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Failing to fulfil the Responsibility to Protect:

The war on drugs as crimes against humanity in the Philippines

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Abstract

The article provides the first substantive analysis of the war on drugs in the Philippines under the Responsibility to Protect. It develops in two stages. First, it argues that the war on drugs constitutes crimes against humanity through an analysis of, i) extrajudicial killings and vigilante justice, ii), dehumanisation, and, iii) the exaggeration of threat. Second, it examines the response of the permanent five members of the UN Security Council (p5) and the Association of Southeast Asian Nations (ASEAN). Despite that the US, the UK, and France have expressed public concerns, we show that they prioritise counter-terrorism and trade over the Responsibility to Protect. Meanwhile, China and Russia uphold the view that the war on drugs is a matter of domestic jurisdiction. Regarding ASEAN, we draw on 26 semi-structured elite interviews conducted in South East Asia (2016-2018) to evidence that the elites prioritise state sovereignty and non-interference. The outcome is that there is a significant protection deficit as the government of the Philippines, the p5, and ASEAN are failing to protect those targeted in the war on drugs. We hope that the article will act as a catalyst for a much needed conversation on the international community's political, legal, and moral responsibilities regarding mass violence against drug users in international relations.

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On February 8 2018 the International Criminal Court (ICC) announced a preliminary examination into the war on drugs campaign launched by the Government of the Philippines since July 1 2016. The investigation centres on the thousands of drug users that have been killed in ‘clashes between gangs’ but also ‘extra-judicial killings in the course of police anti-drug operations’ (International Criminal Court, 2018). As one would expect, ascertaining precise data is difficult. The Philippine Drug Enforcement Agency claims 5,050 people were killed between 1 July 2016 and November 30 2018 (Ellis-Petersen, 2018a). Critics have claimed it is much higher with estimates of 12,000 in January 2018 (Human Rights Watch 2018); 20, 322 in February 2018 (Senator Trillanes cited in Regencia, 2018) and 27,000 by mid-December 2018 (the Chairman of the Philippines Commission on Human Rights cited in Ellis-Petersen, 2018a). Notably, President Duterte made the war on drugs a cornerstone of his election campaign and has maintained strong public support since with an approval rating of 87% in July 2018 (Asia-Pacific Centre for the Responsibility to Protect, 2018, p. 3). During this period, he has continued to frame the war on drugs as ‘a national security issue’ that is outside the remit of the international community (UN Human Rights Council, 2017, p.2). Responding to the announcement of the preliminary examination, Duterte vowed to arrest the prosecutor Fatou Bensouda if she enters the country continues to withdraw the Philippines from the ICC despite the fact that this will not alter the legitimacy of the investigation. Furthermore, in the State of the Nation Address on July 23, 2018 he boldly claimed, ‘the illegal drugs war will not be sidelined. Instead, it will be as relentless and chilling, if you will, as on the day it began’ (Rappler, 2018).

Despite allegations of crimes against humanity and even genocide, the war on drugs in the Philippines has received little academic attention (Simangan, 2018; Espenido, 2018; Geçer and Mahinay 2018). Of specific relevance here is Simangan's (2018) focus on whether the Philippine war on drugs constitutes an act of genocide. To answer this, Simangan uses Gregory H. Stanton's eight stages of genocide and concludes that whilst Duterte's war on drugs does fulfil the understanding set forth by Stanton, it does not meet the requirements set out in the legal definition. The problem with Simangan's analysis is that the obligations embodied in the 1948 UN Convention on the Prevention and Prosecution of the Crime of Genocide depends upon the legal definition being fulfilled. So whilst Simangan calls for immediate international action, she is appealing to an academic framework that although useful, does not carry with it any international responsibilities.

With this in mind, this article adopts a different approach as it utilises the Responsibility to Protect (RtoP) because of the international responsibilities that stem from it.² The RtoP was unanimously endorsed at the World Summit in 2005 and sets out to protect populations from genocide, crimes against humanity, war crimes, and ethnic cleansing (UN Security Council, 2005, p. 31). At this time of writing, the RtoP has been invoked in 75 UN Security Council Resolutions (Global Centre for the Responsibility to Protect, 2018). Accordingly, if the war on drugs in the Philippines does constitute one of these four crimes then it is important to consider the national and international responsibilities set forth in the RtoP. To explain this multifaceted responsibility we use the 'three pillar' framework set out the by former UN Secretary-General Ban Ki-moon in 2009.

² There is precedent for this as the Global Centre for the Responsibility to Protect, the Asia-Pacific Centre for the Responsibility to Protect and the European Centre for the Responsibility to Protect have all included the Philippines in their reports on mass atrocities around the world.

- Pillar I, ‘the protection responsibilities of states’: states are responsible for protecting people (not just citizens) on their territories from the four crimes of genocide, war crimes, crimes against humanity and ethnic cleansing.
- Pillar II, ‘international assistance and capacity-building’: the international community provides assistance to help target states to protect their population from the four crimes.
- Pillar III, ‘timely and collective response’: the international community takes collective action (under Chapters VI, VII and VIII of the UN Charter) without the consent of the state in question, because the UN Security Council judges the government in question to be ‘manifestly failing’ to protect its population from the four crimes.

From an RtoP perspective, the government of the Philippines has the primary responsibility to protect its population from genocide, war crimes, crimes against humanity, and ethnic cleansing. But critically, if a case can be made that the government is committing one of the four crimes then this would constitute a ‘manifest failing’ under pillar III. At which point, the international community has a ‘duty to consider’ on the RtoP all options available under chapters VI, VII, and VIII of the UN Charter (Welsh, 2013, p. 389). As a result, we adopt an RtoP lens because it sets out the political responsibilities that stem from the legal obligations embodied in the Rome Statute. Whilst there are other anti-drug campaigns that may warrant examination, the ICC preliminary examination is the first to focus on an anti-drug campaign. Subsequently, the Philippines represents a timely and important case study that raises questions regarding mass atrocity prevention in international relations.

The article is structured in two parts. First, it answers the question, is the government of the Philippines committing crimes against humanity? To do this, it focuses on three themes,

i) extrajudicial killings and vigilante justice, ii) dehumanisation, and iii) exaggeration of threat. Linking these back to the legal definition in the Rome Statute, we argue crimes against humanity are taking place in the Philippines. From this perspective, a case can be made that under the RtoP the government of the Philippines is ‘manifestly failing’ to protect its population. This raises the question, what is the international community doing about it? The second section answers this question by analysing the role of the permanent five (p5) members of the UN Security Council and the Association of South East Asian Nations (ASEAN). Within the context of the RtoP, these represent key actors in determining the response taken. Although the UN and the EU have openly criticised Duterte’s war on drugs (including two joint statements by the UN Human Rights Council which were signed by the US, France, and the UK³), our research shows that the p5 and ASEAN are undermining the efforts made by these organisations. The US, France, and the UK may make public statements condemning Duterte but in practice they have prioritised the bi-lateral commitment to counter-terrorism and trade. At the same time, China and Russia uphold the view that the anti-drug campaign is a matter of domestic jurisdiction and that the UN and EU should respect state sovereignty. With very few public statements by ASEAN member states, our interview data provides much needed insight into regional views on the war on drugs. It shows that elites in the region view the war on drugs very much like any other anti-drug campaign, a domestic matter, so champion state sovereignty and non-interference. This leads us to conclude that as it stands, there is a significant protection deficit as the Filipino state, the p5, and ASEAN are all failing to protect those targeted in the war on drugs.

The Philippines

³ The first was signed by 39 countries in September 2017. The second was signed by 38 countries in June 2018.

Until Duterte's appointment, there had been some cause to believe that the Philippines was moving in a positive direction in relation to both human rights and the RtoP. In 2005 the Philippines representative summarised the RtoP succinctly as 'a strong political commitment ... which provided a new framework for understanding and applying existing legal obligations concerning [the] four international crimes' (Teitt, 2016, p. 380). Since then, it has routinely expressed its backing. In its statement to the UN General Assembly in 2014 the Philippines representative stated '[w]e join other Member States in affirming their fundamental duty to protect their own people from atrocity crimes' (Philippines Statement, 2014). A year later, it went further as it claimed this 'fundamental duty... is the rule of law, which is the basis not only for the civilized conduct of relations amongst nations, but also of the very legitimacy of a state' (Philippines Statement, 2015). In addition to this, the Philippines has worked to advance the RtoP in the ASEAN region. For example, the Report of the High Level Advisory Panel on the Responsibility to Protect in Southeast Asia (2014) praised the Philippines for deepening and developing ASEAN-UN partnerships to strengthen the regional capacity to prevent atrocity crimes. Furthermore, in February 2016 the Philippines hosted the second international meeting for the Global Action Against Mass Atrocity Crimes (GAAMAC) in Manila. These, of course, took place prior to the election of Duterte.

To gauge the current government's position we turn to the UN General Assembly's formal dialogue on the RtoP which was held in June 2018. The meeting provided UN Member States an opportunity to put forward their views on the RtoP, and more specifically, respond to the UN Secretary-General's 2018 RtoP report 'Responsibility to protect: from early warning to early action'. Notably, the government of the Philippines took the opportunity to express their support for the RtoP but at the same time, interpret the RtoP to justify their approach to tackling terrorism and organised crime.

The first duty of states is the protection of their populations from actual harms and threats to their safety and wellbeing; that is the basis of state legitimacy. But a state fails in its responsibility to protect—as much by failing to use every means effective to protect its population from harm—as by itself abusing them. This happens when states give way to, instead of combating terrorism and organized crime (Locsin, 2018, p. 1).

The statement starts by reiterating the sentiment expressed by the Philippines in 2015 as it speaks of a fundamental duty to protect its population. However, it goes on to imply that a government fails to fulfil its RtoP when it does not tackle the threat posed by terrorism and organized crime. This would be accurate if, for example, a non-state armed group committed one of the four crimes in a country whilst the government either supported the group or ignored the threat, yet at no point does the Ambassador explain how the actions of criminals constitute one of the four crimes. In a statement consisting of five pages, he makes five references to the crimes associated with ‘mass atrocity crimes’ but nine references to ‘organised crime’ and ‘criminality’ which is defined at one point as ‘organized crime like the drug trade’ (Locsin, 2018, p. 2). What we see therefore, is that the Ambassador is [mis]using the RtoP as a means to justify the war on drugs. From his perspective, the government of the Philippines is fulfilling its RtoP precisely because it is fighting the threat posed by organized crime and terrorists.

The sentiment expressed in relation to the RtoP aligns itself with other statements made by the government of the Philippines regarding the duty of the state and the threat posed by drug users. In the national report submitted by the Philippines to the UN Human Rights Council as part of the working group on the Universal Periodic Review (2017, p.2) it notes, ‘in keeping with the State’s duty to promote and protect human rights and fundamental freedoms, the people’s campaign against illegal drugs is pursued to preserve the lives of the Filipino people

and protect the country from turning into a narco-State'. This is part of a constructed narrative which routinely invokes the idea that the Philippines could turn into a narco-State (Cayetano, 2018) but is this credible? Whilst drugs production, trafficking and trans-shipment remains a problem for the Philippines, as Mark R Thompson (2016) notes, the Philippines can hardly be considered a narco-State as no cartels are even close to challenging the authority of the state, as in Mexico and Columbia in the past. To take another example, the report explains 'that alleged EJKs cannot be considered state sponsored' because the Commissioner of CHR could not identify a 'government policy' (UN Human Rights Council, 2017, p.16). However, the CHR later qualified this, saying that '[t]he CHR wishes to reiterate and emphasize that it has yet to arrive at a conclusion on whether the spate of extra-judicial killings in the country in recent months is state-sponsored or not.' (Press Release of the Commission on Human Rights, 2017). Again, we see evidence that the government of the Philippines has a tendency to manipulate and distort information. As will be discussed below, this stems from the underlying view that has come to the forefront under Duterte: in order to address the problem of drugs in society, drug users must be killed. Challenging this narrative, we now set forth the argument that Duterte's regime is committing crimes against humanity.

Crimes Against Humanity

To assess whether crimes against humanity (as defined in the Rome Statute) are taking place, four preconditions need to be met. As Sadat explains, these are, '(1) the commission of the crime as part of a "widespread or systematic attack;" (2) against a civilian population; (3) with knowledge of the attack [directed against any civilian population]; 4) and involving "a course of conduct involving the multiple commission of acts . . . against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack'(Sadat, 2013, p. 352). As Sadat (2013, p. 352) goes onto point out, 'they are noncontroversial with the

exception of the “State or organizational policy” element’. Division arose because on one hand, the role of the state or policy helps distinguish crimes against humanity from an ad-hoc accumulation of acts, but on the other, there was a disagreement over whether the attacks need to be widespread or systematic or widespread and systematic. As Robinson (1999, p. 47) notes, the solution is set out in paragraph 2 (a). This states ‘[a]ttack directed against any civilian population’ means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack’ (Rome Statute, 2002, p. 4). The role of a government is therefore critical. As legal scholars have argued since, the actions must ‘form part of a policy by a government...or is tolerated, condoned, or acquiesced in by the aforementioned government’ (Cassese et al, 2013, p. 91). Breaking this down, we focus here on extrajudicial killings and vigilante justice, the process of dehumanisation and the exaggeration of threat to evidence that the government has directed the attack against drug users. To return to sub-paragraph 2 (a), it is this ‘direction’ that reflects the policy element criteria to make the case that the government of the Philippines is committing crimes against humanity (Robinson, 1999, p. 48).

Extrajudicial killings and vigilante justice

Although the ICC focuses on crimes since June 1 2016, we situate the war on drugs within a historical context to show the underlying culture of violence and impunity. It is important therefore to recognise that extrajudicial killing in the Philippines is not a new development. Such violence has endured, albeit at lower levels, since the period of martial law ended in 1986. According to historian Alfred McCoy (1999, p.131), between 1972 and 1985, the Marcos regime extrajudicially murdered as many as 3,257 people and tortured around 35,000. Mass human rights violations were commonplace and furthermore, Duterte’s father was part of the

administration at the time. As Simangan (2018, pp. 72-73) explains, Duterte ‘idolizes the Marcos authoritarian style’ and has ‘downplayed the atrocities’ committed by it. Whilst there have been several investigations into particular cases of human rights abuses, more research is needed on the culture of violence and impunity which pervades politics in the Philippines (see Sales, 2009). Linking this back to the Rome Statute, we begin to see a track record in which the government of the Philippines is directing the perpetration of mass human rights violations.

We can trace Duterte’s current approach back to his time as mayor of Davao City. He has in fact invoked this legacy. On the eve of the 2016 election, Duterte told a 300,000 strong crowd, ‘if I make it to the presidential palace I will do just what I did as mayor. You drug pushers, holdup men, and do-nothings, you better get out because I’ll kill you’ (Human Rights Watch, 2018). This is just one of many statements in which he boasts of his ‘shoot to kill policy’ (Amnesty International, 2016). Accordingly, it is not just that the government is condoning murder, it is openly championing it. When investigating disappearances and summary executions in 2006, UN special rapporteur Philip Alston (2007, p. 2) noted that in Davao City (where Duterte was mayor at the time) a ‘death squad’ operated with its members ‘routinely killing street children and others in broad daylight’. Independent of this, the Philippine Commission on Human Rights (CHR), which was chaired by long standing critic of Duterte, Senator Leila de Lima raised similar concerns to the Office of the Ombudsman. As of August 2016, the CHR had investigated 227 complaints of alleged extrajudicial or politically motivated killings, but as a mere fact-finding agency it was able to do little more than this, especially in light of Duterte’s threats to dissolve the body if it continued its criticism of his war on drugs (US State Department, 2016, p. 3). The sheer number of complaints would, if investigated properly, help evidence the requirement of ‘widespread’ or ‘systematic’ in the legal definition of crimes against humanity. But what we see is that the strong-arm politics reminiscent of the Marcos era is deployed to ward off challenges. Senator Leila de Lima’s investigation into the

war on drugs came to an abrupt halt when she was arrested on the grounds of drug trafficking. The arrest is widely acknowledged as politically motivated (ASEAN Parliamentarians for Human Rights, 2018). Added to this, Duterte has declared that the armed forces and police are under his jurisdiction and any requests to investigate them have to go through him personally (Corrales, 2017).

As the submission to the ICC (Sabio, 2017, p. 13) and the reports by Human Rights Watch (2017, p. 4) and Amnesty International (2017, p. 11) show, the war on drugs bears many similarities to those undertaken under Duterte in Davao. The killings generally follow similar patterns in targeting low level users or dealers in informal urban settlements and often after victims have voluntarily surrendered themselves to police after learning that they were on the watch list of drug suspects (Human Rights Watch, 2017, p.17). To be clear, The Philippines National Police force denies that such killings represent an overarching strategy and have sought to distinguish between ‘vigilante killings’ and those committed in self-defence during legitimate raids (Human Rights Watch, 2017, p.13). But there is a significant body of evidence contradicting this. Senior police officers told Reuters ‘[i]t is the Philippine National Police doing it,’ and speak of ‘a cash “reward scales” for drug killings’ (Manato and Baldwin, 2017). Similarly, research conducted by both Amnesty International (2017) and Human Rights Watch (2017, p. 13) suggests there is no such distinction between the two types of killings. Amnesty (2017, p.29) also obtained evidence that local governments in Metro Manila offer ‘additional benefits’ for ‘encounters’, which is clearly a euphemism for killings. These reports indicate that police are incentivized to murder drug users. Furthermore, many senior police officers who are ‘implicated in scores of killings’ have been promoted with only a handful prosecuted (Conde, 2018). In what became a high profile case, the officers were found guilty of premeditated murder and planting a weapon on Kian delos Santos, a 17 year old boy (The Straits Times, 2018). The investigations by Amnesty International, Human Right Watch, and

Reuters, show that it would be a mistake to believe that these killings are the result of individuals acting with impunity, in contrast, they evidence top down strategies.

The process of dehumanisation

In studies on mass violence, the role of dehumanisation came to the fore in Chalk and Johansson's (1990, p. 28) seminal comparative analysis on genocide in which they conclude 'we have no evidence that a genocide was ever performed on a group of equals. The victims must not only not be equals, but also clearly defined as something less than fully human'. Although we are not claiming that the war on drugs constitutes genocide, the study shines a light on the role of dehumanisation in mass violence. It is also important from a legal standpoint because it helps illustrate the 'policy element' involved.

Duterte's regime has routinely argued that the war on drugs cannot constitute crimes against humanity because drug users are not part of humanity. Critically, this helps legitimise the murder of drug users as they are depicted as sub-human. Responding to the allegations set forth by international human rights groups and the UN in 2016, Duterte asked, '[W]hat crime against humanity? In the first place, I'd like to be frank with you, are they (drug users) humans? What is your definition of a human being? Tell me' (Ramos, 2016). This sentiment has been restated throughout the war on drugs campaign. Speaking in 2017, Justice Secretary, Vitaliano Aguirre II, claimed 'drug lords, drug addicts' and 'drug pushers' are 'not humanity' (Agence France-Presse, 2017). Accordingly, we see political elites within the government upholding Duterte's logic. Responding to the ICC's preliminary examination in February 2018, Senate Majority Floor leader, Vicente Sotto III stated, 'I think that the charge can't be. When you say "crimes against humanity", who is the humanity being mentioned? Are drug pushers and stubborn drug users considered part of humanity?' (Terrazola, 2018) The statements underline

that a central part of the government's strategy is to challenge the idea that drug users are human.

Dehumanisation is also evident as drug users are portrayed as the walking dead or zombie-like (Villaneuva, 2017). Duterte argued that 'what is really very unsettling is that a year or more of shabu use would shrink the brain of a person, and therefore he is no longer viable for rehabilitation' (Villaneuva, 2017). More explicitly, he suggested that as users 'no longer have the cognitive value of that person or their talents', they 'are of no use to society any more' (Villaneuva, 2017). Whilst there is a consensus that heavy methamphetamine use can result in cognitive impairments such as memory loss, other functions such as intelligence, verbal fluency and psychomotor speed appear to be unaffected (Vearrier, Greenberg, Miller, Okaneku and Haggerty, 2012, p.55-56). Consequently this portrayal of all users as the 'walking dead' is designed to further dehumanise the group and render them all as irredeemable addicts who are therefore legitimate targets of extrajudicial killing. Furthermore, by depicting drug users as zombie like, it enables the government to make the case that drug users are a disease that will contaminate the country. The use and meaning behind the use of this language is important since it underwrites how the government frames the threat posed by drug users.

Exaggeration of threat

To further understand the 'course of conduct' that underpins the 'multiple commission of acts referred to in paragraph 1' it is important to analyse how he exaggerates the threat posed by drug users.

The suggestion that murdering those involved with drugs is the only solution to the problem has been justified by portraying drug users as a threat to the nation itself. Duterte said he had launched his bloody war on drugs 'because of the sheer number of people contaminated will pull my country down – it will destroy the next generation of Filipinos' (The Independent,

2016). Accordingly, the government creates a narrative of fear by portraying drug use as a disease that will spread throughout society to the point that it threatens the state's very existence. At the same time, Duterte's government manipulates statistics as it conflates occasional users with addicts in order to exaggerate the threat. Duterte claims that four million drug 'addicts' will 'contaminate another 10 million' within four to six years (Philstar Global, 2016). This claim is based upon an estimate that there were 1.7 million drug users in the Philippines in 2016, compiled by the Dangerous Drugs Board (DDB), which operates under the jurisdiction of the president (Philstar Global, 2016). Duterte subsequently inflated this figure despite the fact that around a million of those identified in the original DDB estimate were marijuana users and therefore would be exempt from the figures if Duterte legalised it (as he proposed earlier in his Presidency) (Philstar Global, 2016). Moreover, according to the DDB survey, around a third of the 1.7 million users had consumed narcotics in the previous thirteen months, so again can hardly be characterised as addicts (Baldwin and Marshall, 2016). When we consider the narrative being constructed around the threat posed by drug users, it is important to note the relationship between dehumanisation and exaggeration of threat. On one hand, the government tells the public that drug users are zombie like and cannot be rehabilitated. On the other, it speaks of drug users contaminating non-drug users like a disease. These interrelated points reinforce the government's message: in order to address this threat, drug users must be killed.

Tying the three themes together, when one considers the role of Duterte's government in a) championing the murder of drug users, b) dehumanization, and c) the exaggeration of threat, we conclude that crimes against humanity are taking place. Whilst there will understandably be debates over how many exactly have been killed, it is important to recall the understanding of crimes against humanity set out in the Rome Statute. As Robinson (1999, p. 48) explains, "[w]idespread" is a high- threshold test, requiring a substantial number of victims

and “massive, frequent, large- scale action,” whereas the term “course of conduct” and the reference to multiple acts were regarded as presenting a lower threshold’. This is particularly relevant as Duterte’s regime has directed the mass murder of drug users. We are of the view that academics cannot establish the burden of proof required to make a legal judgment, but clearly, there is sufficient grounds to believe crimes against humanity are occurring and that these warrant investigation by a competent legal body.⁴ We therefore welcome the preliminary examination by the ICC and support calls by NGOs and the EU for an international investigation, for example, through a Commission of Inquiry.

Furthermore, the themes identified here are not exhaustive and over time, new evidence will come to light which may further substantiate the case that crimes against humanity are taking place. In August 2018, a file was submitted to the ICC on behalf of victims in which the legal representative from the National Union of People's Lawyers (NUPL). The fifty page document focuses on two themes, ‘murder and other inhumane acts’ whilst linking these to the legal definition in the Rome Statute.⁵ It argues that Duterte is guilty of crimes against humanity because of the ‘[w]idespread and systematic attacks against civilians in the form of Murder of thousands of civilians’ (Takumi, 2018). Whilst one could make the case that a legal filing on behalf of victim groups may be bias, there are increasing numbers of reports detailing murder and inhumane acts. For instance, in April 2018 the US State Department’s report on the Philippines highlights 25 cases of alleged torture (involving 58 victims) and identifies the

⁴ To put this in context, consider that in December 2017 the Dutch Government published an opinion concerning the question of whether politicians can make the determination of genocide. The Dutch government concluded that an international judicial ruling is not required and politicians can deal with the question if they contact an adequate inquiry and consider all evidence. This countered the Dutch Parliament’s judgement that politicians are not best placed to rule on genocide and this should be left to international legal bodies (see Ochab 2018). The UK Government, after pressures from Parliamentarians, has been dealing with a similar question. However, the UK government continues to argue that it is not for politicians but for the international judicial systems to make the determination. In the UK there is an on-going debate regarding the 'Genocide Determination Bill', which is before both houses. Although these do not cover Crimes Against Humanity, they help illustrate the limitations of academic research which can only be addressed by a fact-finding mission such as those conducted by a Commission of Inquiry.

⁵ The submitted file can be retrieved at https://www.scribd.com/document/387196374/Communication-and-Complaint-by-Rise-Up-for-Life-and-for-Rights#from_embed

police as the perpetrator in ‘the majority of the cases’ (US State Department 2018). Since torture is one of the crimes identified in the Rome Statute, this reinforces the overall conclusion that crimes against humanity are taking place. Finally, statements made by President Duterte remain an on-going source of evidence. In September 2018 he publically stated ‘[m]y only sin is extrajudicial killings’ but this has since been downplayed as Duterte just ‘being playful’ (Reed, 2018).

International Response

The UN and the EU have acted as leading critics of Duterte. The Philippines underwent review by the Universal Periodic Review in May 2017 which led to 257 recommendations, some of which related to the war on drugs, the government of the Philippines rejected 154 of them (Global Centre for the Responsibility to Protect, 2018). Since then, the UN Human Rights Council has issued two joint statements. The most recent was signed by 38 countries, including three permanent members of the Security Council (the US, the UK and France), urging the government of the Philippines to cooperate with the UN investigation ‘without preconditions or limitations’ (ABCCBN News, 2018). During this time period, the EU aligned itself with the UN. In April 2018, the European Parliament passed a joint motion for a resolution which expresses concern over the high number of extrajudicial killings, falsification of evidence and the arrest of Senator Leila M. De Lima. The motion calls on all EU Member States to support ‘a United Nations-led investigation into the killings in the Philippines and for those accountable to be brought to justice’ (European Parliament, 2018). Yet as our research reveals, the p5 and ASEAN are undermining the position taken by these institutions. We focus on these because under pillar III of the RtoP, the UN Security Council should respond to a ‘manifest failing’ by considering all options available under Chapters VI, VII, and VIII of the UN Charter and work

in ‘cooperation with relevant regional organizations as appropriate’ (UN Security Council Resolution, 2005, p. 31).

The Permanent Five

The US and the Philippines have a long-term relationship which was formalised through the Mutual Defence Treaty of 1951. This outlines a mutual commitment between the two nations in order to strengthen ‘efforts for collective defense for the preservation of peace and security pending the development of a more comprehensive system of regional security in the Pacific Area’ (Yale Law school, 1951). However, this relationship became strained following the election of Duterte (Albert, 2016). Under President Obama, the US was heavily critical and suspended the sale of 26,000 assault rifles because of human rights concerns (Asian Correspondent, 2016). This notably changed in 2017. President Trump has attempted to forge links personally with Duterte (Sanger and Haberman, 2017). A leaked transcript of a presidential phone call with Duterte showed Trump praising the ‘unbelievable job on the drug problem’ (Sanger and Haberman, 2017). Furthermore, in June 2017, the US began to provide military assistance to the government of the Philippines in its fight against Islamic State in Marawi (Villamor, 2017). The assistance raised concerns over the Trump administration’s position on the war on drugs. This came to the fore as the US Secretary of State at the time, Rex Tillerson, visited the Philippines to hold a meeting with Duterte in August of that year. Tillerson claimed, ‘I see no conflict, no conflict at all in our helping them with that situation and our views of other human rights concerns we have with respect to how they carry out their counternarcotics activities’ (Lima, 2017). The statement reflects an attempt to treat the war on drugs and the counter-terror campaign as two separate issues whilst implying that the anti-drug campaign is ‘their’ (the Philippines) issue which in turn has little to do with the US. Indeed, on President Trump’s subsequent visit to meet Duterte, the US Press Secretary claimed that human

rights was discussed ‘briefly’ yet Duterte ‘denied the issue was broached at all’ (Kurlantzick, 2017).

The aim here is not to downplay the threat posed by non-state armed groups in the country. As the Asia-Pacific Centre’s study on the Philippines explains, there are a ‘number of risk factors’ including ‘Moro rebel groups, ISIS-affiliated militants, and political clans’ as well as the Government’s war on drugs (Asia-Pacific Risk Assessment Series, p. 1). Accordingly, the Philippines is a complex case in that non-state armed groups are perpetrating mass violence in certain parts of the country whilst the government is directing a policy of extrajudicial killings in other parts of the country. If the international community responded ‘selectively’ as opposed to ‘conditionally’⁶, and refused all international assistance then this could leave the government without the capacity to protect its citizens from the threat posed by non-state armed groups. We discuss this within the broader context of multiple priorities below, but within the specific context of the US, the problem is that there is no evidence that the US is even trying to change Duterte’s policy toward the war on drugs. Consequently, the case study gives weight to the long-standing criticism that political elites continue to prioritise counterterrorism over human protection norms such as the RtoP (Reinold, 2013). Moreover, there is an incoherence in the US approach as the public concerns over human rights violations are undermined by President Trump’s private support for Duterte. Moreover, Trump has publically advocated the death penalty for drug users within the United States which has subsequently been used by Duterte to justify his war on drugs (Beech 2018). As a result, the US approach is directly and indirectly helping to legitimise a government that is perpetrating mass human rights violations.

The UK’s foreign policy throughout this time period has been influenced by post-Brexit concerns regarding trade. The outcome is similar to the US in that the UK Government has

⁶ We draw on Paul Williams distinction between ‘selectivity (supporting existing good practices) rather than conditionality (providing assistance on the promise of the recipient reforming its activities in the future)’, Williams (2015, p. 4).

sought to downplay human rights concerns. For example, Secretary of State for International Trade, Liam Fox (2017), spoke of the ‘shared values and shared interests’ of the two countries. The relevance of trade was explicit, ‘[a]s the UK government begins the historic process of leaving the EU, now is the time to look forward to our future trading relationship with the world’ (Fox, 2017). Whereas the Obama administration suspended the sale of rifles to the Philippines for fear that these would be used by the police in the war on drugs, such concerns have not prohibited the UK. In November 2016, the UK granted the Philippines a £1.7 million licence for technology for combat vehicles and weapon control equipment (Campaign Against the Arms Trade, 2016). In September 2017, the UK Government invited a Philippines delegation to the Defence and Security Equipment International Exhibition (Lucas, 2017). The UK sold £150,000 of hi-tech spying equipment to the Duterte regime. Responding to the latter deal, the British Labour MP Lloyd Russell-Moyle (a member of the committees on arms export controls), claimed this ‘makes us complicit in the deaths of thousands of Filipinos’ (Ellis-Petersen, 2018b).

France has strengthened its bi-lateral relations with the Philippines and justified this on the grounds of trade and counter-terrorism. In June 2017, French Ambassador to the Philippines, Thierry Mathou, spoke of strengthening the friendship between the two countries stating ‘this has not changed with the current situation’ (Mercene, 2017). In December 2017, the two countries held a meeting to mark their 70th anniversary of diplomatic relations. The outcome was that they both agreed ‘to strengthen cooperation to counter-terrorism, and to increase economic engagement through implementation of agreed programs and projects in the crucial sectors of agriculture, infrastructure, tourism, science and technology, digital economy and creative industry, among others (Republic of the Philippines Department of Foreign Affairs, 2017)’. The meeting was held just a few months after a high-profile row between the two countries. Initially, President Duterte invoked French law, albeit inaccurately, to claim that

in France people are presumed guilty until proven innocent and used this as a justification for his own approach to the war on drugs (Agence France-Presse, 2017). In response, the French Embassy clarified that this is factually inaccurate and went on to explain ‘France strongly believes in the importance of the rule of law, due process and respect for human rights in all countries, including the Philippines’ (Statement of the Embassy of France to the Philippines, 2017). What is interesting, therefore, is that despite a row specifically about human rights violations in the Philippines, France’s position is very much business-as-usual as it prioritises trade and counter-terrorism. In so doing, it confirmed the aspirations of Duterte who openly sought stronger trade and economic ties with France (Geducos, 2017).

China and Russia have essentially upheld the Philippine government’s position that the war on drugs is a national security issue. Despite tensions surrounding the South-China sea dispute, China has urged the UN Human Rights Council in (UNHRC) to respect the ‘judicial sovereignty’ of the Philippines (Flores, 2017). Furthermore, when the Philippines underwent Universal Periodic Review, ‘China expressed support for the campaign against illegal drugs’ (United Nations Human Rights Council, 2017, p.4). At the same time, Russia expressed its support for the Philippines continuing work to ‘to improve its potential in the human rights field’ (United Nations Human Rights Council, 2017, p.12). Neither China nor Russia signed the joint statements made by the UN Human Rights Council in 2017 and 2018. Meanwhile, Russia has taken the lead in attempting to ‘neutralise’ the spread of ‘liberal attitudes to drugs’ at the United Nations by penning a letter to the UN Secretary-General which was signed by the Philippines amongst twenty other states (Ministry of Foreign Affairs of the Russian Federation, 2018). China and Russia continue to support Duterte through arms deals and in return, have gained praise from Duterte, ‘[t]o this day, in fairness to China and Russia, they never asked for anything’ (Placido, 2017). From an RtoP perspective, this is problematic because whilst the UN and the EU call on the government of the Philippines to change its anti-drug strategy,

Duterte knows he has powerful allies. For example, the EU tried to coerce Duterte into changing his approach by explaining that the continued human cost involved in the war on drugs would lead to economic repercussions. In response, Duterte condemned the EU as ‘sons of bitches’ and explained that the economic cost would be off-set by new Chinese investment (Morales and de la Cruz, 2017). Similarly, when the arms deal with the Obama administration failed, Russia provided ‘timely assistance’ to replenish ‘old arms’ (Russian Presidential Executive Office, 2017).

The stark reality is that permanent members of the UN Security Council are providing assistance to a government that is allegedly committing crimes against humanity.⁷ Therefore, whilst there has been international condemnation by the UN, the EU, and the ICC, these efforts are undermined by the actions taken by the p5. As a result, it is important to consider what is going on at the regional level.

ASEAN

As Acharya notes (2018, 123), ‘compared with other parts of the developing world, Asia remains a tightly sovereignty-bound region’. What we see therefore, is that the ‘meta norms’ of state sovereignty and non-interference are often prioritised over norms such as the RtoP (42-67). Focusing more specifically on ASEAN, Capie (2012) spoke of the ‘localization myth’ as he rejected the idea that the RtoP had been internalised in the Southeast Asia. Although there have been some positive developments since then, such as the appointment of an RtoP Focal Point in Cambodia and the establishment of High-Level Advisory Panel on the RtoP in Southeast Asia, the meta norm of state sovereignty persists (Petcharamesree, 2016 133; Coe 2017, 294). This is not to suggest that state sovereignty is interpreted as absolute in the region. There are times when crises are viewed as passing a certain threshold which has led to

⁷ We discuss two potential rebuttals below regarding strategy and competing priorities.

interference from ASEAN member states. In an RtoP context, this first arose in 2008 following Cyclone Nargis (Harrington, 2012). The timely and decisive response saw an ‘ASEAN-led coordinating mechanism’ representing a ‘watershed’ moment in the organisation’s history (Denzil and Fan et. al., 2010, 28). The principle of non-interference was not viewed as a barrier to action. This is also evident in relation to the crisis in the Rakhine State as representatives from Malaysia and Indonesia have challenged the principle of non-interference. Speaking ahead of the ASEAN Summit in November 2018, the Malaysian Prime Minister Mahathir Mohamad stated, ‘[o]ur policy in ASEAN is non-interference in the internal affairs of the countries, but this is ... grossly unjust’ (Geddie and Aung 2018). The statement reflects a divergence of views within ASEAN as countries such as Malaysia and Indonesia have sought to ‘distance itself’ from the official statements released by ASEAN on the grounds that they ‘misrepresent the reality of the situation’ (Smith and Choi, 2017). Within the context of the Philippines therefore, the response by ASEAN sheds light on whether the member states view the anti-drug campaign as meeting the threshold needed to warrant challenging the principles of non-interference.

To understand ASEAN’s current position one has to consider the region’s historical approach to drugs. Although ASEAN concerns regarding drugs can be traced back to 1972, the issue is still viewed as a matter of domestic jurisdiction. This is captured in the position statement adopted at the fourth ASEAN ministerial meeting on drug matters in 2015 (p. 2).

Each country has the sovereign rights and responsibility to decide on the best approach to address the drug problem in their country, taking into account the historical, political, economic, social and cultural context and norms of its society. The transnational challenges posed by the world drug problem should be addressed with full respect for the sovereignty and territorial integrity of

states, and the principle of non-intervention in the internal affairs of states. Every government and its citizens should be free to decide for themselves on the most appropriate approach to tackle its own drug problem.

This statement illustrates that ASEAN acknowledge the transnational implications of drugs but despite this international context, they view anti-drug campaigns as a matter of domestic jurisdiction. Notably, the war on drugs was not discussed at the 23rd meeting of the ASEAN Intergovernmental Commission on Human Rights (AICHR) in February 2017. The commission discussed its human rights-based approach to the implementation of the ASEAN Convention Against Trafficking in Persons, but did not discuss this approach in relation to combating drugs abuse (AICHR, 2017). In relation to Duterte's war on drugs, some public statements have been made but these have primarily focused on the arrest and release of Senator Leila de Lima (ASEAN Parliamentarians for Human Rights, 2018).

With so few public statements, our interview data provides insight into how ASEAN frames the war on drugs. In an interview in the Ministry of Foreign Affairs in Indonesia, a common sentiment was expressed.

ASEAN has [a] collective understanding and commitment to combat the illicit trafficking and abuse of drugs since 1970s as stated in several mechanisms and [a] series of meetings (such as AMMDM, ASOD and include AMMTC and SOMTC) to tackle this issue. If something happens as the consequence of the war on drugs, it is a national domestic problem of the country. (Interviewee 23, 2018)

The statement begins to illustrate that the war on drugs in the Philippines is situated within a historical and regional context and as a result, viewed as matter of domestic jurisdiction. Despite

the allegations of genocide and crimes against humanity surrounding Duterte throughout 2016 and 2017, the Minister does not view the war on drugs as qualitatively different from any other anti-drug campaign. From this perspective, the international community does not have the right to interfere. As one permanent representative to ASEAN explained, ‘All ASEAN countries must respect the sovereignty of other member states. The values and principles of ASEAN teach the member states to not hurt the feelings of their neighbours by interfering in their domestic matters’ (Interviewee 4, 2016).

Returning to Acharya (2018), we see that the ‘meta norm’ of state sovereignty is upheld. To be clear, this should not be [mis]interpreted as synonymous with absolute sovereignty and/or the idea that ASEAN countries approve of what is going on in the Philippines. As Glanville (2011) rightly points out, ‘sovereignty as responsibility’ has a long history and that elites have often expressed concern for what is going on inside other states. It would be a mistake, therefore, to conflate a commitment to state sovereignty on one hand with approval on the other. Although there is some evidence of this,⁸ it is not the mainstream view. As a permanent representative to ASEAN explained, ‘I am not condoning what is happening in neighbour countries, but we engage with consultation to let the member states respect the sovereignty of each other. The state has rights to decide what is the best for their nation’ (Interviewee 11, 2017). Or to take another example,

We realise about the casualties of the war on drugs in the Philippines, but it is a complex problem... We cannot simply condemn or take a response to the situation... We also cannot interfere the country for their domestic problem.

⁸ Indonesia’s Head of Anti-Narcotics Agency stated that they would not utilise extrajudicial killing but went onto contextualise this by saying ‘I never say that we have to follow the Philippines. We have our own laws, but I have to say, though, that Duterte’s policy shows he is taking care of his citizens’ (Davies and Reinard, 2017).

The enforcement of law against drug smugglers and users is related to the state sovereignty issue (Interviewee 25, 2018).

To get a better sense of this it is important to consider two points. First, the thinking expressed throughout the interview process reflects a pluralist ethic. As Jackson's (2000, 308) defence of pluralism explains, 'Sovereignty is not a political arrangement only for fair weather and good times. It is an arrangement for all political seasons and for all kinds of weather'. Applying this to the war on drugs, interviewees acknowledge the 'bad weather' (to use Jackson's terminology) yet uphold a commitment to state sovereignty. Second, the notion of conditional sovereignty embodied in the RtoP is not even being considered because the elites interpret the crisis through an anti-drug lens rather than an atrocity lens.

To help explain this, it is important to consider that the elites do not see value of engaging with the RtoP because they perceive that pre-existing commitments to human rights in ASEAN cover this. For instance, one ASEAN official argued, 'ASEAN does not necessarily need to adopt RtoP because all ASEAN instruments are already in place to address humanitarian and RtoP issues' (Interviewee 11, 2016). From this perspective, ASEAN already has regional frameworks and mechanisms (the ASEAN Charter, ASEAN Intergovernmental Commission on Human Rights and ASEAN Community Vision were often raised in interviews) that can be used instead of the RtoP. Indeed, another Permanent Representative to ASEAN questioned, 'why should we use RtoP if we have our own instrument and mechanism?' (Interviewee 8, 2016). On the one hand therefore, we have a commitment to state sovereignty and non-interference, and on the other, there is a view that the region is already protecting its people so does not need to engage with the RtoP directly. The outcome of which is that clearly ASEAN countries do not view the crisis through an RtoP lens and do not believe that the government of the Philippines is 'manifestly failing' to protect its population.

When assessing the role of ASEAN, it is important to bear in mind Bellamy and Williams' depictions of regional organisations as 'gatekeepers', 'influencing which issues get debated in the Council, how they are framed and the range of possible Council responses' (Bellamy and Williams, 2011, 816) Critically, and despite the allegations of crimes against humanity, ASEAN interpret the war on drugs through an anti-drug lens rather than a mass atrocity lens. In so doing, they view this as a domestic matter and uphold the 'meta norms' of state sovereignty and non-interference. This, at least in part, helps explain why Duterte's policies have not been discussed more formally at the UN Security Council and/or the UN General Assembly as they have perpetuated a discourse that interprets the crisis as an anti-drug campaign rather than a mass atrocity crime. The fact that individual countries such as Malaysia and Indonesia have challenged the principle of non-interference in relation to the treatment of the Rohingya but not Filipinos further supports the claim that the war on drugs is viewed as a domestic issue. Consequently, ASEAN draws the same conclusion as China and Russia in that none of these view it as a matter of international jurisdiction, they did not sign either of the joint statements by the UNHRC and do not openly criticise Duterte's approach.

Prior to concluding, it is important to consider two potential rebuttals regarding the international response. First, the RtoP is not the only moral commitment states have to fulfil. It needs to be understood within the context of competing priorities at both the domestic and international level (Morris 2015, Gallagher 2012). As stated, the threat posed by the Islamic State in Marawi reflects the complex reality in which counterterrorist operations embody a human protection element. Furthermore, countries such as the UK do need to establish post-Brexit trade deals which may benefit the citizens of both countries. Our response is that it is important to bear in mind that the RtoP should not be viewed as just another foreign policy commitment precisely because it sets out to tackle the gravest of international crimes. Doyle (2015, 15) captures this when he states the RtoP should be viewed as a 'legitimate moral

minimum of global order'. In a similar vein, May's analysis of the philosophical grounding of international law leads him to argue that there are two types of crime that harm humanity: genocide and crimes against humanity (2001, 8). Of course, there may be times when a crisis is so complex that it poses a direct challenge to the RtoP. For example, in North Korea the regime is committing crimes against humanity yet the threat of omnicide (the destruction of humankind itself) as a result of nuclear war may lead elites to conclude there is little they can do. But it is difficult to make such a case with reference to the Philippines.

Second, in terms of strategy, there are legitimate questions to be raised over the effectiveness of tactics such as naming and shaming or economic sanctions which may lead one to conclude that states are better working through backchannel diplomacy. For instance, a study of 145 countries highlighted that 'naming and shaming' can be positive in that it led to a reduction in mass violence but also negative in that some perpetrators increased the violence (Hafner-Burton, 2008). As a result, one could look at how hostile Duterte is and conclude that it is better not to 'name and shame' for fear that this may cause an escalation in killings. To take another example, the effectiveness of sanctions has seen a wide range of success rates put forward ranging from 5%, to 34%, and 38-54%.⁹ Consequently, a case can be made that economic sanctions may be counter-productive because they reduce leverage by cutting economic relationships. Yet whilst such concerns are understandable, the fact that countries such as the p3 have signed two joint declarations by the UN Human Rights Council shows that they are engaging in 'naming and shaming' which undermines the idea that they are seeking to change Duterte's approach through other means. At the same time, there is no evidence that any state is engaging in such diplomacy. As stated, Trump has privately praised Duterte and

⁹ Pape (1997) responds to Hufbauer, Schott, and Elliot's study's claim of 34% success and concludes a more realistic total is 5%. Since then, Morgan, Bapat, and Kobayashi (2014) collected data on both imposed sanctions and sanction threats and find that the success rate is about 38% if we apply a restrictive definition of success and 56% if a less restrictive definition is applied.

when he personally met with him he is said to have discussed human rights only 'briefly' if at all. Meanwhile China and Russia clearly see this as a domestic issue that is nothing to do with them. Therefore, whilst there has been international condemnation by the UN, the EU, and the ICC, these efforts are undermined by the actions taken by the p5 and ASEAN.

Conclusion

The article developed in two sections. First, it evidences that crimes against humanity are taking place in the Philippines through an analysis of three themes, i) extrajudicial killings and vigilante justice, ii) dehumanisation, and iii) the exaggeration of threat. The role of the government looms large as Duterte's regime has played a facilitative role in the mass violence which we argue fulfils the legal requirement of 'course of conduct' set out in Article 7 paragraph 2 (a) of the Rome Statute. From an RtoP perspective, this constitutes a 'manifest failing' which begs the question, what is the international community doing about it? The second part of the article demonstrates that the implicit and explicit support from the p5 and ASEAN undermine the international efforts made by the UN, the EU, and the ICC. The US, the UK, and France have all prioritised bi-lateral trade relations and the counter-terrorism norm whilst China has openly supported the war on drugs and, along with Russia, see any interference as a violation of state sovereignty. Echoing the latter position, ASEAN views this as a matter of domestic jurisdiction and despite the allegations of crimes against humanity, treats this in the same light as any other anti-drug campaign. This leads us to conclude that there is a significant protection deficit as the government of the Philippines, the p5, and ASEAN are all failing to protect the victims in the Philippines.

Placing the case study in the broader context of international relations, we finish by raising three points. First, more research is needed on the relationship between anti-drug campaigns and mass atrocity prevention. This feeds into concerns raised by the former UN Secretary-General's Special Adviser on the RtoP regarding its future and how the international

community understands different types of mass violence (Welsh, 2018, p. 990). We are not saying here that the RtoP should be extended to cover new crimes, but instead highlight that in the future we may see more atrocity crimes committed in contexts which differ dramatically from the traditional benchmark of Rwanda and Srebrenica. Consider that over the past year, Bangladesh, Sri Lanka, and Indonesia have all looked to the Philippines with a view to 'replicate the success' (the words of the Sri Lankan government) in their war on drugs (Beaumont, 2018; Gupta and Pokharel, 2018; Kine, 2017). With this in mind, approaches to mass atrocity prevention, for example, which highlight 'risk' and 'trigger' factors need to be able to address these challenges.

Second, the case study is part of a larger concern over the military assistance being provided to states despite their human rights record. The initial hope was that the RtoP would act as a rallying cry to galvanise international support (Evans, 2008). Over the years, even those that defend the RtoP have accepted that there is little evidence for this (Bellamy, 2013), but at the same time, argue that the norm is part of broader human protection regime that is helping to reduce mass violence around the world (Bellamy, 2016). However, in 2018, the United Nations and the World Bank published its major study (1976-2016) identifying a 'dramatic resurgence' of violent conflict especially in Africa and the Middle East. This resurgence challenges the Pinker (2010) narrative that the world is more peaceful than ever before. Trying to make sense of this, some analysts have been keen to stress the return of *realpolitik* (if indeed it ever went away) to explain the new era of changing power balances. It would seem that liberal democracies, including the US, the UK, France, Canada, and Australia are all providing military assistance to countries such as Saudi Arabia and the Philippines despite both allegations of war crimes and crimes against humanity. Such action reinforces criticisms that human protection norms are at best, acts of symbolism, or at worst, a Trojan horse used by powerful states to pursue ulterior motives (Chomsky, 2012). Of course, we should not forget

the progress that has been made. There has been a significant reduction in mass violence in regions such as East Asia (Bellamy, 2017). At the global level, the commitment to human rights is evident in the fourteen peacekeeping missions currently being led by the United Nations Department for Peacekeeping. With this in mind we hope that the article will act as a catalyst for a much needed conversation on the international community's political, legal, and moral responsibilities.

Third, and following on from the last point, governments have multiple priorities that are not always mutually consistent. Of course governments have more than one moral responsibility and tough decisions need to be made on a case-by-case basis. At times, the RtoP finds itself competing with other foreign policy commitments. For instance, there is a polarized debate over the relationship between the RtoP and counterterrorism (Matthews 2015, Ralph 2015, Karlsrud 2015). As Welsh explains, RtoP advocates are 'uncomfortable' with its 'close association' with counterterrorism for fear that a 'security logic' will compromise a 'humanitarian logic' (2016, p.993). That said, she acknowledges that 'the connection is likely to endure, and thus poses a major challenge for the R2P in its next decade of implementation' (2016, p.993). At a broader level, this will see a division arise between those that call for a more 'pragmatic approach' (Ralph 2018) as opposed to those that strive for a universal application of the RtoP that is consistent (Hehir 2019). We uphold Wheeler's (2000, 305) view that it is important to differentiate between a consistent and a coherent approach. As stated, we accept that there may be times when the international community cannot fulfil its RtoP, the problem is that within the context of the Philippines there is very little evidence that the p5 or ASEAN are even considering how the RtoP should be applied. Challenging this narrative, the article sets forth the idea that because the war on drugs in the Philippines constitutes crimes against humanity it should be understood as core RtoP-business. After all, the RtoP was forged

to protect people the world over, there is no caveat stating it does not apply to victims of the war on drugs.

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