and structural independence, enforcement power and evaluation processes (Caballero-Anthony et al., 2009). Thus, while these institutions are suited to promoting the RtoP and preventing mass atrocities, the variations seen in their effectiveness means that their work would have to be complemented by other measures.

Court hearings

Public participation through court hearings on cases of human rights violations are used by

some NHRCs. This approach clearly has its limitations, as the courts in some countries are viewed as non-transparent and overly monolithic. Another approach involves specialised court proceedings with adjunct judges adjudicating human rights cases. A notable example is the Extraordinary Chambers in the Courts of Cambodia (ECCC), more commonly known as the Khmer Rouge trials, which was established to hold those accountable for the mass atrocities committed in Cambodia. Its operation is broadly a compromise between international and local norms, an arrangement which is reflective of the function and form that the RtoP has in the region (Cook and Gong, 2011). However, even in this case, limitations exist and judicial impartiality is an international and local concern (Cook et al., 2011).

Ombudspersons

Ombudspersons are another national-level avenue. They have access to national parliaments; and where they exist, they mostly focus on internal auditing. Drawing on the expertise of ombudspersons in the region would provide another avenue through which to monitor sites of conflict with the potential to escalate into situations conducive to mass atrocity crimes.

For some countries such as Thailand, human rights abuse cases must pass through an ombudsperson before a court hears the case. In East Timor, the ombudsperson (or *provedor*) has a broad human rights mandate but has three specific areas of concern – human rights, good governance and anti-corruption. In line with these concerns, it aims to increase awareness about human rights and justice, to build capacity to protect human rights in all organs of government, and to implement an anti-corruption strategy. However, due to a weak judicial system, as well as its financial dependence on the ministry of finance and planning and on external donors, the office faces significant challenges (Caballero-Anthony et al., 2009).

Non-state actors

While the state remains the primary actor, non-state actors also play a significant role in civilian protection. They provide aid to victims of human rights abuses and raise awareness at the local level. The work of the Documentation Center of Cambodia (DC-Cam) in communicating ECCC proceedings and information to the public is a case in point (Cook et al., 2011). Such efforts, conducted in coordination with NHRC activities and in consultation with local communities, where such mechanisms exist – or other national mechanisms, where they do not – could form part of a strategy to prevent mass atrocities. However, it is important to remember that non-state actors can themselves also be a source of human insecurity, as noted by the 2009 Maguindanao massacre. It must thus be recognised that the involvement of non-state actors could have negative as well as positive impacts on civilian protection.

Another significant issue is that while NGOs often provide indirect civilian protection through their assistance programmes across the region, many remain largely unaware of the RtoP doctrine (Maulia, 2012). For an early warning system to emerge, there is a need for more awareness-raising initiatives both within governments and in the NGO community across the region.

Overall, as the number of NHRCs increase across Asia, it is not their presence or absence that

poses the greatest challenge to the advancement of the RtoP and the prevention of mass atrocities. Rather, the most important immediate-term task is to identify those mechanisms that could meaningfully bridge the gap between international commitment to the RtoP and local capacities. Further, there is a need to coordinate the activities of these mechanisms – in order to share knowledge, to raise awareness at the appropriate level and to develop the capacity for an effective early warning system.

Regional mechanisms

This section argues that there have been significant regional institutional developments in Southeast Asia, and that these offer insights into the ways in which this one Asian sub-region has provided an environment conducive to the RtoP norm. However, it is first important to ground the understanding of regional relations in their historical context. Doing so would provide some idea of the limits and possibilities of these developments and the pathways ahead.

ASEAN

Essentially, institutional development and policy research in the region had been largely a result of ‘driving with the rear-view mirror’ (Wendt, 2001). The Bangkok Declaration signed on 8 August 1967 set out the vision for ASEAN and was brought into effect through the 1976 Treaty of Amity and Cooperation. Its fundamental concern was ‘to reassert individual sovereignty, mutual protection from foreign influence and ensure each member was equally protected from another member’s influence’ (ASEAN, 1976); thus, it was seemingly not a suitable avenue through which to promote the RtoP norm. It was only with the signing of ASEAN Vision 2020 in 1997 that the way was paved for more informed strategic approaches going forward. The signing of the ASEAN Charter in 2007 turned this vision and grouping into a legal entity, and offers room for cautious optimism for the advancement of the RtoP at the regional level where ASEAN is the ‘primary driving force’ for regional interactions with external partners (ASEAN, 2007: Article 1.15). While the ASEAN Charter fell short of what many progressive thinkers in the region had been

pushing for, there are still opportunities to include greater commitments to civilian protection (to fulfil the ASEAN Vision 2020) when the ASEAN Community roadmap for the next phase comes up for discussion.

The 2007 ASEAN Charter sees an increase in the number of direct references to human rights, as well as references to regional peace and security; compared to the number of references to non-interference and state sovereignty principles;⁶ and in contrast to the texts of the earlier Bangkok Declaration and the Treaty of Amity and Cooperation.⁷ The Charter commits ASEAN member states to upholding international humanitarian law (ASEAN, 2007: Article 2(i)) through the enacting of domestic legislation ‘to effectively implement the provisions of this Charter and to comply with all obligations of membership’ (ASEAN, 2007: Article 5.2). These articles are in line with the RtoP norm and represent the regional justification for the implementation of the RtoP. They also highlight the significance given by the ASEAN Charter to multiple layers and actors, such as external partners and national laws to enforce international obligations. In addition, the Charter specifies that the ASEAN chair

shall ‘actively promote ... ASEAN ... through policy initiatives, coordination, consensus and cooperation’ complementing the association’s focus on preventive strategies (ASEAN, 2007: Article 32(a)).

As a regional institution, ASEAN is well-suited for the role of facilitating interactions between states with a view to balancing local understandings with international obligations. However, the approach taken by the framework has historically been preventive and informal, using channels such as the ASEAN Regional Forum (ARF). The ARF, established in 1994, is the meeting place of the regional security community. It promotes and relies on track two diplomacy to foster trust and understanding, and provides a forum to address appropriate concerns within its mandate (ARF, 1994).

Alongside the ARF, the Council for Security Cooperation in the Asia Pacific (CSCAP) was established to serve as a track two mechanism for addressing security concerns. This regional mechanism enables civil society to invoke ARF member states’ commitment to the RtoP through memoranda. Indeed, a CSCAP study group produced Memorandum No. 18 on the RtoP in September 2011. This memorandum calls for the establishment of a regional risk reduction centre as well as the strengthening of cooperation between regional mechanisms and the UN. It also suggests the establishment of regional diplomatic and mediation capacity, and the appointment of national-level officials – these will act as part of a broader early warning system (CSCAP, 2011).



The 10 ASEAN member states are Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Singapore, Philippines, Thailand and Vietnam.

The AICHR

The ASEAN Charter mandated the formation of a regional human rights mechanism. As a result, and after significant negotiations, the AICHR was launched at the 2009 ASEAN Summit. Subsequently the appointed Commissioners drafted the Terms of Reference for the body which operationalised its mandate.

AICHR Commissioners are appointed by member state governments, with the internal processes for selection varying from state to state. The perspectives of the various Commissioners may divide along national lines, but their opinions can also differ from those held by their own state's government officials. While there is criticism that the AICHR does not have the mandate to investigate civilian abuse claims (Caballero-Anthony et al., 2009), the ASEAN system of rotating Chairs means that each member state will host AICHR meetings once every 10 years. These meetings provide the AICHR collectively, or the Commissioners individually, with a de facto opportunity to visit areas with potential or escalating RtoP situations and to meet with civil society groups concerned with civilian protection. Furthermore, for the AICHR to fulfil its mandate (ASEAN, 2009a: para 4.8), it has to identify key stakeholders and involve them in data collection. There is thus a need for it to establish an open and transparent process for such engagement, which will strengthen its own position.

At the formal institutional level, these developments are tempered by the realisation that the AICHR Terms of Reference (ASEAN, 2009a) are significantly weaker than civil society had hoped for. Nevertheless, the AICHR is still at an early stage of development, and as its functions and form evolve, civil society needs to adopt a dual-track approach. It should, on the one hand, push the envelope while working within the parameters of the AICHR Terms of Reference, and on the other, pursue more fundamental institutional reform to promote the RtoP.

As a result of the AICHR's embryonic mandate, the framing of issues becomes all the more important for the mechanism; and the AICHR, alongside other stakeholders, needs to ensure

that its efforts focus on multiple levels in the region – individual politicians, local governments, particular state institutions, national legislation, other regional organisations (such as the ARF), the UN system and civil society. It is through this creative and multifaceted approach that the RtoP can be successfully operationalised and implemented in Southeast Asia.

The Asia Pacific Forum

The Asia Pacific Forum facilitates the establishment and strengthening of independent national human rights institutions, and it is the leading human rights organisation in that respect. Its membership is made up of NHRCs (discussed earlier under 'National mechanisms'). NHRCs that are compliant with the Paris Principles are members of the Asia Pacific Forum, while those not fully compliant are associate members. In the Asia-Pacific, there are 15 NHRCs in compliance with the Paris Principles, according to the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. In addition, the region has three NHRCs that are not fully compliant with the Paris Principles and two that are non-compliant (OHCHR, 2011).

The Asia Pacific Forum provides training workshops on the prevention of torture, the international human rights system, national inquiries, the rights of human rights defenders and investigation techniques. It also runs thematic regional workshops. The Forum also provides capacity assessment to determine institutional strengths and weaknesses – such information could form the foundation of an early warning system. The Forum could also serve as a channel for communicating the emergence of RtoP situations to the UN and other relevant stakeholders.

Civil society

With the establishment of the ARF and the ASEAN Political-Security Community, and the ongoing development of regional civil society (outside of CSCAP), the conduct of diplomacy at the track two level is increasingly apparent.⁸ For example, the 2007 2nd meeting of the UNHCR-

backed Asia Pacific Refugee Rights Network brought together more than 100 organisations from across the region. The meeting highlighted that the ‘protection of refugees often depends on political discretion rather than written laws’ (McKinsey, 2009), and that, as a result, the framing of the debate becomes all the more important.

Another attempt at fostering greater civil society involvement was the inaugural ASEAN People’s Assembly in 2000, where past and present government officials were brought together with NGOs and CSOs (Acharya, 2000:386). Indeed, indigenous and regional CSOs⁹ – and their interactions with international NGOs and the wider international community – form the bedrock of efforts to promote the RtoP. Indigenous and regional CSOs also provide the necessary linkages to national governments and institutions, ASEAN, the UN and other stakeholders in potential and escalatory RtoP situations. These interactions occur in an effort to influence government officials and the policy agenda. However, this avenue of influence remains dependent on individual relationships.

As the ASEAN Charter does not embed the relationship between CSOs, national governments and the regional association in any formalised or truly significant way, keeping the influence of CSOs largely to the informal realm (Morada, 2009:186), civil society has to develop new and creative ways to ensure that its voice is heard and fed into the elite decision-making process. This could include the sharing of information through thematic reports on the state of civil conflicts across Southeast Asia which could be made available to, for example, the AICHR. However, the role of such information once it is submitted to the appropriate ASEAN committee is at the discretion of the committee’s Chair, thus highlighting again the importance of individuals and individual relationships.¹⁰

It could be seen, therefore, that while civil society in Southeast Asia at the national and regional level is largely informal, they do nonetheless have an important role to play in identifying RtoP triggers and raising them with officials. Overall, the interaction between ASEAN and

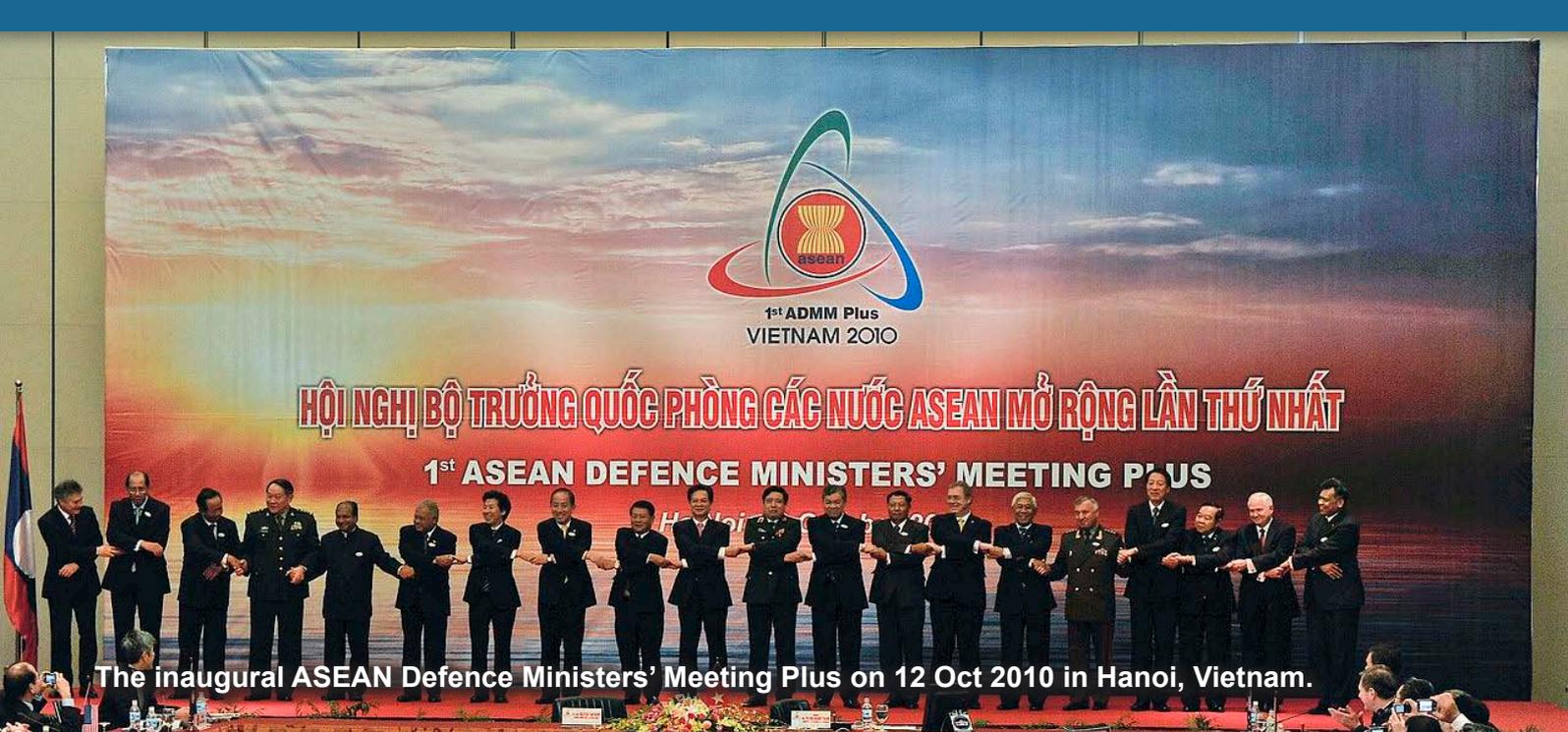
civil society on the issue of human rights could be characterised as instrumental and strategic, but this is necessarily so as, according to one seasoned academic, framing human rights in terms of states’ interests is the way in which it gains policy traction in the region. Indeed, this runs in concert with the RtoP which seeks to strengthen state sovereignty.

Operationalising the third pillar

At present, the regional apparatus has not institutionalised far enough to have developed capacity for reactive measures. Ultimately, this means that, at this point in time, only preventive RtoP strategies and early warning mechanisms (that could lead to the RtoP being invoked) could be operationalised. That said, one current strategy – the development of a regional peace operations capability – could pave the way for the third pillar of the RtoP to be operationalised in the future. This strategy is being realised through the three-year work programme released at the 5th ASEAN Defence Ministers’ Meeting Plus (ADMM Plus) in May 2011, which focuses on fostering increased dialogue and cooperation in security and defence in several areas, including peacekeeping operations and the establishment of an ASEAN Peacekeeping Centres Network (Haywood, 2011; see ASEAN (2011) for more on the network).

Concurrent with such policy developments, some individual member states have sent troops to take part in peace operations within the region, in Cambodia, Timor-Leste, Aceh (AMM, n.d) and Mindanao (EU, 2010). Outside the region, Malaysian troops have been sent to the Balkans and Singaporean police officers to Namibia and South Africa, for example (GOS, 2009). However, these were not part of ASEAN capacity but rather represent the contributions of individual member states to UN peace operations, an important distinction to draw given the focus here on the regional apparatus as an essential component for the implementation of the third pillar of the RtoP under Chapter VIII of the UN Charter.

In sum, the reluctance to implement the third pillar of the RtoP seems to be rooted more in the lack of capacity at the regional level rather than any rejection of the third pillar. Indeed, academics,



The inaugural ASEAN Defence Ministers' Meeting Plus on 12 Oct 2010 in Hanoi, Vietnam.

officials and policymakers in the region reiterate the central role of the UN in authorising the use of force, which itself is a central component of the RtoP. As for the preventive first and second pillar, there are institutions and processes in place, such as the AICHR, which could be utilised at the regional level, and which are well positioned to provide early warning capability and assist in developing internal state capacities, yet have unfulfilled capacity to develop their roles and functions. This unfulfilled capacity is a result of the limited financial resources available to ASEAN institutions and processes under the ASEAN funding regime. As the current financial arrangements operate on the principle of 'equal financial responsibility', any change would be dependent on the willingness and ability of the least-able member state to contribute (Severino, 2006:33).

International mechanisms

Legal frameworks

There are three main international legal frameworks supplementing the RtoP: international humanitarian law (IHL), international human rights law and general international law. The IHL framework seeks to limit the human consequences of armed conflict. It protects persons who are not, or are no longer, taking part in the hostilities; and it restricts the means and

methods of armed warfare. A major part of the IHL is contained in the 1949 Geneva Conventions which were developed and supplemented by three additional protocols (two in 1977 and one in 2005) relating to the victims of armed conflicts. Asian states are party to the Conventions and have national laws upholding civilian protection. However, there are institutional capacity and structural governance issues across the region that inhibit the upholding of the law. Alongside the international legal framework, there are several noteworthy actors within the international community which are significant and potential influencers in the push to implement the RtoP.

UN champions

Within the UN system, a key facilitator of normative evolution is the UN Secretary-General. From early on, Annan's successor and current UN Secretary-General Ban Ki-moon has championed the RtoP norm, as demonstrated by his RtoP report (UNGA, 2009). The 2009 report reiterates the three pillars of the RtoP doctrine (UNGA, 2009). Subsequently the UN General Assembly passed resolution 63/308, in response to which the International Coalition for the Responsibility to Protect, or ICRtoP (2009), noted that it 'received the report, the debate was fruitful and that it should continue'. While the resolution did not endorse the RtoP, it did show support for the norm, taking it forward most



The Human Rights Council

Created by the UN General Assembly on 15 March 2006, the Human Rights Council is an intergovernmental body within the UN system. It consists of 47 member states with the mandate to strengthen the promotion and protection of human rights worldwide, and it works closely with UN Special Procedures to do so. The picture here is from the 15th session of the Human Rights Council held in 2010.

notably through the strengthening of the UN's early warning system and the Peacebuilding Commission (ICRtoP, 2009).

Some have suggested that the RtoP has been used as a means to centralise authority, and have the final check on the use of force placed at UN Security Council level. The UN Secretary-General's 2009 report, by reaffirming the commitment to the RtoP, places the RtoP within customary international law, reserving the right to authorise the use of force to the UN executive branch. The UN Security Council is thus in a position to legitimise the use of force (in the last resort) by a coalition of states to prevent mass atrocities to 'maintain global peace and security' (Orford, 2011). However, critics argue that the UN Security Council has been largely ineffectual in this regard. Given the historical and current politics around the use of force, it is becoming clearer that when the use of force is mandated by the UN, it is more likely to be endorsed or implemented by a regional body, or with a significant contribution from a given region, as has become the norm in peace operations (as

exemplified by the contributions of ASEAN member states, Australia and New Zealand to the UNTAET in 1999). Moreover, international legitimacy can also be conferred at the UN General Assembly, which can mandate its own monitors and investigations should the use of force be blocked at the UN Security Council.

Within the office of the UN Secretary-General, there are two important positions: the Special Adviser on the RtoP, held by Edward Luck; and the Special Adviser on the Prevention of Genocide, held by Francis Deng. The two positions assist in facilitating progress on the RtoP across the world. They work closely with the UN Department of Political Affairs and the UN High Commissioner for Human Rights in the field, and with human rights treaty bodies and Special Procedures bureaucracies. While this work is of central importance at the international level, there remains limited traction at the regional level.

The IPU

Outside of the UN system, but in cooperation with it, is the Inter-Parliamentary Union (IPU), the world association of parliaments of sovereign states. Utilising this multilateral forum to raise awareness of the RtoP with national parliamentarians would allow for greater awareness within individual countries as the parliamentarians hold governments to account. Included in the membership of the IPU are many Asian states and the Arab Inter-parliamentary Union (IPU, n.d.). At present, the ASEAN Inter-Parliamentary Assembly is not an associate member of the IPU although there are eight ASEAN member states with IPU membership.

Civil society

Outside formal government relations, civil society actors also play a key role in furthering understanding of the RtoP. The Global Centre for the Responsibility to Protect is based in New York and produces policy pieces and highlights potential RtoP-like situations. The ICRtoP brings together NGOs from across the world to strengthen normative consensus on the RtoP. The ICRtoP includes NGOs from the Asia-Pacific such as Initiatives for International Dialogue

(Philippines) and the Asia-Pacific Centre for the Responsibility to Protect (Australia). However, overall, there are few Asian NGOs in the ICRtoP, reflecting the current low level of awareness of the RtoP in the region despite its high profile in New York or Geneva. This reality is noted in a recent report by Lina Alexandra of the Centre for Strategic and International Studies in Jakarta, Indonesia, which found that very few Indonesian NGOs were aware of the RtoP (Maulia, 2012).

Proponents of the RtoP at the international level should therefore facilitate greater community awareness through an active campaign with local civil society groups. The work of the Asia-Pacific Centre for the Responsibility to Protect in providing in-country training workshops on the RtoP is notable in this regard. If the RtoP is to gain greater policy traction in Asia, then increasing the frequency of such sessions is the immediate hurdle that needs to be cleared.

Conclusion

This NTS Perspectives began by tracking the normative evolution of the RtoP concept, right up to its inclusion in the 2005 *World Summit Outcome* document, the defining moment for its broad acceptance. However, it is also open to misuse, misinterpretation and is entering a period where the broad definition is being refined. These processes could lead to the norm ending up with a function and form different from what was envisaged when it was conceptualised. Indeed, as Badescu and Weiss (2010) point out, there have already been three significant cases of misrepresentation of the RtoP norm (though they argue that such cases in fact strengthen the norm by allowing these interpretations to be rejected by the international community). Therefore, the challenges posed by the potential for misuse and misinterpretation should be addressed, and this should be done while the RtoP norm is in the current, initial stage of implementation and policy design.

The first challenge is the way in which the concept is translated from the UN to other layers

of governance. The second is the identification of local, national and regional champions – individuals, institutions and civil society well-placed and well-versed in the aims and objectives of the RtoP. The third is communication and coordination across and between the different levels of governance to facilitate what would essentially be an early warning system. With these challenges in mind, there is current traction for the RtoP in Asia but it is at the initial stages of operational development as government officials, academics and policymakers debate the scope of the RtoP and its implications for Southeast Asia.

The latter part of this NTS Perspectives thus examined how the RtoP could be developed in the region, noting the importance of encouraging clear lines of communication between stakeholders. To that end, this NTS Perspectives looked closely at the interactions among stakeholders, including those involving the regional apparatus – an area currently understudied. This NTS Perspectives reviewed various mechanisms, and discussed the work of the AICHR and the CSCAP RtoP study group in relation to their capacity to offer tangible ways to gain the attention of ASEAN member states. These mechanisms could potentially provide input on the operationalisation of the RtoP by collecting and receiving information which could then be disseminated to the appropriate stakeholders within their zone of influence. Through such a process, these mechanisms could push the first two pillars of RtoP up the policy agenda and facilitate the development of an early warning system.

In the immediate future, the success of ASEAN or the wider Asian region in promoting the RtoP norm in its entirety will be dependent on its and the larger community's strategic approach: they would have to frame issues in such a way that member governments see policy and institutional development as in their interest and as a way to prevent mass atrocities, a goal they all share.

Notes

¹ Evans (2008:140) argues that the three pillars are inextricably linked.

² Finnemore and Sikkink (1998:895) argue that a norm life cycle is a three-stage process. The first stage is 'norm emergence', the second stage is the 'norm cascade' when a norm gains broad acceptance and the third stage involves internalisation. While this assumes a positive evolutionary relationship, it is argued that stage two can also include a negative element where a norm gains broad recognition but can be utilised by actors to justify actions not originally intended at 'birth'.

³ The RSIS Centre for Non-Traditional Security (NTS) Studies, Singapore, hosted a series of regional consultations on the RtoP between 2009 and 2011. See for example, RSIS Centre for NTS Studies (2011a, 2011b).

⁴ Ibid.

⁵ Ibid.

⁶ Morada (2009:195–6) has argued that 'of the fourteen principles included in Article 2 of the Charter, only four relate directly to the protection of people's fundamental rights and freedoms', that is, Articles 2(h), (i), (j) and (l). However, this list should be extended to include Articles 2(b), (c) and (d) as they are principles in the UN Charter.

⁷ The 1967 Bangkok Declaration promoted cooperation and peace, broadly including phrases such as 'strengthen the foundation ... for peace' or 'establish firm foundations for peace'. However, nine years later when the 1976 Treaty of Amity and Cooperation was signed, it included references to the 'settlement of disputes by peaceful means' and the 'non-interference in the internal affairs of one another', which highlights the preventive nature of the Treaty specifically, and the institution at that point in time more broadly (ASEAN, 1976). The 2007 ASEAN Charter notes the 'principles of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms', and specifically refers to 'human rights' in three of its

articles (Articles 1.7, 2.2(i) and 14) illustrating a significant normative shift, from the broad and aspirational nature of the earlier Declaration and Treaty, to a less ambiguous commitment to democracy and human rights.

⁸ There are 58 civil society organisations (CSOs) affiliated to ASEAN, mostly covering businesses, sports and the professions (as of 24 March 2009). See ASEAN (2009b) for a list.

⁹ According to the guidelines on ASEAN relations with CSOs, one of the criteria for a CSO to become an ASEAN affiliate is that its membership is 'confined to the ASEAN nationals' (ASEAN, 2006: para 8(a)). In other words, only local CSOs with local memberships may become affiliated to ASEAN thus ruling out international non-governmental organisations (NGOs).

¹⁰ The guidelines on ASEAN relations with CSOs show that affiliated CSOs are able to 'submit written statements or recommendations and views on policy matters or on significant events or on regional or international concerns, to the ASEAN standing committee'; submit their own project proposals for third-party funding; use ASEAN Secretariat facilities, documents and logos; initiate programmes; attend meetings of direct concern to the CSO at the discretion of the link body Chair, and be provided with key ASEAN publications (ASEAN, 1986; revised 2006).

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