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Contesting the ‘Responsibility to Protect’ in Southeast Asia: Rejection or Normative Resistance?

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Abstract

This article explores the engagement of Southeast Asian states with the Responsibility to Protect principle (R2P) in relation to the Rohingya in Myanmar and the ‘war on drugs’ in the Philippines. It finds a form of contestation based upon subsidiary principles and local interests in which states have offered normative resistance to international scrutiny in order to justify their limited response to the atrocities. Elite stakeholders have emphasised that ASEAN already has principles and frameworks to address abuses – which reflect the historical experience, social context, and political culture of the region – in order to support their resistance to R2P. While existing debates about the R2P principle in Southeast Asia tend to be oriented around the opposing poles of incremental adaptation and adoption versus outright rejection, our conclusion is distinct: R2P is consciously contested in Southeast Asia on normative grounds which must be understood in the context of the region.

Keywords: R2P – ASEAN – Rohingya – the Philippines – norm contestation

Introduction

Southeast Asia has received considerable attention amongst scholars interested in the normative and operational traction of the Responsibility to Protect principle (R2P) in different regional contexts – whether that reflects diffusion, contestation, rejection, or adoption. The subject reflects a perennial research problem which has confounded attempts by scholars to categorise the region with reference to International Relations norms. ASEAN and individual Southeast Asian countries publicly endorse R2P norms in international forums such as the United Nations, and simultaneously project a contrary position in the regional context in response to human rights abuses. Two broad schools of thought have emerged in response to this. First, some scholars take a guardedly positive stance, arguing that ASEAN and its members have made significant progress in promoting and localising R2P in the region, albeit shaped by local political and cultural factors.¹ From this perspective progress should be

¹ Alex Bellamy and Sara E. Davies, ‘The Responsibility to Protect in the Asia-Pacific Region’, *Security Dialogue*, 40(6) 547-574 (2009); Alex Bellamy and Mark Beeson, ‘The Responsibility to Protect in Southeast Asia: Can

understood – and welcomed – as incremental and conditioned by the regional context, and assessments of compliance must therefore be realistic. These scholars suggest that the principle of non-interference is in the process of being recalibrated to permit expressions of concern, offers of assistance, and even the application of limited diplomatic pressure internationally in response to major humanitarian crises.² Thus, a form of normative agonism is at work, whereby the contestation of R2P by ASEAN and regional states is generating localised practices of protection which – while unsatisfactory according to some external benchmarks – should be acknowledged as progress. The establishment of regional human rights-related bodies,³ and the existing work of the ASEAN High Level Advisory Panel and the ASEAN Intergovernmental Commission on Human Rights – both theoretically relevant to R2P – are seen as a demonstration of this shift.⁴

Second, in contrast to this positive interpretation, others argue that there is too little evidence to claim that ASEAN and its member states are incorporating or localising R2P into regional practices.⁵ As Capie argued, the promotion of R2P in the ASEAN context is something largely driven and heralded by outsiders, especially the Asia Pacific Centre for the Responsibility to Protect (APCR2P)-led networks.⁶ According to this, the positive assessment is a triumph of hope and the ‘cup half full’ optimism over experience on the part of policy-engaged analysts keen to encourage a progressive shift in the region, but with scant evidence that this is really occurring. From this perspective, while outsiders and non-state actors have played significant roles in promoting R2P in Southeast Asia, ASEAN countries have maintained their stance on sovereignty as an inalienable and unequivocal right of states rather than a responsibility.⁷ While ASEAN states such as Thailand⁸ and Indonesia⁹ have given vocal support to R2P at multilateral meetings, the implementation of the principle needs to be far more institutionalised across the region before a positive assessment can be made. The muted reaction of most ASEAN states

ASEAN Reconcile Humanitarianism and Sovereignty?', *Asian Security*, 6(3) 262-279 (2010); Herman Kraft, 'RtoP by Increments: The AICHR and Localizing the Responsibility to Protect in Southeast Asia', *Pacific Review*, 25(1) 27-49 (2012).

² Bellamy and Beeson, 'The Responsibility to Protect in Southeast Asia'.

³ Alex Bellamy, 'The Other Asian Miracle? The Decline of Mass Atrocities in East Asia', *Global Change, Peace & Security*, 26(1) 1-19 (2014); Noel Morada, 'Southeast Asian Regionalism, Norm Promotion and Capacity Building for Human Protection: An Overview', *Global Responsibility to Protect*, 8(2-3) 111-132 (2016).

⁴ ASEAN High Level Advisory Panel, 'High-Level Advisory Panel on the Responsibility to Protect in Southeast Asia: Executive Summary Report', 2014, <http://www.r2pasiapacific.org/docs/Events%202014/exec-summary-hlapreport.pdf>, accessed 13 March 2020.

⁵ David Capie, 'The Responsibility to Protect Norm in Southeast Asia: Framing, Resistance, and Localization Myth', *The Pacific Review*, 25(1) 75-93 (2012); Rizal Sukma, 'Political and Security Community (APSC): Opportunities and Constraints for the R2P in Southeast Asia', *The Pacific Review*, 25(1) 135-152 (2012); Srirapha Petcharamesree, 'ASEAN Human Rights Regime and Mainstreaming the Responsibility to Protect: Challenges and Prospects', *Global Responsibility to Protect*, 8(2-3) 133-157 (2016).

⁶ Capie, 'The Responsibility to Protect Norm in Southeast Asia'.

⁷ See Seng Tan, 'Providers Not Protectors: Institutionalizing Responsible Sovereignty in Southeast Asia', *Asian Security*, 7(3) 201-217 (2011).

⁸ Keokam Kraisoraphong, 'Thailand and the Responsibility to Protect', *The Pacific Review*, 25(1) 1-25 (2012).

⁹ Lina Alexandra, 'Indonesia and the Responsibility to Protect', *The Pacific Review*, 25(1) 51-74 (2012).

to the Rohingya crisis in Myanmar and the war on drugs in the Philippines illustrates this scepticism.

Against this backdrop, this article uses the humanitarian crisis of the Rohingya and the Philippines' 'war on drugs' as empirical cases to explore the traction of R2P in the region. Analysis of these cases provides an insight into how the R2P norm is actually interpreted and contested in the ASEAN context, rather than rejected outright. Thus, this article makes an argument which is distinct from the two main poles of opinion (above) that have dominated debate on this region. It proposes an argument that emphasises the problematisation of R2P by ASEAN governments on normative grounds, which is not a straightforward stance of disengaged rejection or a process of generative agonism resulting in adaptive practices guided by new normative understandings locally. It therefore brings evidence that ASEAN governments draw upon subsidiary practices and norms with reference to principles such as state sovereignty, non-interference, and self-determination – shaped by local social and cultural conditions – to offer normative resistance to the diffusion and application of R2P in the region. Since the regional experience, based upon the Rohingya and the Philippines cases, has been largely to resist much of the content of international R2P norms, this suggests a form of resistance based upon subsidiarity which needs to be better understood.

There is still little evidence that ASEAN countries are preparing to accommodate or localise R2P in the region. Optimistic analysts and observers tend to base their arguments concerning the support of ASEAN states for R2P on statements by the countries at the international level, especially at the UN General Assembly meetings or in dialogues on R2P. At the same time, sceptical analysts tend to ignore or dismiss evidence of engagement with human protection norms and principles such as R2P. This article offers a more nuanced analysis of this engagement – even if it amounts to a lack of localisation – and considers its significance.

The article proceeds as follows. The first section presents the theoretical debates on norm diffusion and contestation. It emphasises the discursive approach to norms in relation to the role of states as local actors and regional governance in moderating the traction of international norms such as R2P. The second section presents two case studies of serious human rights abuses in the region – the treatment of the Rohingya in Myanmar and the 'war on drugs' in the Philippines. It analyses the perspectives and responses of ASEAN countries to these abuses in order to gauge the state of R2P diffusion, rejection, or resistance in the region. It finds that subsidiary norms are at work on the part of ASEAN countries which offer resistance on normative grounds – reflecting political culture and societal circumstances – in parallel with engagement with international norms, and thus *not* outright rejection. The final section provides a conclusion, including a discussion of the implications of this research for the traction of the R2P principle in Southeast Asia. Against a theoretical background of International Relations norms literature, the methodology involves interpreting elite perspectives in relation to two critical cases in order to understand state positions towards the R2P principle. This draws upon primary data gathered from 26 interviews with public officials and civil society

representatives from across the region (see Appendix A and Table 1). Evidence is also drawn from official statements and reports. The originality and contribution of this article are threefold. It provides insights, based upon locally gathered primary data, on the response of ASEAN to key regional challenges and interprets the significance of these for debates on R2P in relation to the region. Based upon this data, it presents an argument which is distinct from existing opinions on the subject. Finally, it contributes to ongoing debates in International Relations and R2P studies about the diffusion of international norms.

Norm Contestation: The Role of Local Actors and Regional Governance

The study of international norms – agreed expectations and patterns of behaviour among various actors – remains a highly popular topic.¹⁰ Within this literature, the question of the compliance (and non-compliance) of states with norms and the process of ‘socialisation’ has received particular attention,¹¹ especially amongst scholars of the early norm debates who emphasise the stable qualities of norms and the role of transnational actors.¹² This traditional understanding of norms implies the (re)construction of a standard for state behaviour in line with international norms, and a cumulative and linear process of norm emergence and diffusion. It follows the ‘logic of appropriateness’ whereby the quality of norms is considered stable, the validity of norms is unproblematic, and the social efficacy, once established, is taken as equally stable.¹³ Wiener describes this as a behaviourist approach to norms.¹⁴

¹⁰ Martha Finnemore and Kathryn Sikkink, ‘International Norm Dynamics and Political Change’, *International Organization*, 52(4) 887-917 (1998); Amitav Acharya, ‘How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism’, *International Organization*, 58(2) 239-275 (2004); Antje Wiener, *A Theory of Contestation* (Heidelberg: Springer, 2014); Alexander Betts and Phil Orchard (eds.), *Implementation and World Politics: How International Norms Change Practice* (Oxford: OUP, 2014); Chris Reus-Smit, *On Cultural Diversity: International Theory in a World of Difference* (Cambridge: Cambridge University Press, 2018).

¹¹ Socialisation is defined as a process of inducting actors into norms and rules of a given community. See Kai Alderson, ‘Making Sense of State Socialization’, *Review of International Studies*, 27(3) 415-433 (2001); Finnemore and Sikkink, ‘International Norm Dynamics and Political Change’. It can also be understood as ‘the process that is directed toward a state’s internalisation of the constitutive beliefs and practices institutionalised in its international environment’, see Frank Schimmelfennig, ‘International Socialization in the New Europe: Rational Action in an Institutional Environment’, *European Journal of International Relations*, 6(1) 109-139 (2000), pp. 111-112.

¹² Finnemore and Sikkink, ‘International Norm Dynamics and Political Change’; Margaret E. Keck and Kathryn Sikkink, ‘Transnational Advocacy Networks in International and Regional Politics’, *International Social Science Journal*, 51(159) 89-101 (1999).

¹³ Antje Wiener, ‘The Dual Quality of Norms and Governance Beyond the State: Sociological and Normative Approaches to “Interaction”’, *Critical Review of International Social and Political Philosophy*, 10(1) 47-69 (2007).

¹⁴ Antje Wiener, ‘Contested Compliance: Interventions on the Normative Structure of World Politics’, *European Journal of International Relations*, 10(2) 189-234 (2004).

In contrast, other norm scholars apply a reflexive or discursive approach to norms.¹⁵ This approach emphasises that norms, as sets of complex institutionalised ideas, are dynamic, flexible, and contested in nature and thus subject to evolution even after their institutionalisation.¹⁶ This reflexive/discursive approach emphasises that norms have dual qualities in that they are both structuring and socially constructed through interaction within a particular context, and while, by definition, they can remain stable over particular periods, they also always remain flexible.¹⁷ Wiener thus explains that the meaning of a norm is not fixed, but is contextually ‘in use’ by agents.¹⁸ At this point, norms are mediated by agents, in the sense that they ‘give meaning to the norms and compare them with the broader normative environment’.¹⁹

Taking a discursive approach, this article draws on the concepts of norm implementation²⁰ and norm subsidiarity – where ‘local actors develop new rules, offer new understandings of global rules or reaffirm global rules in the regional context’²¹ – to explain how ASEAN countries interpret R2P. However, this is not a straightforward subsidiarity argument; rather, the evidence points to a form of contestation and resistance based upon subsidiary principles and interests, and therefore illustrates different forms of rejection in international norm dynamics. Indeed, ASEAN states criticise the hypocrisy of the ‘great powers’ in terms of their own implementation of R2P, but they do not feel any exclusion or marginalisation from the R2P norm-making processes. Instead, at the UN level (and to some extent in the local context), most ASEAN countries support the basic idea of R2P to protect people from mass atrocities, and are regularly involved in the annual R2P debates in the UN since 2009.²²

At the UN General Assembly Informal Dialogue on R2P in 2015, for example, the Philippines expressed its agreement with the notion of ‘sovereignty as responsibility’ as the key idea of R2P.²³ Thailand emphasised that the general concept of R2P is timely and needed in an age of intolerance, insecurity, and violence.²⁴ The Myanmar delegation at the General Assembly stated that ‘international community should avoid any effort to renegotiate at a text already

¹⁵ Mona L. Krook and Jacqui True, ‘Rethinking the Life Cycles of International Norms: The United Nations and the Global Promotion of Gender Equality’, *European Journal of International Relations*, 18(1) 103-127 (2012); Wiener, *A Theory of Contestation*.

¹⁶ Krook and True, ‘Rethinking the Life Cycles of International Norms’; Betts and Orchard, *Implementation and World Politics*.

¹⁷ Wiener, ‘The Dual Quality of Norms and Governance Beyond the State’.

¹⁸ Antje Wiener, ‘Enacting Meaning-in-use: Qualitative Research on Norms and International Relations’, *Review of International Studies*, 35(1) 175-193 (2009).

¹⁹ Krook and True, ‘Rethinking the Life Cycles of International Norms’, p. 108.

²⁰ Betts and Orchard, *Implementation and World Politics*.

²¹ Amitav Acharya, ‘Norm Subsidiarity and Regional Orders: Sovereignty, Regionalism, and Rule Making in the Third World’, *International Studies Quarterly*, 55(1) 95-123 (2011), p. 96.

²² Bellamy and Davies, ‘The Responsibility to Protect in the Asia-Pacific Region’.

²³ The Philippines Permanent Mission to the United Nations, ‘Statement on the responsibility to protect at the 7th Annual Interactive Dialogue on the Secretary-General’s Report United Nations General Assembly’, 8 September 2015, <http://responsibilitytoprotect.org/philippines.pdf>, accessed 12 September 2021.

²⁴ Thailand Permanent Mission to the United Nations, ‘Statement of Thailand at the Informal Interactive Dialogue on R2P’, 8 September 2015, <http://www.responsibilitytoprotect.org/thailand-1.pdf>, accessed 12 September 2021.

agreed by the world leaders in 2005'.²⁵ In addition, Indonesia suggested to the international community that it should refrain from reinterpreting and renegotiating the conclusions of the World Summit, and instead find ways to implement the R2P principle.²⁶ Malaysia emphasised that they were ready to cooperate with the international community, including UN members, regional organisations, and civil societies, to prevent and protect people from existing and emerging threats of mass atrocities.²⁷ Moreover, Singapore called for a restraint on the use of a veto in situations of genocide, war crimes, ethnic cleansing, and crimes against humanity.²⁸ Such statements show that there is no such feeling and expression of exclusion from ASEAN countries to the R2P principle.

Therefore, we argue that ASEAN's resistance to R2P in the context of the region can be characterised as engaged contestation or principled rejection – despite the geopolitical and economic interests which play a role – and not disengaged rejection. The article presents a critical assessment and understanding of local interpretations of international norms in the context of local norms and practices. A straightforward rejection could be understood in the sense that actors (states) reject the validity or moral values of international norms.²⁹ According to Risse-Kappen and Sikkink, rejection identifies states as being in a category of denial, meaning that states refuse to accept the moral validity or legitimacy of international norms and oppose their jurisdiction to their internal affairs, both rhetorically and in terms of practice.³⁰ Zimmermann suggested that 'a rejection occurs when international norm is neither adopted into local law nor implemented because the validity of the norm is contested and rejected in a local setting'.³¹ Acharya's study of collective defence in Southeast Asia could be an example of an outright rejection, where national leaders in the region implacably reject the imposition of collective defence (in this case the creation of Southeast Asia Treaty Organization (SEATO) led by the United States) in the region.³² According to the role-spectrum of norm dynamics, Bloomfield identifies outright rejection by norm antipreneurs which are characterised as

²⁵ Myanmar Permanent Representative to the United Nations, 'Statement by Ambassador H. E. U Kyaw Zwar Minn at the follow-up to the outcome of the Millennium Summit: report of the Secretary-General in the General debate of the 63rd session of the United Nations General Assembly', 23 July 2009, <http://www.globalr2p.org/media/files/myanmar-2009-r2p-debate.pdf>, accessed 12 September 2021.

²⁶ Indonesia Permanent Representative to the United Nations, 'Statement by Ambassador H.E. Dr. R.M. Marty M. Natalegawa at the United Nations Plenary Meeting on the Responsibility to Protect', 23 July 2009, <http://www.globalr2p.org/media/files/indonesia-2009-r2p-debate.pdf>, accessed 12 September 2021.

²⁷ Malaysia Permanent Mission to the United Nations, 'Statement of Malaysia at the Informal Interactive Dialogue on R2P', 8 September 2015, <http://www.responsibilitytoprotect.org/malaysia-1.pdf>, accessed 12 September 2021.

²⁸ Singapore Permanent Representative to the United Nations, 'Statement by Ambassador H. E. Karen Tan at the Informal Meeting of the General Assembly on the Responsibility to Protect', 8 September 2015, <http://www.globalr2p.org/media/files/singapore.pdf>, accessed 12 September 2021.

²⁹ Thomas Risse-Kappen and Kathryn Sikkink, 'The Socialization of International Human Rights Norms into Domestic Practices: Introduction' in Thomas Risse-Kappen, S.C. Ropp and Kathryn Sikkink (eds.), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999); Lisbeth Zimmermann, 'Same Same or Different? Norm Diffusion Between Resistance, Compliance, and Localization in Post-Conflict States', *International Studies Perspectives*, 17(1) 98-115 (2016).

³⁰ Risse-Kappen and Sikkink, 'The Socialization of International Human Rights Norms into Domestic Practices', p. 23.

³¹ Zimmermann, 'Same Same or Different?', p. 106.

³² Acharya, 'Norm Subsidiarity and Regional Orders'.

‘implacable resisters’, meaning that actors (states) aim to undermine certain international norms and ‘seek to utterly defeat their normative opponent’.³³ In this type of role, states ‘simply defend the entrenched status quo norm by refuting entrepreneurs’ claims that it produces morally problematic outcomes’.³⁴ Meanwhile, a softer version of norm entrepreneurs has been described as ‘creative resisters’, meaning that local actors (states) resist and problematise international norms, but at the same time they do not reject the persuasion (such as dialogue and discussion) of norm entrepreneurs or advocates.³⁵

To this point, contestation and argumentation are inevitable in the process of norm diffusion because of the plurality of values, or the difference of normative community, among states.³⁶ The contested nature of norms suggests that a state or collective of states may have different interpretations of international norms and different attitudes to them in their local context. Focusing on the behaviour of states with reference to international norms in a local context, it is possible to assess whether a norm has been accepted and internalised by a state or collective of states, and thus to understand the method or mechanism states use when accepting (or resisting) international norms. During this process, state responses to, and interpretations of, international norms are influenced by three sets of structures: ideational (local cultures and values), institutional (bureaucratic identities and constitutional frameworks), and material structures (collective interests of states).³⁷ Scholarship has shown that ideational and institutional structures matter in both facilitating and constraining the process of norm translation and implementation.³⁸ As cultures shape experiences and the expectations of a state, international norms can potentially be understood and interpreted in parallel with actors’ local cultures and values. This article is a contribution to this debate. While ideational and institutional factors are relatively common in the norm literature,³⁹ some scholars emphasise the significance of material structures, such as the interests of states, as the primary factor in influencing the behaviour of states towards international norms at the implementation stage.⁴⁰ Unlike rational choice and regime theorists,⁴¹ norm scholars emphasise that the interests of

³³ Alan Bloomfield, ‘Norm Antipreneurs and Theorising Resistance to Normative Change’, *Review of International Studies*, 42(2) 310-333 (2016), p. 320.

³⁴ Bloomfield, ‘Norm Antipreneurs and Theorising Resistance to Normative Change’, p. 323.

³⁵ Bloomfield, ‘Norm Antipreneurs and Theorising Resistance to Normative Change’, p. 331.

³⁶ Antje Wiener, *A Theory of Contestation*; Andrew Hurrell, ‘Norms and Ethics in International Relations’ in W. Carlsnaes, T Risse and B.A. Simmons (eds.), *Handbook of International Relations* (London: Sage Publications, 2002).

³⁷ Betts and Orchard, *Implementation and World Politics*.

³⁸ Betts and Orchard, *Implementation and World Politics*; Acharya, ‘How Ideas Spread: Whose Norms Matter?’; Zimmermann, ‘Same Same or Different?’.

³⁹ Finnemore and Sikkink, ‘International Norm Dynamics and Political Change’; Acharya, ‘How Ideas Spread: Whose Norms Matter?’; Wiener, ‘The Dual Quality of Norms and Governance Beyond the State’.

⁴⁰ Betts and Orchard, *Implementation and World Politics*; Andrea Liese, ‘Exceptional Necessity – How Liberal Democracies Contest the Prohibition of Torture and Ill-Treatment When Countering Terrorism’, *Journal of International Law and International Relations*, 5(1) 17-47 (2009); Andrea Birdsall, ‘But We Don’t Call It “Torture”! Norm Contestation During the US “War on Terror”’, *International Politics*, 53(2) 176-197 (2016).

⁴¹ For the application of rational choice and regime theory in the study of norm, see Schimmelfennig, ‘International Socialization in the New Europe’; Kees V. Kersbergen and Bertjan Verbeek, ‘The Politics of International Norms: Subsidiarity and the Imperfect Competence Regime of the European Union’, *European Journal of International Relations*, 13(2) 217-238 (2007).

actors in the implementation process do not necessarily reflect pure strategic action on the part of a state. In this process, norms remain the central factor that guide the attitude of a state in interpreting and applying particular international norms. While states may use their interests in understanding and interpreting particular international norms, they tend to justify their actions and interpretations through reference to the existing international norms and laws. In the case of whether the United States practises torture of suspected terrorist prisoners, Birdsall shows that while the government emphasises their international commitment to the prohibition of torture, they attempt to redefine the actual meaning of torture and make arguments that their policy is in line with existing international legal obligations.⁴² This also implies a general strategy of norm translation, whereby if a state has interests which are out of line with international norms, they seek to reinterpret the meaning or practice of the norms, rather than contesting the norms' validity. A similar strategy is used by ASEAN countries in interpreting and resisting the use of R2P in cases of mass atrocities in the region.

Through the concept of norm subsidiarity, Acharya explains that states, as local actors, may reject international norms by creating or upholding their local rules in order to protect their autonomy from being dominated, violated, or abused by more powerful actors.⁴³ On the one hand, local actors often use normative principles such as state sovereignty, non-interference, and self-determination as shields to offer normative resistance to international norms or institutions. On the other, local actors attempt to justify their right to formulate and apply their own principles to deal with problems without intervention by 'outsiders' or any higher authority. Even though local or regional principles are not always effective for dealing with their issues, the principles enjoy greater legitimacy and recognition from the states in the region. Local actors resist 'foreign' norms as they assume that the norms are not necessary or worthy of being borrowed, adopted, and implemented.⁴⁴ Despite the exhortations of ASEAN members in global forums in support of R2P, the response of countries to serious abuses in the region illustrates this resistance, and a close examination of the discourse within the region demonstrates that this resistance emerges from deeply engrained normative positions that reflect elite political culture.

Since the emergence of the concept in 2001 and its formal recognition at the 2005 World Summit, the diffusion of R2P has been complex. Recognition of R2P has been remarkable, but at the same time, its diffusion in international politics remains problematic and controversial. R2P continues to be challenged and contested conceptually and practically. Former UN Special Adviser on R2P Jennifer Welsh argues that despite the source and scope of R2P having been 'institutionalised' in the World Summit, the meaning and practical application of the principle

⁴² Birdsall, 'But We Don't Call It "Torture"!'.
⁴³ Acharya, 'Norm Subsidiarity and Regional Orders'.
⁴⁴ Acharya, 'Norm Subsidiarity and Regional Orders'.

continue to be contested. She acknowledged that contestation surrounding R2P occurs in both procedural and substantive respects.⁴⁵

Considering the nature of R2P some have described it as a ‘composite principle’⁴⁶ or a ‘complex principle norm’,⁴⁷ meaning that the principle combines competing international norms such as state sovereignty and human rights protection, and contains more than one set of prescriptions. Wiener explains that ‘organising principles’, such as the emerging norm of R2P, that occupy the intermediary level of norms, contain a legitimacy gap whereby the normativity of the norm is negotiated and the procedure for implementing the norm is still highly contested.⁴⁸ To this point, norm types matter because they are likely to determine the extent of the contestation and influence the robustness of the norms.⁴⁹ On one side, the composite characteristic of R2P allows the principle to gain wider support from the international community, as it is already embedded in the established normative structure of human rights, humanitarian law, and civilian protection.⁵⁰ It is also argued that the remaining ambiguity surrounding R2P is considered to be beneficial for its development and implementation.⁵¹ In other words, the norm’s ambiguity could increase its acceptance and allow for necessary adjustments in the implementation process. On the other hand, ‘the legitimacy gap’ related to R2P (due to its characteristics) has encouraged wider controversies and debates.⁵² But as Wiener suggests, contestation and conflictive interaction around norms are central and constitutive to establishing the social legitimacy of compliance processes.⁵³ Moreover, local norms and local interpretation to international norms matter,⁵⁴ even when this amounts to resistance. When it comes to the ASEAN context, a form of contestation and resistance to the application of the principle persist, as reflected from the ASEAN states’ responses to mass atrocities in the region. As explained in the next section, ASEAN states tend

⁴⁵ Jennifer M. Welsh, ‘Norm Contestation and the Responsibility to Protect’, *Global Responsibility to Protect*, 5(4) 365-396 (2013).

⁴⁶ Brian L. Job and Anastasia Shesterinina, ‘China as a Global Norm-Shaper: Institutionalization and Implementation of the Responsibility to Protect’ in Alexander Betts and Phil Orchard, *Implementation and World Politics*.

⁴⁷ Jennifer M. Welsh, ‘Implementing the Responsibility to Protect’, in Alexander Betts and Phil Orchard, *Implementation and World Politics*.

⁴⁸ Wiener, *A Theory of Contestation*.

⁴⁹ Nicole Deitelhoff and Lisbeth Zimmermann, ‘Things We Lost in the Fire: How Different Types of Contestation Affect the Robustness of International Norms’, *International Studies Review*, 22(1) 51-76 (2020); Nicole Deitelhoff and Lisbeth Zimmermann, ‘Norms Under Challenge: Unpacking the Dynamics of Norm Robustness’, *Journal of Global Security Studies*, 4(1) 2-17 (2019); Welsh, ‘Norm Robustness and the Responsibility to Protect’.

⁵⁰ Welsh, ‘Norm Robustness and the Responsibility to Protect’.

⁵¹ Wesley W. Widmaier and Luke Glanville, ‘The Benefits of Norm Ambiguity: Constructing the Responsibility to Protect across Rwanda, Iraq and Libya’, *Contemporary Politics*, 21(4) 367-383 (2015).

⁵² Wiener, *A Theory of Contestation*; Adrian Gallagher and Jason Ralph, ‘The Responsibility to Protect at Ten’, *Global Responsibility to Protect*, 7(3-4) 239-253 (2015).

⁵³ Wiener, ‘Contested Compliance’.

⁵⁴ Melinda Negrón-Gonzales and Michael Contarino, ‘Local Norms Matter: Understanding National Responses to the Responsibility to Protect’, *Global Governance*, 20, 255-276 (2014); Acharya, ‘Norm Subsidiarity and Regional Orders’; Acharya, ‘How Ideas Spread: Whose Norms Matter?’.

to problematise the use of R2P by offering a locally-anchored norms and principles normative understanding to the diffusion and application of R2P in the region.

ASEAN Responses to Atrocities

Southeast Asia has seen a historic decline in armed conflict in the last two decades,⁵⁵ which makes the recent violence directed at the Rohingya community in Myanmar and the abuses associated with the ‘war on drugs’ in the Philippines conspicuous and significant. Both cases, by wide agreement, reflect systematic violence inflicted on the population, and regional responses are therefore instructive in terms of norms and practices of human protection in Southeast Asia. Reports from authoritative organisations and institutions, including UN bodies and human rights-related organisations, state that the governments of Myanmar and the Philippines are committing systematic and widespread abuses (see below). Both cases constitute abuses which are relevant to R2P. It is therefore entirely appropriate to examine ASEAN’s behaviour in the context of these cases to understand the extent to which R2P is being accepted or implemented – or resisted – in the context of the region, as a major test of the normative reach of the principle. The following empirical sections apply the theoretical themes above to explore how ASEAN elites explained or justified their responses to the two cases. In particular, they focus on whether this regional narrative reflected a straightforward tendency to reject the legitimacy of the R2P principle, or rather a form of contestation and resistance that reflects localised norms and subsidiary practices.

ASEAN’s Response to the Rohingya Issue: Respecting the ‘Complexity’ of the Situation

The minority Rohingya community has been described as the most persecuted refugee group on earth,⁵⁶ and the widespread and systematic attacks against this group have been labelled as

⁵⁵ Alex Bellamy, *East Asia's Other Miracle: Explaining the Decline of Mass Atrocities* (Oxford: Oxford University Press, 2017).

⁵⁶ Amnesty International, ‘Who Are Rohingya and What Is Happening in Myanmar?’, 26 September 2017, <https://www.amnesty.org.au/who-are-the-rohingya-refugees/>, accessed 16 March 2020; United Nations Human Rights Office of the High Commissioner, ‘Human Rights Council Opens Special Session on the Situation of Human Rights of the Rohingya and Other Minorities in Rakhine State in Myanmar’, 5 December 2017, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22491&LangID=E>, accessed 16 March 2020.

a crime against humanity.⁵⁷ The UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, described the treatment of the Rohingya as 'a textbook example of ethnic cleansing'.⁵⁸

Two themes form the background to this crisis. The issue of citizenship has been central to the plight of the Rohingya, an ethnic and religious minority within the country. The 1982 Citizenship Law is widely viewed as a form of institutional racism directed against them, facilitating marginalisation, persecution, and other forms of human rights violations.⁵⁹ The Citizenship Law frames the violence against Rohingya and it has been used by Myanmar's national authorities and other ethnic groups to legitimise the abuses.⁶⁰ Second, the history of insurgency and separatism in Rakhine State – in which Rohingya militants have been active – has played a key role in the exclusion and vilification of the community as a whole.⁶¹

Persecution and abuses were particularly acute in the 2017-18 period. Following the 'deadly attacks' in Rakhine State in October and November 2016, the UN Special Rapporteur on the Situation of Human Rights in Myanmar, Yanghee Lee, described the situation as 'institutionalised discrimination' in the context of the 'long-standing persecution' of the Rohingya population.⁶² It was reported that around 392 predominantly Rohingya villages were

⁵⁷ Human Rights Watch, 'All You Can Do is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State', 22 April 2013, <https://www.hrw.org/report/2013/04/22/all-you-can-do-pray/crimes-against-humanity-and-ethnic-cleansing-rohingya-muslims>, accessed 16 March 2020; United Nations Human Rights Office of the High Commissioner, 'Flash Report: Interviews With Rohingyas Fleeing From Myanmar Since 9 October 2016', 3 February 2017, www.ohchr.org/Documents/Countries/MM/FlashReport3Feb2017.pdf, accessed 16 July 2019; United Nations Office of the High Commissioner on Human Rights, 'UN Independent International Fact-Finding Mission on Myanmar Calls on UN Member States to Remain Vigilant in the Face of the Continued Threat of Genocide', 23 October 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25197&LangID=E>, accessed 20 March 2021; United Nations Office of the High Commissioner on Human Rights, 'Myanmar: "Possible War Crimes and Crimes Against Humanity Ongoing in Rakhine and Chin States" – UN Special Rapporteur Yanghee Lee', 29 April 2020, accessed 20 March 2021'; Amnesty International, 'Myanmar: Military Commits War Crimes in Latest Operation in Rakhine State', 29 May 2019, <https://www.amnesty.org/en/latest/news/2019/05/myanmar-military-commits-war-crimes-latest-operation-rakhine-state/>, accessed 12 March 2021.

⁵⁸ United Nations Office of the High Commissioner on Human Rights, 'Human Rights Council 36th Session: Opening Statement by Zeid Ra'ad Al Hussein', 11 September 2017, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22041&LangID=E>, accessed 20 March 2021.

⁵⁹ A.K.M. Ahsan Ullah, 'Rohingya Crisis in Myanmar: Seeking Justice for the "Stateless"', *Journal of Contemporary Criminal Justice*, 32(3) 285-301 (2016); M. Zarni and A. Cowley, 'The Slow-Burning Genocide of Myanmar's Rohingya', *Pacific Rim Law and Policy Journal*, 23, 683 (2014).

⁶⁰ B. Zawacki, 'Defining Myanmar's Rohingya Problem', *Human Rights Brief*, 20, 18-25 (2012); Zarni and Cowley, 'The Slow-Burning Genocide of Myanmar's Rohingya'.

⁶¹ International Crisis Group, 'Myanmar: A New Muslim Insurgency in Rakhine State', Asia Report No. 283, 15 December 2016, <https://d2071andvip0wj.cloudfront.net/283-myanmar-a-new-muslim-insurgency-in-rakhine-state.pdf>, accessed 23 March 2021.

⁶² United Nations Office of the High Commissioner on Human Rights, 'Statement by Ms. Yanghee Lee Special Rapporteur on the Situation of Human Rights in Myanmar at the 34th Session of the Human Rights Council, 13

completely or partially destroyed by the military forces between August 2017 and March 2018, thousands of Rohingya including children were killed, and nearly 725,000 Rohingya fled to Bangladesh where they lived in camps and settlements throughout the district of Cox's Bazar, making it one of the largest refugee camps in the world.⁶³ The government also burned and bulldozed villages to destroy evidence of crimes and to establish new security force bases.⁶⁴ A report from the APCR2P in 2019 on the 'Regional Atrocity Risk Assessment' categorised the Rohingya issue as very high risk of ongoing atrocity crimes.⁶⁵ The Independent International Fact-Finding Mission on Myanmar concluded that there is sufficient information to claim that the Myanmar military committed acts of genocide against the Rohingya.⁶⁶

ASEAN countries resist the description of the Rohingya issue as a crime against humanity or genocide. The Rohingya issue has generally been defined as a complex problem seen through the lens of national and regional stability and peace, and involving the issues of state sovereignty, ethnic conflict, extremism, and radicalism.⁶⁷ In this sense, regional states tend to view the issue in the context of the insurgency and counter-insurgency challenges ongoing in parts of Myanmar, which have parallels with conflicts elsewhere in the region. Thus, ASEAN states primarily frame the issue as a national or 'domestic' matter for Myanmar – a clear reflection of the predominant regional political culture. Even in the face of demonstrable egregious and widespread human rights abuse ASEAN and its member states have therefore emphasised that assistance to Myanmar in addressing the situation in Rakhine State must respect the sovereignty, dignity, and territorial integrity of the country.

This normative reasoning is reflected in elite discourse gathered through interviews. Thailand's Permanent Representative to ASEAN stated that 'we cannot simplify the issue of Rohingya as one specific issue ... instead, we are looking at the case of Rohingya in a broader context'.⁶⁸ A former Indonesian Permanent Representative to ASEAN suggested that, from a humanitarian point of view, the case of Rohingya has been oversimplified as a question of refugees and illegal trafficking in which challenges have been portrayed internationally in black and white terms and divorced from the political 'complexities' which surround them.⁶⁹ A statement from

March 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21355&LangID=E>, accessed 17 July 2019.

⁶³ United Nations Office of the High Commissioner on Human Rights, 'Oral Update of the High Commissioner for Human Rights on Situation of Human Rights of Rohingya People', 3 July 2018, https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session38/Documents/A_HR_38_CRP.2.docx, accessed 7 June 2019; United Nations Human Rights Council (UNHRC), *Report of the Independent International Fact-Finding Mission on Myanmar*, A/HRC/39/64, 12 September 2018.

⁶⁴ Human Rights Watch, 'World Report 2019: Myanmar Events of 2018', <https://www.hrw.org/world-report/2019/country-chapters/burma>, accessed 7 June 2019.

⁶⁵ Asia Pacific Centre for Responsibility to Protect, 'Asia Pacific Regional Outlook: Regional Atrocity Risk Assessment', April 2019, <https://r2pasiapacific.org/files/3292/AsiaPacificOutlookV11%20FINAL.pdf>, accessed 11 November 2021.

⁶⁶ UNHRC, *Report of the Independent International Fact-Finding Mission on Myanmar*.

⁶⁷ Interviewees 11, 16, and 20.

⁶⁸ Interviewee 11.

⁶⁹ Interviewee 8

one of the ASEAN countries' representatives attempts to link the current Rohingya situation to historical events during the fourteenth century, when there were conflicts among kingdoms in Myanmar and the King of Rakhine (formerly Arakan) – implying that violence is somehow inherent.⁷⁰

As well as seeing the Rohingya issue as a 'complex' problem, some ASEAN countries consider there to be no clear criteria for defining the situation as an atrocity crime, thus introducing a layer of subjectivity into a situation that international observers view as clear-cut.⁷¹ According to this regional perspective, the large number of refugees does not automatically mean that ethnic cleansing or crimes against humanity are being committed, since the flight of Rohingya to Bangladesh is caused by multiple factors. These include military operations related to the issue of separatism, communal conflicts between ethnic Rohingya and Rakhine, and more recently, the issue of religious-based conflict between Muslims and Buddhists.⁷² The Rohingya issue has not been considered an R2P case regionally; instead, state elites suggest that the Rohingya case should be seen proportionately and 'in context'.⁷³ The generally shared position is therefore that R2P is not automatically applicable because there are no grounds for determining mass atrocities in the region. In considering whether the Rohingya crisis constitutes atrocity crimes, one interviewee stated that:

We can question the definition of atrocity crimes and systematic persecution. We believe that the Nazis carried out clear, systematic persecution. The case of Rwanda can also be considered as atrocity crimes. But in the case of the Rohingya, there has been a military operation that has caused civilian casualties. This is not systematic persecution because the casualties happened as a result of the military operation.⁷⁴

In common with many state elites, a former Indonesian Representative to ASEAN framed the situation in Rakhine State with reference to the militant insurgency in the region, a group which has been trained by terrorist groups that have ties with groups in the Middle East.⁷⁵ In arguing this, Indonesia and most ASEAN countries appear to believe that the Rohingya crisis is not due purely to violence inflicted by the government on the Rohingya people, in terms of genocide or ethnic cleansing, but rather is linked to a military operation against extremism. As one of the ASEAN High Level Advisory Panel members emphasised, 'all human rights violations happen in the region by accident rather than being systematically planned'.⁷⁶

⁷⁰ Interviewee 20.

⁷¹ Interviewees 6, 16, and 20.

⁷² Interviewee 20.

⁷³ Interviewees 15, 16, and 18.

⁷⁴ Interviewee 16.

⁷⁵ Interviewee 16

⁷⁶ Interviewee 12.

To support their argument, they claim that the situation in Rakhine State has been exaggerated and dramatised by international observers. One interviewee described:

I and other ASEAN countries colleagues came to a village and saw probably around 13 houses had been burned. We went into the houses and there was nothing inside them. There were no household items; they were empty. Probably they had taken all their stuff, burned their homes, taken some pictures and spread them via the media and social media. Moreover, we saw some demonstrations when some other ASEAN Ambassadors and I visited Rakhine State. We saw that the language that they used in their posters was very good English. They used very good sentences in the posters. It seems that the posters were not written by the Rohingya. As we know, most of them are very poor and not well-educated. Probably only a few of the people can speak English, so the words in the posters were too sophisticated for them. We doubted that it was purely by the Rohingya.⁷⁷

This assertion casts doubt upon the international narrative of serious human rights abuse – reflected in diplomatic circles and media – and, again, introduces an element of subjectivity into discussions about what has occurred, and a resistance to black-and-white characterisations, despite the credible reports of egregious suffering and persecution. The enduring framing of ASEAN and most of its member states is based upon the ‘complexity’ of the situation, implying that human rights abuses need to be understood in context.⁷⁸ Therefore, it has been suggested that all parties should move beyond the debate concerning whether the case is a crime against humanity or ethnic cleansing.⁷⁹ Thus, ASEAN seems disinclined to focus on the labelling of the crisis, whether as a crime against humanity or ethnic cleansing. It is argued that whereas labelling is tantamount to blaming and shaming, ASEAN tends to focus on diplomatic solutions.⁸⁰ Regardless of the debate and controversy around the situation, ASEAN states have emphasised that the most important thing is to help Myanmar in dealing with the problem.⁸¹ This reflects a regional orientation which is closer to Pillar Two of R2P,⁸² suggesting that an undifferentiated, monolithic characterisation of R2P is problematic. Given that R2P is not a single norm, but rather a package from which states can relate to in different ways, it also presents a challenge to conventional norms analysis since there is space for dispute as to whether compliance is occurring.

Further, Singapore has emphasised that regardless of the controversy over whether the Rohingya case constitutes a crime against humanity or other atrocity crime, it is Myanmar’s

⁷⁷ Interviewee 16.

⁷⁸ Interviewees 11, 16, and 20.

⁷⁹ Interviewees 8, 11, and 16.

⁸⁰ Interviewees 23 and 24.

⁸¹ Interviewees 6 and 15.

⁸² Adrian Gallagher, ‘The Promise of Pillar II: Analysing International Assistance Under the Responsibility to Protect’, *International Affairs*, 91(6) 1259-1275 (2015).

domestic problem and a national affair. The Office of the Singaporean Ministry of Foreign Affairs has stated that:

Indeed, there is a humanitarian issue in the Rakhine State of Myanmar, but it is still debatable whether or not the case is an atrocity crime. For sure, it is a domestic issue of Myanmar. We have to respect the sovereignty of Myanmar and we must be very careful when addressing this issue. Singapore does not want to interfere with Myanmar in this case.⁸³

To that point, ASEAN and its member states do not want their responses to be considered as a form of intervention into Myanmar's domestic affairs as they believe that each member country has the right to decide what is best for their nation.⁸⁴ ASEAN states have emphasised that 'if we want to help, we must knock on their doors'.⁸⁵ In other words, it is suggested that any international response to the issue should be accompanied with the consent of the Myanmar authorities. Therefore, ASEAN countries believe that despite having the capacity to provide assistance, the Rohingya issue must be addressed by the government of Myanmar themselves and they must arrive at their own solution, without undermining the basic rights of the Rohingya.⁸⁶ This is representative of the region-wide tendency to resist external interference and resolve peace and security issues in line with a conservative, statist mindset – a mindset which is arguably at odds with the normative developments that underpin R2P. ASEAN countries put their regional principles – especially state sovereignty and self-determination – first when dealing with the issue, but do not claim that this is incompatible with R2P as a global principle, and especially the aspects of R2P geared to providing assistance. As stated in the sixth report of the UN Secretary-General on R2P, 'the three pillars of R2P are of equal weight, mutually reinforcing and non-sequential'.⁸⁷ It does imply that a collective of states could prioritise certain strategies and approaches in implementing the R2P principle. At this point, ASEAN prioritises the use of their regional approaches to help the Myanmar government restore its capacity to respond the Rohingya issue. This should not be regarded as entirely cynical; the interviews conducted for this research reflected a widely held belief that external coercion is unlikely to alleviate the humanitarian crisis, and that engagement is more constructive. Thus, Pillar Three of R2P, which provides a pretext for international coercion in response to atrocity crimes, is the most problematic aspect of the principle in this regional context. Moreover, there is also clearly reluctance across the region to antagonise a powerful neighbour by appearing 'interventionist', and economic interests – both national and those

⁸³ Interviewee 6.

⁸⁴ Interviewees 8 and 11.

⁸⁵ Interviewee 20.

⁸⁶ Interviewee 8.

⁸⁷ UN Secretary-General, *Fulfilling Our Collective Responsibility: International Assistance and the Responsibility to Protect*, A/68/947-S/2014/449, 12 August 2014, https://www.un.org/ga/search/view_doc.asp?symbol=A/68/947&referer=/english/&Lang=E, accessed 27 September 2021.

linked to elites – also shape responses. In this sense, regional responses cannot be explained entirely through reference to norms or principles.

Indonesia has been notable in leading a ‘soft’ approach to Myanmar which typifies the regional mindset. It emphasised that ‘condemnation and sanctions are not necessarily a good way to show our concern about the problem’.⁸⁸ The country believes that ‘a good and trusted relationship among states is the key to solving a cross-border problem ... and this is what Indonesia did to Myanmar’.⁸⁹ To this point, Rosyidin argues that the quiet diplomacy and soft approach of Indonesia to Myanmar embraces the R2P principle, especially Pillar Two.⁹⁰

An illustration of practical approach is found in Indonesia’s successful efforts to bring the Rohingya issue into an ASEAN meeting – the ASEAN Retreat Meeting – where members believe that it should be addressed together as an ‘ASEAN family’.⁹¹ The Retreat Meeting claimed that Myanmar is slowly changing to become more open, especially with its ASEAN neighbours. More importantly, it was claimed that taking opportunities for engagement and consultation, one of which was the Retreat Meeting, is the key to dealing with regional problems including the situation in Rakhine State. An interviewee emphasised that:

Dialogue and engagement with Myanmar are highly important to be able to understand the issue comprehensively, find an appropriate solution, and convince each other to reach a ‘comfort level’ among the member states to act collectively.⁹²

In conjunction with the Retreat Meeting, the Rohingya issue has also been addressed by ASEAN members as part of their regional concerns regarding irregular movement and irregular migration. ASEAN adopted a regional declaration on the irregular movement of persons in 2015, in Kuala Lumpur, Malaysia. One of the follow-up actions taken in the wake of the declaration was the provision of a so-called ‘trust fund’ to support humanitarian and relief efforts that deal with the challenges resulting from irregular migration of persons in the region. This apparently apolitical, humanitarian approach is again typical of the region’s political culture. The Deputy Permanent Representative of Singapore to ASEAN stated that ‘we have used a “Trust Fund” from ASEAN to Myanmar to help the country to deal with the problem. We do not want to interfere with the country, but we are willing to help them respond to the problem’.⁹³ It is argued that the fund is important because it gives the Myanmar authorities the financial capacity to address the situation and support the development of the country.

⁸⁸ Interviewee 16.

⁸⁹ Interviewee 15.

⁹⁰ Mohamad Rosyidin, ‘Reconciling State’s Sovereignty with Global Norms: Indonesia’s Quiet Diplomacy in Myanmar and the Feasibility of the Implementation of Responsibility to Protect (RtoP) in Southeast Asia’, *Global Responsibility to Protect*, 12(1) 11-36 (2020).

⁹¹ Interviewees 11 and 16.

⁹² Interviewee 8.

⁹³ Interviewee 4.

Given the scale of the human rights abuses and the ‘soft’ approach by Indonesia and most ASEAN countries towards Myanmar, it is arguably difficult to make the case for there being ‘R2P in practice’ or the implementation (without adoption) of the R2P norm. Rather, it suggests a subsidiary behaviour of the ASEAN governments to R2P. In terms of motives and perspectives influencing their behaviour, it implies an embedded and calculated desire to resist international interference, especially when the R2P norm is taken into account, and to justify a response to the Rohingya issue which is more in tune with regional concerns. As described above, the Rohingya issue has been defined and framed through the lens of security and regional stability and peace, rather than as a human protection issue or with reference to atrocity crimes. On this point alone, it is problematic to claim that a state or collective response constitutes an R2P-based action when they resist the characterisation of an issue as an atrocity crime, despite the overwhelming evidence. A soft and incremental approach as part of the limited response by ASEAN and its member states to the Rohingya issue reflects the centrality of the ASEAN political culture rather than the implementation of the R2P norm – and thus a clash of norms rather than adaptation. Yet the interview evidence suggests a resistance based upon the applicability – and sometimes effectiveness – of R2P in this case, in favour of more discreet regional approaches, rather than a rejection of the R2P principle itself.

This is consistent with the incremental and consultation-based regional responses to other events in Myanmar, including the 2021 military coup, although these responses have been more critical of the regime than in the case of the Rohingya.⁹⁴ While external narratives – reflected in UN and European Union discussions, for example – have been wholeheartedly critical of the coup and the crackdown against protestors, ASEAN approaches have been markedly more circumspect and have framed the issue ‘in context’. Again, this reflects an aversion to public criticism on the basis that it may have little impact and be destabilising, and an inclination towards the ‘legitimacy’ of state actors.

The Philippines’ War on Drugs: ASEAN’s Silent Response

The attitude of ASEAN and its member states to the ‘war on drugs’ in the Philippines suggests that they perceive it in a similar way to the Rohingya issue. Again, the case reflects the strong influence of ASEAN norms which shape the reaction of member countries to the issue. After taking office in late June 2016, the Philippines President, Rodrigo Duterte, launched an aggressive official and semi-official approach to drug use and the illegal drug market, including encouraging extrajudicial and vigilante killings. Based upon a range of authoritative sources, including UN bodies and international human rights networks, a case can be made that

⁹⁴ Strangio Sebastian, ‘Indonesia Leading ASEAN Push on Myanmar Coup’, 18 February 2021, <https://thediplomat.com/2021/02/indonesia-leading-asean-push-on-myanmar-coup/>, accessed 15 March 2021.

Duterte's deadly war on drugs constituted atrocity crimes.⁹⁵ The state, according to some observers, has directly or indirectly committed unlawful killings and the enforced disappearance of persons intentionally and systematically, specifically targeting those suspected of being involved in illegal drugs.⁹⁶

The 'war on drugs' has resulted in a large number of deaths and widespread fear and terror among the population, even though it is supported by some sections of the community who are frustrated by crime and impunity.⁹⁷ By September 2017, the Philippines Drug Enforcement Agency (PDEA) claimed there had been nearly 4,000 deaths during operations. By June 2019, the Philippines National Police (PNP) reported that at least 6,600 people had been killed. Human Rights Watch claimed that unidentified gunmen have killed thousands more drug suspects, which would bring the total death toll to more than 12,000.⁹⁸ An opposition Senator in the Philippines claimed that the number of deaths from the war on drugs has surpassed 20,000.⁹⁹ In turn, the Chairperson of the Commission on Human Rights of the Philippines, Chito Gascon, suggested that the policy brought the total death toll to more than 27,000.¹⁰⁰ Despite a decline in the intensity of the killings in the war on drugs since the PDEA took over the anti-drugs operations from the PNP in October 2017, extrajudicial killings have still been consistently carried out by groups associated with, or encouraged by, the government.¹⁰¹ In addition, thousands of anti-government activists and members of the political opposition have

⁹⁵ UN High Commissioner for Human Rights, *Situation of Human Rights in the Philippines: Report of the United Nations High Commissioner for Human Rights*, A/HRC/44/22, 29 June 2020, <https://www.ohchr.org/Documents/Countries/PH/Philippines-HRC44-AEV.pdf>, accessed 15 March 2021; Human Rights Watch, 'World Report 2021: Philippines Events of 2020', <https://www.hrw.org/world-report/2021/country-chapters/philippines>, accessed 15 March 2021; Global Centre for the Responsibility to Protect, 'Populations at Risk: the Philippines', <https://www.globalr2p.org/countries/the-philippines/>, accessed 15 March 2021.

⁹⁶ UN High Commissioner for Human Rights, *Situation of Human Rights in the Philippines*.

⁹⁷ Paterno R. Esmaguell II, 'Why Filipinos Believe Duterte Was "Appointed by God"', *Rappler*, 28 June 2019, <https://www.rappler.com/newsbreak/in-depth/why-filipinos-believe-duterte-appointed-by-god>, accessed 15 March 2021; Reuters, 'Filipinos Give Thumbs Up to Duterte's "Excellent" Drugs War: Poll', 23 September 2019, <https://www.reuters.com/article/us-philippines-drugs-idUSKBN1W803M>, accessed 15 March 2021; The Economist, 'Rodrigo Duterte's Lawless War on Drugs is Wildly Popular', 22 February 2020, <https://www.economist.com/briefing/2020/02/20/rodrigo-dutertes-lawless-war-on-drugs-is-wildly-popular>, accessed 15 March 2021.

⁹⁸ Human Rights Watch, 'World Report 2018: Philippines Events of 2017', <https://www.hrw.org/world-report/2018/country-chapters/philippines>, accessed 7 June 2019.

⁹⁹ Ted Regencia, 'Senator: Rodrigo Duterte's Drug War Has killed 20,000', *Al-Jazeera*, 22 February 2018, <https://www.aljazeera.com/news/2018/02/senator-rodrigo-duterte-drug-war-killed-20000-180221134139202.html>, accessed 24 February 2019.

¹⁰⁰ Hannah Ellis-Petersen, 'Duterte's Philippines Drug War Death Toll Rises Above 5,000', *The Guardian*, 19 December 2018, <https://www.theguardian.com/world/2018/dec/19/dutertes-philippines-drug-war-death-toll-rises-above-5000>, accessed 24 February 2019.

¹⁰¹ Asia Pacific Centre for Responsibility to Protect, 'Atrocity Crimes Risk Assessment Series: The Philippines', Volume 7, September 2018, <https://r2pasiapacific.org/files/2497/Risk%20Assessment%20The%20Philippines%20FINALwith%20images%20opti%281%29.pdf>, accessed 2 October 2018.

been arrested and detained, with many allegedly subjected to ill-treatment and possibly torture.¹⁰²

The UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, stated that the extrajudicial killings violated international law.¹⁰³ International human rights networks such as Amnesty International and Human Rights Watch consider Duterte's war on drugs to constitute crimes against humanity.¹⁰⁴ Some scholars have claimed that the systematic extrajudicial killings could be considered an act of genocide¹⁰⁵ or crime against humanity.¹⁰⁶ The International Criminal Court (ICC), through its prosecutor Fatou Bensouda, indicated that a preliminary examination would begin to establish whether state crimes have been or are being committed.¹⁰⁷ An ICC report in 2020 detailing its preliminary examination emphasised that 'the Office is satisfied that information available [regarding the war on drugs policy] provides a reasonable basis to believe that the crimes against humanity of murder [...], torture [...] and the infliction of serious physical injury and mental harm as other inhumane acts [...] were committed on the territory of the Philippines'.¹⁰⁸ The report also stated that the Office aimed to have reached 'a decision on whether to seek authorisation to open an investigation [...] in the first half of 2021'.¹⁰⁹

In response, the Philippines government has refuted any criticisms of its policy. The government claims that the war on drugs is for the sake of peace and national security by saying, in the words of Duterte, that 'I am trying to preserve this country [...]. I do not want Filipinos destroyed by drugs'.¹¹⁰ The government has also invoked the principles of

¹⁰² Global Centre for the Responsibility to Protect, 'Atrocity Alert: International Criminal Court Initiates Examinations of Venezuela and the Philippines', 14 February 2018, <http://createsend.com/t/j-6166BB014256D4AC2540EF23F30FEDED>, accessed 10 March 2018.

¹⁰³ United Nations Office of the High Commissioner for Human Rights, 'High Commissioner's Global Update of Human Rights Concerns', 7 March 2018, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22772>, accessed 10 June 2018.

¹⁰⁴ Amnesty International, 'They Just Kill: Ongoing Extrajudicial Executions and Other Violations in the Philippines' "War on Drugs", 8 July 2019, <https://www.amnesty.org/download/Documents/ASA3505782019ENGLISH.PDF>, accessed 14 March 2021; Human Rights Watch, "'License to Kill': Philippines Police Killings in Duterte's 'War on Drugs'", 2 March 2017, <https://www.hrw.org/report/2017/03/02/license-kill/philippine-police-killings-dutertes-war-drugs>, accessed 27 September 2019.

¹⁰⁵ Dahlia Simangan, 'Is the Philippine "War on Drugs" an Act of Genocide?', *Journal of Genocide Research*, 20(1) 68-89 (2018).

¹⁰⁶ Adrian Gallagher, Euan Raffle, and Zain Maulana, 'Failing to Fulfil the Responsibility to Protect: The War on Drugs as Crimes Against Humanity in the Philippines', *The Pacific Review*, 33(2) 247-277 (2020).

¹⁰⁷ International Criminal Court, 'Statement of the Prosecutor of the International Criminal Court, Mrs Fatou Bensouda, On Opening Preliminary Examinations Into the Situations in the Philippines and in Venezuela', 8 February 2018, <https://www.icc-cpi.int/Pages/item.aspx?name=180208-otp-stat>, accessed 10 February 2018.

¹⁰⁸ International Criminal Court, 'Report on Preliminary Examination Activities 2020', 14 December 2020, <https://www.icc-cpi.int/itemsDocuments/2020-PE/2020-pe-report-eng.pdf>, accessed 16 March 2021.

¹⁰⁹ *ibid.*, p. 49.

¹¹⁰ Presidential Communications Operations Office, 'Speech of President Rodrigo Roa Duterte During His Attendance to the 80th Anniversary of the Department of National Defense', 20 November 2019,

sovereignty and non-interference into domestic matters to resist criticism of the strategy and tactics behind this policy. Presidential spokesperson, Harry Roque, stated that ‘deaths in the drug war do not constitute “crimes against humanity”, because “the ongoing war on drugs is an exercise of the police power in dealing with the problem of drug trafficking”’.¹¹¹ According to Human Rights Watch, the government therefore claims a ‘license to kill’ drugs suspects within the country.¹¹²

There has been no clear reaction from ASEAN and its member states to this situation in terms of meetings, joint statements, and other forms of response – with the exception of a small number of general statements cited in the media.¹¹³ This may be explained by the regional context. Southeast Asia is one of the busiest drug trafficking regions in the world, oriented around the ‘Golden Triangle’, and ASEAN governments consider combating the illegal trafficking and abuse of drugs to be a critical and a primary objective of ASEAN. This is regarded as being central to such challenges as regional development, national resilience, and the security of the nations and region.¹¹⁴ As the ASEAN Leaders Declaration on a Drug-Free ASEAN in 2015 stated, governments in the region emphasise that ‘apart from the suffering caused to individuals, particularly the young, illicit drug abuse and trafficking weaken the social fabric of nations, represent direct and indirect economic costs to governments and entail criminal activities which could threaten the stability of states’. Moreover, regional states realise that drugs, especially their illegal trafficking, are inextricably linked to other transnational crimes such as arms-smuggling and money laundering, which can cause serious political and security threats to the region.¹¹⁵

This deeply ingrained official aversion to illegal drug use – which is widely shared by the public across Southeast Asia – is therefore an essential part of the regional context which explains the reluctance of states within ASEAN to use regional processes to restrain the government of the Philippines or publicly chastise it. On the contrary, there is implicit encouragement of the Philippine’s approach to this social problem, and external defensiveness. Tackling illegal drug use has received regional political support, with little or no consideration

<https://pcoo.gov.ph/wp-content/uploads/2019/11/20191120-speech-of-president-rodrigo-roa-duterte-during-his-attendance-to-the-80th-anniversary-of-the-department-of-national-defense.pdf>, accessed 23 March 2021.

¹¹¹ Lian Buan and Jodesz Gavilan, ‘Int’l Criminal Court Takes 1st Step in Probe into Duterte Drug War’, *Rappler*, 8 February 2018, <https://www.rappler.com/nation/195492-icc-the-hague-netherlands-duterte-drug-war-killing>, accessed 27 September 2019.

¹¹² Human Rights Watch, “License to Kill”.

¹¹³ Ed Davies and Stefano Reinhard, ‘Indonesia Drug Czar Warns Methamphetamine Seizures Tip of Iceberg’, *Reuters*, 28 July 2017, <https://www.reuters.com/article/us-indonesia-drugs/indonesia-drug-czar-warns-methamphetamine-seizures-tip-of-iceberg-idUSKBN1AD17N>, accessed 8 August 2018; Paterno Esmaguel II, ‘Singapore Says It Respects Philippines’ Drug War’, *Rappler*, 21 March 2017, <https://www.rappler.com/nation/164819-singapore-philippines-war-drugs-duterte-lee>, accessed 8 August 2018.

¹¹⁴ ASEAN, ‘Joint Declaration for a Drug-Free ASEAN’, 25 July 1998, http://asean.org/?static_post=joint-declaration-for-a-drug-free-asean, accessed 7 March 2018; ASEAN, ‘The 30th ASEAN Summit: Remarks of the President Duterte at the Opening Ceremony’, 29 April 2017, <https://asean.org/remarks-president-rodrigo-roa-duterte-opening-ceremony-30th-asean-summit-picc-manila-philippines-29-april-2017/>, accessed 7 March 2018.

¹¹⁵ ASEAN, ‘Joint Declaration for a Drug-Free ASEAN’.

of the human rights implications. Within the framework of ASEAN drugs control, ASEAN governments have been able to build cooperation and collaboration (within the region and beyond) on the issue. On behalf of member countries, at the 31st ASEAN Summit in November 2017 the Chairman of ASEAN emphasised that governments in the region needed to recognise that drug problems are too difficult and complex to be addressed by individual states, and that cooperation is essential. ASEAN governments thus welcome any assistance, including initiatives such as capacity-building and intelligence information sharing to help deal with the challenge.¹¹⁶

Along with cooperation and collaboration in combating the illegal trafficking and abuse of drugs, ASEAN countries emphasise that each nation should respect the sovereignty of others, especially in deciding the most appropriate approaches to dealing with the problem. At the 4th ASEAN Ministerial Meeting on Drug Matters in 2015, a joint statement perfectly encapsulated the regional mindset:

Each country has the sovereign rights and responsibility to decide on the best approach to address the drug problems in their country, taking into account the historical, political, economic, social and cultural contexts 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. There is no one-size-fits-all approach towards addressing the drug issue, as each country has its own unique set of challenges.¹¹⁷

As the statement suggests, ASEAN frameworks and instruments on drugs control encourage cooperation and collaboration, but the implementation of these commitments are still understood within the context of ASEAN norms on state sovereignty and non-interference. According to Emmers, ASEAN's arrangements have been created and developed according to its basic norms, to ensure their full support and acceptance by all member countries.¹¹⁸ Consequently, the war on drugs in the Philippines is viewed in line with this understanding, reflecting both the state-centric political culture and a marked antipathy towards illegal drug use. This is translated into a reluctance across ASEAN member states to condemn or take action

¹¹⁶ ASEAN, 'The 31st ASEAN Summit: Chairman Statement', 13 November 2017, <http://asean.org/storage/2017/11/final-chairman%E2%80%99s-statement-of-31st-asean-summit.pdf>, accessed 18 February 2018.

¹¹⁷ ASEAN, 'Position Statement Endorsed and Adopted by the 4th ASEAN Ministerial Meeting on Drug Matters 29 October 2015, Langkawi, Malaysia', 29 October 2015, <http://www.asean.org/wp-content/uploads/2015/10/Position-Statement-on-Drugs-endorsed-and-adopted-by-the-4th-AMMD-on-29-October-2015-Langkawi-Malaysia.pdf>, accessed 15 February 2015.

¹¹⁸ Ralf Emmers, 'International Regime-Building in ASEAN: Cooperation against the Illicit Trafficking and Abuse of Drugs', *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, 29(3) 506-525 (2007).

regarding the situation in the Philippines because the war on drugs policy is regarded as a legitimate – if heavy-handed – method of law enforcement against illegal drugs smugglers and users. Indonesia’s Head of the Anti-Narcotics Agency, for example, showed his sympathy with Duterte’s policy by saying that ‘he is taking care of his citizens’.¹¹⁹

The Head of the Directorate of Law and Human Rights in the Indonesian Ministry of Foreign Affairs stated that:

ASEAN has had a collective understanding and commitment to combat the illicit trafficking and abuse of drugs since the 1970s, as stated in several mechanisms and series of meetings [...] If something happens as a consequence of the war on drugs, it is a national domestic problem of the country.¹²⁰

In a similar vein, another interviewee said:

We realise there are casualties of the war on drugs in the Philippines, but it is a complex problem. The war on drugs has a comprehensive agenda. The drugs problem correlates with transnational crimes, the development of the country, social-health issues and law enforcement. We cannot simply condemn or take action on the situation. We have a commitment in the ASEAN to fight against the abuse and illegal trafficking of drugs. But also we cannot interfere with the country’s domestic problems. The enforcement of laws against drug smugglers and users is a state sovereignty issue.¹²¹

Most ASEAN countries, as in the case of the Rohingya, do not readily define the Philippines’ drugs war as an atrocity crime, despite international condemnation of the abuses from national governments, the EU, and the UN. Consequently, the Philippines’ war on drugs is neglected in all relevant ASEAN forums including the meeting of the ASEAN Intergovernmental Commission on Human Rights (AICHR) and ASEAN Summit. It is highly instructive that an ASEAN country representative to the ASEAN Senior Officials on Drug Matters (ASOD) and ASEANAPOL (the front guard of ASEAN drugs control) stated that they never discussed the case either formally or informally at the ASEAN level.¹²² Similarly, at the 23rd meeting of the AICHR in February 2017 in the Philippines, the commission did not discuss the human rights issues related to this situation. While the commission discussed the human rights-based approach to the implementation of the ASEAN Convention Against Trafficking in Persons,

¹¹⁹ Davies and Reinhard, ‘Indonesia Drug Czar Warns Methamphetamine Seizures Tip of Iceberg’.

¹²⁰ Interviewee 23.

¹²¹ Interviewee 25.

¹²² Interviewee 26.

they did not discuss human rights in relation to measures to combat drug abuse.¹²³ At the time of writing, this issue is still being neglected by the AICHR, including in the 2020 and 2021 AICHR Annual Reports. The reports made not one mention of drugs, including the issue of the war on drugs in the Philippines.

At the highest level meetings of ASEAN, despite the general problems and challenges presented by drugs always being raised and reinforced at every ASEAN Summit Meeting, the Philippines' war on drugs has been ignored at the last six Summits since Duterte launched his deadly policy (the 28th to 34th summits held between 2016 and 2019). Instead of addressing this, ASEAN governments have reinforced their joint commitment to a zero-tolerance approach in realising the regional vision of a Drugs-Free ASEAN.¹²⁴ At the 34th ASEAN Summit in June 2019, ASEAN countries again reaffirmed their commitment to addressing the scourge of drugs through their regional drug control arrangements in order to achieve their goal of freedom from drug abuse and trafficking.¹²⁵

While there was no criticism directed at the Philippines from ASEAN and its member states, Duterte, as the host of the 30th ASEAN Summit in April 2017, used the opening ceremony to remind his ASEAN colleagues of the threat posed by illegal drugs to community-building. Furthermore, Duterte urged ASEAN collectively to strengthen its political will and cooperation in order to destroy the threat before it destroys societies.¹²⁶

As in the Rohingya case, the way ASEAN countries interpret and respond to the extrajudicial killings carried out as part of the Philippines' war on drugs suggests the centrality of ASEAN principles and approaches that inform the member states' perspectives and behaviour in response to the problem. In a broader sense, it indicates a rejection by countries in the region of international 'interference', including the application of R2P. But this resistance is based upon subsidiary practices, regional political culture, and domestic jurisdiction, and not a claim that R2P principles *per se* are illegitimate or invalid. Rather, the regional narrative includes a claim that R2P principles are already reflected in existing regional norms and practices, as a localised interpretation which is more suitable to local circumstances (see next section). From

¹²³ ASEAN, 'The 23rd ASEAN Intergovernmental Commission on Human Rights (AICHR)', 15 February 2017, <http://aichr.org/press-release/press-release-23rd-meeting-of-the-aichr-13-15-february-2017-boracay-the-philippines/>, accessed 18 February 2018.

¹²⁴ ASEAN, 'The 28th-29th ASEAN Summit Meeting: the Chairman Statement', 6-7 September 2016, <http://asean.org/storage/2016/08/Final-Chairmans-Statement-of-the-28th-and-29th-ASEAN-Summits-rev-fin.pdf>, accessed 18 February 2018.

¹²⁵ ASEAN, 'The 34th ASEAN Summit: the Chairman Statement', 23 June 2019, https://asean.org/storage/2019/06/Final_Chairs-Statement-of-the-34th-ASEAN-Summit-rev.pdf, accessed 17 August 2019.

¹²⁶ ASEAN, 'The 30th ASEAN Summit: Remarks of President Duterte as the Opening Ceremony', 29 April 2017, <http://asean.org/remarks-president-rodrigo-roa-duterte-opening-ceremony-30th-asean-summit-picc-manila-philippines-29-april-2017/>, accessed 18 February 2018.

a regional elite perspective – which may not be fully understood or supported externally – addressing the illegal market in narcotics is the greater humanitarian goal.

ASEAN Norms in Context

The promotion and mainstreaming of R2P in the Southeast Asian region is still very limited and demonstrates a contestation and subsidiary behaviour among ASEAN countries, in the sense that states have used their regional perspectives and frameworks to offer normative resistance to the diffusion and application of R2P in the context of the region. The way ASEAN countries perceive and respond to these cases suggests that states interpret international norms in their local context, along with their ideational, institutional and material structures,¹²⁷ irrespective of the rhetoric such countries offer in international forums such as the UN. This is therefore not a rejection of the fundamental principles of protection – on the contrary, since regional elites openly endorse R2P in global settings – but rather an assertion and justification of regional interpretations. While this is generally regarded as being simply disingenuous, an examination of regional practices suggests that forms of subsidiarity are drawn upon – albeit in a manner which is widely regarded as unsatisfactory to many observers.

As the analysis of cases demonstrates, ASEAN governments uphold a strong belief in the doctrine of a ‘regional solutions to regional problems’ by emphasising the capacity of the regional mechanisms and instruments to respond. This doctrine, to a large extent, has restricted the promotion of R2P and constrains the use of R2P to frame and respond to the Rohingya crisis and the war on drugs. Despite the visibility of the R2P narrative on the ground following the 2021 coup in Myanmar, this mindset remains largely intact. The ‘ASEAN Way’ has not been specifically constructed to challenge R2P, but it has been widely used by member states to constrain the promotion and the use of the principle in the region. As the Permanent Representative of Thailand to ASEAN suggested:

I think the ASEAN does not need specific guidelines, frameworks and plans of action to adopt and implement R2P. We have enough provisions and instruments in place already to address a specific humanitarian problem.¹²⁸

Another statement, from Indonesia, indicated that:

Any issues related to human rights protection are already regulated in the AICHR and ASEAN Charter. Issues related to the political situation and democracy in Myanmar

¹²⁷ Betts and Orchard, *Implementation and World Politics*.

¹²⁸ Interviewee 11.

are responded to through a political approach among the member states. In other words, there is already a framework and a mechanism to deal with the issues occurring in the region.¹²⁹

Most ASEAN governments accept that there are humanitarian problems associated with the Rohingya and the war on drugs. However, they generally claim that these cases should be addressed through their regional apparatus, given its characteristics and diplomatic culture.¹³⁰ Moreover, regional elites claim that the two cases are within the domestic jurisdiction of Myanmar and the Philippines and thus ‘national’ affairs. This ASEAN response describes the general picture of the region’s human protection arrangements, which are understood within the bounds of the regional principles and mechanisms. For example, Indonesia explicitly favours their own way of ‘quiet diplomacy’ toward Myanmar on the issue of the Rohingya, rather than the invocation of R2P. State elites believe that they have experience to deal with civil-military conflict and consider that a quiet and incremental approach to Myanmar authorities is more likely to create trust and thus better facilitate humanitarian assistance and the search for solutions.¹³¹ Thus, albeit human rights norms have been adopted into ASEAN’s institutional framework, they are generally understood and implemented according to the broader understandings of its core regional principles.¹³²

R2P proponents in the region, such as Mely Caballero-Anthony, argue that despite reluctance to accept the language of R2P, the region is already practising the key principle of R2P, namely atrocity prevention.¹³³ In a similar vein, former Executive Director of the APCR2P Noel Morada emphasised that even though the wording of R2P does not exist in ASEAN, certain elements of the principle are contained in the ASEAN Charter and other relevant documents and agreements and thus it has claimed that ‘R2P in action’ does exist in the region.¹³⁴ It is thus claimed that criticism of Myanmar by several ASEAN countries – such as Indonesia, Malaysia, and Thailand – indirectly implies support for R2P.¹³⁵ This may reflect what Dunne and Gelber describe as the ‘implicit signifier’ of R2P, meaning that the absence of explicit R2P language does not mean the idea of R2P is irrelevant.¹³⁶ While the R2P proponents in the region accept

¹²⁹ Interviewee 8.

¹³⁰ Interviewees 4, 8, and 11.

¹³¹ Claire Q. Smith and Susannah G. Williams, ‘Why Indonesia Adopted “Quiet Diplomacy” Over R2P in the Rohingya Crisis: The Roles of Islamic Humanitarianism, Civil-Military Relations, and ASEAN’, *Global Responsibility to Protect*, 13, 158-185 (2021).

¹³² Petcharamesree, ‘ASEAN Human Rights Regime and Mainstreaming the Responsibility to Protect’.

¹³³ Interviewee 7.

¹³⁴ Interviewee 10. See also Noel Morada, ‘ASEAN Regionalism and Capacity-Building for Atrocities Prevention’ in Cecilia Jacob and Martin Mennecke (eds.), *Implementing the Responsibility to Protect* (Milton Park: Routledge, 2020), pp. 89-108; Noel Morada, ‘ASEAN and the Rakhine Crisis: Balancing Non-Interference, Accountability, and Strategic Interests in Responding to Atrocities in Myanmar’, *Global Responsibility to Protect*, 13, 131-157 (2021).

¹³⁵ Interviewee 10.

¹³⁶ Tim Dunne and Katharine Gelber, ‘Arguing Matters: The Responsibility to Protect and the Case of Libya’, *Global Responsibility to Protect*, 6(3) 326-349 (2014); Welsh, ‘Norm Robustness and the Responsibility to Protect’; Deitelhoff and Zimmermann, ‘Things We Lost in the Fire’. See also Alex J. Bellamy, *The Responsibility to Protect: A Defense* (Oxford: Oxford University Press, 2014).

the limitations of ASEAN, they emphasise that the region is generally moving in the right direction in relation to R2P and human protection in strengthening capacity-building and atrocity prevention. This perspective also reflects a desire to constructively engage rather than criticise.

For ASEAN countries, prevention is key to R2P and that is the primary concern of the region. The Office of Singapore to the ASEAN stated:

The basic idea of R2P already exists in the ASEAN. ASEAN mechanisms and frameworks in relation to human rights and human protection contain the core element of R2P, especially prevention and capacity-building. Therefore, there is no urgency for the ASEAN to refer directly to or adopt R2P formally. Instead, the ASEAN prefers to use its own way to deal with its regional problems.¹³⁷

Similarly, an interview with a member of the Indonesian Ministry of Foreign Affairs revealed that:

The ASEAN already has a mechanism, especially in the political and security pillars of the ASEAN community. It is clearly related to the core element of R2P. Moreover, the ASEAN already has some instruments, such as a human rights declaration, ASEAN Charter, AICHR, ASEAN Humanitarian Centre, and other instruments and mechanisms, related to human rights and human protection. The current mechanism and approach to problems in the region (including the case of Rohingya) are effective and show progress. Therefore, why should we not continue this approach?¹³⁸

This elite discourse argues in favour of ‘implicit signifiers’ of R2P in the region by emphasising the strong linkage between R2P and ASEAN principles and frameworks, and the practices of R2P’s core elements, namely prevention and capacity-building. However, this claim needs to be tested. In ASEAN, human rights-related mechanisms and instruments such as AICHR and the ASEAN Coordinating Centre for Humanitarian Assistance (AHA Centre) have fundamental limitations in supporting atrocity prevention in the region. The AICHR has no authority to monitor and investigate human rights within member states. Members of AICHR and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) are generally government representatives rather than NGOs or human rights activists.¹³⁹ In practice, the commission is unable to collect data relevant to atrocity crimes, or enforce a policy with regard to human rights within member countries.¹⁴⁰ The mandate of AICHR does not provide a mechanism or the authority to enable the commission to discuss gross human rights violations. Despite the stated commitment ‘to obtain information on human rights violations that take place in member states’, this mandate is restricted by ASEAN

¹³⁷ Interviewee 4.

¹³⁸ Interviewee 18.

¹³⁹ Interviewees 19 and 21.

¹⁴⁰ Interviewees 5, 8, and 14.

political principles. The mandate ‘to obtain information’ can only be implemented if there is consent from a state where human rights violations are being investigated and it must be agreed by the ten member states (ASEAN consensus mechanism).¹⁴¹

In terms of addressing, preventing or reducing abuses in the Rohingya case and the war on drugs, AICHR has played a very limited role. The two cases of egregious human rights abuses in the region were ignored at AICHR meetings even though they were ongoing issues. In contrast, AICHR remains focused on somewhat less controversial issues such as disabled people’s rights, human trafficking, women and children affected by natural disasters, freedom of expression in the information age, and human rights in business activities.¹⁴²

It is similarly too early to claim that the AHA Centre is ready to play a significant role in atrocity prevention, despite being involved in providing humanitarian assistance in the wake of conflict in Southeast Asia, including the assistance to Myanmar in the case of Rohingya. The primary responsibility of the centre is disaster relief – especially following natural disasters – and providing humanitarian assistance rather than addressing human rights violations or the resolution of atrocity problems. In this context, the early warning system provided by the centre is primarily related to natural disasters rather than the occurrence of conflict or risk of atrocities. Taking the *UN Framework of Analysis for Atrocity Crimes: A Tool for Prevention* as a benchmark,¹⁴³ the AHA Centre is not designed to assess atrocity risk factors in Southeast Asian countries, and it does not have a mandate for monitoring potential human rights crises in the region. As the *UN Framework* emphasises, atrocity prevention requires the systematic collection of accurate and reliable information based on the risk factors and indicators that the Framework identifies.¹⁴⁴ In the case of Rohingya, the mandate is limited to identifying where ASEAN can work with the host country (Myanmar) for the repatriation and resettlement of the Rohingya. At best, ASEAN’s role in the repatriation of the Rohingya will be limited to identifying the technical and humanitarian needs of the process rather than addressing the alleged atrocity crimes of Myanmar authorities.¹⁴⁵

ASEAN countries could argue that the role of the AHA Centre could be expanded to include atrocity prevention and response, but it would require an extension of the mandate and authority

¹⁴¹ Interviewees 9 and 14.

¹⁴² ASEAN Intergovernmental Commission on Human Rights, *Annual Report 2018* (Jakarta: AICHR, 2018).

¹⁴³ United Nations, *Framework of Analysis for Atrocity Crimes: A Tool for Prevention* (New York: United Nations, 2014), https://www.un.org/en/genocideprevention/documents/aboutus/Doc.3_Framework%20of%20Analysis%20for%20Atrocity%20Crimes_EN.pdf, accessed 15 January 2021.

¹⁴⁴ United Nations, *Framework of Analysis for Atrocity Crimes*, p. 5.

¹⁴⁵ Moe Thuzar, ‘Repatriating the Rohingya: What Regional Cooperation Can and Cannot Do’, *ISEAS – Yusof Ishak Institute Perspective*, No. 2019/73, 13 September 2019, p. 6, https://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2019_73.pdf, accessed 15 January 2021; Interviewees 2, 3, and 22.

of the centre. As Staunton and Ralph suggest, a successful strategy of prevention needs early action to prevent the escalation of the latent risk factors and to be cost-effective.¹⁴⁶ In the context of ASEAN, the extension of the mandate of bodies, or ensuring the instruments are fit for purpose, would be a very difficult and complex process, especially when taking into account sensitive issues for ASEAN countries surrounding human rights violations and state sovereignty. In other words, the current features of the AHA Centre do not suggest that it could play a significant role in atrocity prevention.

While most ASEAN countries have claimed that the regional arrangements contain the core elements of R2P, and especially the aspect of prevention, ASEAN as an institution does not have adequate mechanisms to prevent and respond to atrocity crimes, in addition to the lack of political will. Lack of understanding on R2P, atrocity risk, mitigation, and response strategy also persist among the ASEAN countries.¹⁴⁷ This has been reflected in the problematic and limited nature of the regional responses to the two cases of atrocities.

ASEAN's interpretation of R2P within the context of its principles and power dynamics reflect the way the countries contest and resist the diffusion and implementation of R2P within the region. As Acharya argued, when states uphold their locally constructed norms and doctrines, it suggests they are more likely to at least justify this as a form of norm subsidiarity, and that is what is at work here.¹⁴⁸ Regional reluctance to embrace R2P is a consequence not only of aversion to international intervention, but also a desire to preserve their regional autonomy and identities. This argument certainly reinforces the sceptical view regarding the diffusion of R2P in the ASEAN context.¹⁴⁹

Conclusion

The way ASEAN and its member states perceive and respond to serious human rights abuse in the region demonstrates the predominant influence of regional normative framings and political dispositions. Regional principles, diplomatic and political cultures, and the common interests of states in preserving their autonomy and regional stability have clearly shaped the shared perspective of these countries in their interpretation and response to the cases as 'complex' problems which are the internal affairs of states. The near uniformity of this stance across the region is remarkable. There is no reason to think that the behaviour and discourse of regional actors is not also shaped to some extent by self-serving interests on the part of elites, but the manner in which political decisions are framed with reference to regional norms is significant.

¹⁴⁶ Eglantine Staunton and Jason Ralph, 'The Responsibility to Protect Norm Cluster and the Challenge of Atrocity Prevention: An Analysis of an European Union's Strategy in Myanmar', *European Journal of International Relations*, 1-27 (2019), p. 5.

¹⁴⁷ Interviewees 2 and 3.

¹⁴⁸ Acharya, 'Norm Subsidiarity and Regional Orders'.

¹⁴⁹ Capie, 'The Responsibility to Protect Norm in Southeast Asia'.

Regional responses to these key cases in Myanmar and the Philippines demonstrate a general understanding of R2P within ASEAN and a reluctance to implement the norm in the context of the region. To be clear: policy elites are aware of the R2P principle and other international norms, and the human rights issues raised in these cases, but they nevertheless adopt behaviour and discourse which reflects a form of subsidiarity.

To this point, it is problematic to claim that the stance of ASEAN is one of straightforward rejection of R2P because they accept the validity of the principle to protect people from mass atrocities, despite they problematise the controversial implementation of the R2P especially when the use of force is taken into account. As some ASEAN stakeholders emphasised in the interviews conducted for this paper, even in the absence of explicit R2P language, some elements of R2P do exist in Southeast Asia, especially prevention and capacity-building,¹⁵⁰ albeit in a manner which would not satisfy most R2P analysts. But the claim of countries in the region that they are substantially already directly or indirectly practising R2P suggests a form of contestation and subjectivity in the way in which international norms may be implemented in various ways and types. As Zimmermann suggested, norm contestation may result a certain type of translation rather than simply adoption or rejection.¹⁵¹ Therefore, ASEAN states' responses to the two cases of atrocity crimes suggest a form of contestation and resistance based upon subsidiary principles and interests of countries in the region. This position may reflect the behaviour of 'creative resisters' or it may fall somewhere in between 'creative resisters', based upon subsidiary principles and interests, and pure norm antipreneurs in the sense of suggested by Bloomfield.¹⁵²

We find that the subsidiarity dynamic is relevant, despite the appearance of norm rejection, because the regional political culture and the responses to human rights abuse reflect – at least discursively – local norms and principles, and there is a pattern of justification and engagement with international principles, even if the outcome is not one of internalisation. Moreover, the regional political discourse often reflects a counter-hegemonic narrative in resisting external coercion in a post-colonial sense – even if this might be regarded as being disingenuous – which is often a feature of subsidiary behaviour. Finally, regional responses to atrocities are justified on the basis of local institutions and processes, such as the ASEAN Coordinating Centre for Humanitarian Assistance and the ASEAN Intergovernmental Commission on Human Rights. However the efficacy of these instruments might be judged, the regional claim that these are established, functional frameworks which preclude the need to internalise external regimes, is a subsidiary stance. The position of regional stakeholders therefore falls somewhere between subsidiarity and rejection, and points to the idea of differential forms of rejection which need to be unpacked and understood as the basis for negotiation. We therefore define this as a form of contestation and resistance based upon subsidiary principles and interests – neither straightforward rejection nor subsidiarity. In relation to the International Relations norms field, this suggests that there may be limitations to categorising norm

¹⁵⁰ Interviewees 4 and 18.

¹⁵¹ Zimmermann, 'Same Same or Different?'

¹⁵² Bloomfield, 'Norm Antipreneurs and Theorising Resistance to Normative Change'.

engagement into discrete or fixed types, since this engagement – whether that is rejection, internalisation, or subsidiarity – is not static in nature and needs to be understood as multifaceted in terms of the motivations and drivers at work.

Countries in the region view the cases largely from the perspective of political sovereignty and self-determination, the imperative of resisting external interference, and the wish to preserve their regional principles and identities. They emphasise that states or regional organisations have mechanisms and approaches for addressing their problems which take precedence over, and are more appropriate than, those found at the international level. Thus, elites claim that ASEAN principles and approaches are already in place to address human rights abuses and, more importantly – as a reflection of a kind of exceptionalism – that regional principles and approaches are the most suitable instruments to use in the context of the region. This is not to suggest that ASEAN has made no progress on human rights protection issues, but the way ASEAN and the member states perceive and respond to the abuses in the region indicates that the R2P norm has not been internalised, and that this is not the consequence of some form of political or bureaucratic inertia, but rather active contestation on normative grounds.

Table 1. List of interview subjects

Code	Institutions/Identities	Category	Date
Interviewee 1	Former Executive Director of Centre for Strategic and International Studies (CSIS) Indonesia	Non-state actor	5 Oct. 2016
Interviewee 2	Researcher at the Department of Politics and International Relations, CSIS Indonesia	Non-state actor	12 Oct. 2016
Interviewee 3	Senior staff member, Cambodia Institute for Cooperation and Peace (CICP), Cambodia	Non-state actor	17 Oct. 2016
Interviewee 4	Deputy Permanent Representative of Singapore to ASEAN	State actor	20 Oct. 2016
Interviewee 5	Senior Advisor on ASEAN and Human Rights of the Human Rights Working Group (HRWG) Indonesia	Non-state actor	27 Oct. 2016
Interviewee 6	Senior staff member, ASEAN Directorate at Singapore Ministry of Foreign Affairs	State actor	2 Nov. 2016

Interviewee 7	Senior Professor and staff member, Centre for Non-Traditional Security Studies at the S. Rajaratnam School of International Studies (RSIS), Singapore	Non-state actor	2 Nov. 2016
Interviewee 8	Former Permanent Representative of Indonesia to ASEAN	State actor	3 Nov. 2016
Interviewee 9	Researcher and Program Manager of ASEAN Human Rights Advocacy at the Human Rights Working Group (HRWG) Indonesia	Non-state actor	4 Nov. 2016
Interviewee 10	Staff member, the Asia Pacific Centre for the Responsibility to Protect	Non-state actor	4 Nov. 2016
Interviewee 11	Permanent Representative of Thailand to ASEAN	State actor	25 Nov. 2016
Interviewee 12	Member of the ASEAN High Level Advisory Panel (ASEAN-HLAP)	Non-state actor	29 Nov. 2016
Interviewee 13	Second Secretary of Malaysian Embassy in Indonesia	State actor	16 Dec. 2016
Interviewee 14	Former Indonesia Representative to ASEAN Intergovernmental Commission on Human Rights (AICHR)	State actor	20 Dec. 2016
Interviewee 15	Director of Political and Security Cooperation in ASEAN, the Indonesian Ministry of Foreign Affairs	State actor	5 Jan. 2017
Interviewee 16	Former Indonesia Permanent Representative to ASEAN	State actor	5 Jan. 2017
Interviewee 17	Indonesia Representative to ASEAN Institute for Peace and Reconciliation (AIPR)	State actor	6 Jan. 2017
Interviewee 18	Director of Humanitarian and Human Rights, the Indonesian Ministry of Foreign Affairs	State actor	6 Jan. 2017

Interviewee 19	Former Indonesia Representative to ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC)	State actor	9 Jan. 2017
Interviewee 20	Director General of ASEAN Cooperation, the Indonesian Ministry of Foreign Affairs	State actor	11 Jan. 2017
Interviewee 21	Former Indonesia Representative to ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC)	State actor	16 Feb. 2018
Interviewee 22	Researcher and Program Manager of ASEAN Human Rights Advocacy at the Human Rights Working Group (HRWG) Indonesia	Non-state actor	22 Feb. 2018
Interviewee 23	Head of the Directorate of Law and Human Rights, the Indonesian Ministry of Foreign Affairs	State actor	6 Mar. 2018
Interviewee 24	Former Indonesia Representative to ASEAN Intergovernmental Commission on Human Rights (AICHR)	State actor	16 Mar. 2018
Interviewee 25	Director of Humanitarian and Human Rights, the Indonesian Ministry of Foreign Affairs	State actor	5 April 2018
Interviewee 26	Head of the Directorate of Regional and International Cooperation, Indonesian National Narcotics Agency and Indonesia Representative to ASEANAPOL	State actor	11 April 2018