

# **Mainstreaming the Responsibility to Protect in Southeast Asia:**

## **Pathway Towards a Caring ASEAN Community**



**REPORT OF THE HIGH-LEVEL ADVISORY PANEL ON THE  
RESPONSIBILITY TO PROTECT IN SOUTHEAST ASIA**

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**High-Level Advisory Panel on the  
Responsibility to Protect in Southeast Asia**

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## **PART I: INTRODUCTION AND EXECUTIVE SUMMARY**

**Mainstreaming the Responsibility to Protect in Southeast Asia could make a significant contribution to the establishment of a ‘sharing and caring’ ASEAN Community, which the Association’s Member States aspire to achieve in 2015. The responsibilities of protection stem not just from international law and global commitments made by the region’s governments at the United Nations, but also from the commitments that ASEAN Member States have made to each other. The concepts and norms of the Responsibility to Protect converge with ASEAN’s vision of a peaceful, just, democratic, people-centered and caring community in Southeast Asia. As such, the Responsibility to Protect provides ASEAN with a major pathway towards realizing its vision of a caring and sharing community in Southeast Asia and supports ASEAN’s responsibility to care for the protection of its own people.**

At the 2005 World Summit, ASEAN Member states joined the whole membership of the United Nations in making a solemn commitment to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This commitment to protect, encapsulated in the phrase ‘Responsibility to Protect’ was reflected in paragraphs 138-140 of the World Summit Outcome Document. This calls on every state to: (1) fulfill its responsibility to protect its own population from genocide, war crimes, ethnic cleansing and crimes against humanity, (2) encourage and assist other states to fulfill their responsibility, and (3) take timely and decisive action when necessary, in full accordance with the UN Charter, to protect populations from these crimes.

Since 2005, several ASEAN Member states have contributed to the ongoing development of the Responsibility to Protect through their constructive contributions to the informal dialogues of the UN General Assembly, participation in the Group of Friends of the Responsibility to Protect, engagement and hosting of regional workshops, and cooperation with the UN in the field of training.

Regional efforts at promoting the Responsibility to Protect have extended beyond official meetings to initiatives undertaken by track-two, unofficial, bodies that have worked to raise awareness of the Responsibility to Protect and advance its objectives. In September 2011, the Council for Security Cooperation in the Asia-Pacific (CSCAP), which includes think tanks from across Southeast Asia, published a Memorandum (Memorandum No. 18) on implementing the “Responsibility to Protect in the Asia Pacific region”. It concluded that regional arrangements such as ASEAN and the ASEAN Regional Forum (ARF) should play an important role in implementing the Responsibility to Protect to enhance the protection afforded to populations in Southeast Asia and ensure, among

other things, that it is advanced in a manner consistent with local norms and interests. Similarly, ASEAN-based research institutions have conducted research and organized dialogue on how best to promote the Responsibility to Protect in Southeast Asia, as well as identifying pathways to institutionalize a culture of prevention when it comes to genocide, war crimes, ethnic cleansing and crimes against humanity. This ongoing dialogue has brought together representatives from national parliaments, governments, the ASEAN secretariat, civil society organizations, academe, media and representatives from international organizations. It has helped deepen the region's understanding of the Responsibility to Protect and the steps that should be taken to fulfill the commitments made by governments in 2005.

In 2013, Mr. Adama Dieng, Under-Secretary-General of the United Nations and Special Advisor to the Secretary-General on the Prevention of Genocide wrote to Dr. Surin Pitsuwan, former Secretary-General of ASEAN, requesting advice on the steps that might be taken to promote the Responsibility to Protect in Southeast Asia. Recognizing the 2005 commitment made by ASEAN Member states, and mindful of the on-going multi-track efforts in the region aimed at promoting the goals of the Responsibility to Protect, Dr. Surin convened a small group of eminent persons to establish a High Level Advisory Panel on the Responsibility to Protect in Southeast Asia in April 2013. The main objective of the High Level Advisory Panel on the Responsibility to Protect in Southeast Asia (*hereafter referred to as* ASEAN-HLAP) is to support efforts to promote the Responsibility to Protect and to contribute further to its implementation in the ASEAN region. By presenting analysis and recommendations, the ASEAN-HLAP aims to contribute ideas for the strengthening of regional capacity to prevent genocide, war crimes, ethnic cleansing and crimes against humanity and protect the peoples of Southeast Asia from these crimes, thereby mainstreaming the Responsibility to Protect in Southeast Asia.

It is against this background that this Report was prepared. It reflects the deliberations of the panel's members on the kinds of challenges faced by states and non-state actors in mainstreaming the Responsibility to Protect in Southeast Asia. In addressing these challenges, the Report pays particular attention to the role of ASEAN in supporting the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity. It highlights the following points:

**First, the ultimate objective of the Responsibility to Protect—the protection of populations from genocide, war crimes, ethnic cleansing and crimes against humanity – is consistent with and integral to the overall goals of an ASEAN Community** founded on the principles and norms of a peaceful, just, democratic, people-centered and caring community.<sup>1</sup> In this regard, promoting

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<sup>1</sup> Cha-am Hua Hin Declaration on the Roadmap for an ASEAN Community (2009-2015), *ASEAN Secretariat*, 2009

the Responsibility to Protect is a logical extension of ASEAN's own commitment to building a responsible, caring community that supports its members to protect its peoples, promotes their well-being, respects their human rights and ensures their security.

**Second, the norms and objectives of the Responsibility to Protect are not alien to ASEAN. Southeast Asia is already well-endowed with norms relating to the prevention of these crimes and the protection of populations from them.** These can be utilized to support the goals of the Responsibility to Protect. These norms are found in the ASEAN Charter and are outlined in the respective Blueprints of the ASEAN Political and Security Community, Economic Community and the Socio-cultural Community.

**Third, ASEAN already has important mechanisms and instruments that are particularly relevant to the implementation of the R2P.** These include, among others, the ASEAN Intergovernmental Commission on Human Rights (AICHR); ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), ASEAN Treaty of Amity and Cooperation and the Treaty on Nuclear Weapons Free Zone. While some of these mechanisms remain in the formative stage of development, they nonetheless constitute significant opportunities for building the regional capacities needed to assist states and societies in the region to resolve disputes, prevent violence, and facilitate the peaceful management of difference.

**Fourth, the commitment to the Responsibility to Protect made by all UN Member States, including those from ASEAN, is compatible with existing international law.** Significantly, this commitment shares with ASEAN's ongoing work a primary focus on the prevention of crimes and on state responsibility and assistance to the state when requested. Hence, there is nothing in the Responsibility to Protect that changes international law or global institutional processes with respect to coercive measures such as the use of force and economic sanctions.

**Fifth, as one of the world's leading regional organizations, ASEAN has worked closely with the United Nations in promoting international peace and security.** ASEAN members have also actively contributed to UN peacekeeping and peacebuilding missions, contributions that are growing over time. Thus, as well as enhancing the region's capacity to maintain peace and security and protect its populations, playing a more active role in the implementation of the Responsibility to Protect would grant ASEAN a stronger voice in global deliberations about how best to mainstream.

For these reasons, the commitment of ASEAN Member States to the Responsibility to Protect is a logical extension of the commitments that they have made to each other within the ASEAN framework. Cooperation to protect Southeast Asian peoples from genocide, war crimes, ethnic cleansing and

crimes against humanity is a necessary corollary to the establishment of a caring and sharing ASEAN community.

In addition to this Introduction and Executive Summary, the report proceeds in four main parts. The following section examines the concept of the Responsibility to Protect, its meaning and scope, lessons learned from implementation, and the efforts being made in other regions to achieve its goals. After this, the report focuses on the situation in Southeast Asia, examining why ASEAN should adopt a proactive approach to implementing the Responsibility to Protect, identifying the relevant regional institutions and mechanisms that might be used to this effect, and reviewing some of the principal challenges. The final two sections contain recommendations for the region and its Member States and for strengthening the region's partnership with the UN. These are meant to identify the first steps along the pathway, not a complete agenda.

At the regional level, the panel recommends:

1. Raising awareness and public knowledge of the Responsibility to Protect.
2. Developing and strengthening regional capacity for early warning and assessment through existing institutions, mechanisms and relevant sectoral bodies within ASEAN.
3. Strengthening regional consultation and exchange on issues relating to the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity and the protection of vulnerable populations from these crimes, in accordance with ASEAN frameworks and instruments.
4. Giving Consideration to the incorporation of the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity into the future agenda of the ASEAN Intergovernmental Commission on Human Rights.
5. Supporting relevant civil society efforts to promote human rights protection and advance the norms and principles of atrocities prevention.

For national governments in Southeast Asia, the panel recommends that:

1. They continue and further develop national dialogue amongst stakeholders on building a national architecture to support the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity.
2. ASEAN Member States consider signing, ratifying and implementing relevant international treaties and conventions relating to the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity and protection of vulnerable populations.
3. ASEAN Member States consider appointing senior-level officials as national focal points for the Responsibility to Protect, to coordinate national efforts and lead engagement in regional and global dialogue.

For strengthening the relationship between ASEAN and the UN, the panel recommends:

1. Strengthening the High-Level Meeting between ASEAN and the UN.
2. Promoting regular dialogue between ASEAN and UN officials on peace and security.
3. The provision of training and information on best practice by the UN.
4. A young leaders dialogue on the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity.
5. That the UN's Office of the Special Adviser on the Prevention of Genocide should consider doing more to engage with ASEAN, its Member States and relevant civil society groups in Southeast Asia.



## PART II: THE RESPONSIBILITY TO PROTECT IN REVIEW

### 1. The emergence of the Responsibility to Protect

This concept of the Responsibility to Protect has its roots in a number of initiatives developed in the 1990s in response to the failure of the international community to prevent the genocide and mass killings that happened in Rwanda and Bosnia, and the failure to protect civilians from mass atrocities in other parts of the world. These crises also created a global crisis of internal displacement, as up to twenty million people were forced from their homes, but were left unable to claim the protections afforded by International Refugee Law because they had not crossed international borders. Recognizing that these failures to protect people from genocide, war crimes, ethnic cleansing and crimes against humanity undermined international peace and security, the UN Secretary-General at the time, Kofi Annan, challenged the UN General Assembly to live up to its responsibilities whilst protecting other cherished principles such as state sovereignty. After several years of deliberation, which included (but was not limited to) the 2001 Report of the International Commission on Intervention and State Sovereignty, UN Member States agreed the World Summit Outcome Document, which was later adopted as a General Assembly Resolution.<sup>2</sup> Under the heading 'Responsibility to Protect', paragraphs 138-140 of the Summit's Outcome Document declared that:

138. Each individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter of the United Nations, to help protect populations from war crimes, ethnic cleansing and crimes against humanity. In this context,

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<sup>2</sup> On this, see *inter alia*, International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: IDRC, 2001), Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All* (Washington, DC: The Brookings Institution, 2009) and Michael Ignatieff, 'The duty to protect, still urgent', *New York Times*, 13 September 2013.

we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity before crises and conflicts break out.

140. We fully support the mission of the Special Adviser of the Secretary-General on the Prevention of Genocide.

The 2005 World Summit Outcome Document was unanimously reaffirmed by the UN Security Council in Resolutions 1674 (2006), 1894 (2009) and 2150 (2014). The Security Council has also explicitly referred to the Responsibility to Protect in resolutions relating to more than ten country situations.<sup>3</sup>

In 2009, the UN General Assembly committed itself to ongoing consideration of its implementation (A/RES/63/308) and, since that time, has held an annual informal and interactive dialogue on the Responsibility to Protect. It also approved the modest strengthening of the Office of the Special Advisor on the Prevention of Genocide to support new activities with respect to the Responsibility to Protect.

## **2. What Responsibility to Protect is and is not**

Mainstreaming the Responsibility to Protect is based only on what states themselves agreed in 2005 and have reaffirmed several times since. However, misconceptions about what was agreed in 2005 remain evident in public, policy and academic discourse. It is imperative to be clear about what was agreed in 2005 and to ensure that other, misconceived, interpretations are rejected. To ensure clarity and to provide a foundation for future dialogue and action, it is

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<sup>3</sup> Namely: Democratic Republic of Congo / Burundi (Res. 1653 (2006)); Darfur (Sudan) (Res. 1706 (2006)); Libya (Res. 1970, 1973, 2040, 2095 (2011-2013)); Cote d'Ivoire (Res. 1975 (2011)); South Sudan (Res. 1996, 2155 (2011 and 2014)); Yemen (Res. 2014 (2011)); Mali (Res. 2085 (2012) and Res. 2100 (2013)); Somalia (Res. 2093 (2013)); Sudan/South Sudan (Res. 2109 (2013)); Central African Republic (Res. 2121, 2127, 2134, 2149 (2013-2014)); Syria (Res. 2139 (2014)).

necessary to emphasize several critically important points.

**First, the Responsibility to Protect lies first and foremost with the state itself. Protecting populations from genocide, war crimes, ethnic cleansing and crimes against humanity is one of the core responsibilities of sovereignty.** The principal role of the international community and regional organizations such as ASEAN is to encourage, assist and support the state to discharge its primary responsibility.

**Second, the Responsibility to Protect is narrow in scope, but universal and enduring in its coverage.** The concept applies everywhere, all the time. In other words, all states have agreed that they have a permanent responsibility to protect their own populations from genocide, ethnic cleansing, war crimes and crimes against humanity. As the UN Secretary-General observed in 2012, the question is never one of whether or not the Responsibility to Protect ‘applies’ – because this wrongly implies that there are situations in which states do not have a responsibility to protect their populations – but of how best to realize its goals in any given situation. The concept is narrow, though, in that it relates only to the four crimes identified in the 2005 World Summit Outcome Document and to their prevention. The concept does not relate to threats to human life stemming from other sources.

**Third, States have a responsibility to protect all populations under their care.** Paragraphs 138-139 of the World Summit Outcome Document refer specifically to ‘populations’ and not ‘citizens’. The right to be protected from genocide, war crimes, ethnic cleansing and crimes against humanity is a universal one that is not conditional on citizenship.

**Fourth, the Responsibility to Protect is based on well-established principles of international law. It does not change international law or seek to change the law.** The crimes to which the Responsibility to Protect relates are identified in existing international law. Under customary international law, states already have obligations to prevent and punish genocide, war crimes and crimes against humanity, assist other states to fulfill their obligations under international humanitarian law, and promote compliance with the law. In addition, the World Summit Outcome Document is clear in stating that the Responsibility to Protect is to be implemented **through the UN Charter**. Nothing in the concept permits states or regional organizations to act in ways contrary to the UN Charter.

**Fifth, the World Summit Outcome Document places prevention at the core of the Responsibility to Protect.** The commitment made by UN Member States in 2005 calls explicitly for the prevention of the four crimes and their incitement. As such, prevention is paramount, with other measures contemplated only when prevention fails or (in accordance with Article 42 of the UN Charter) is thought likely to fail by the UN Security Council.

**Sixth, military force may be used only when authorized by the UN Security**

**Council** and when other, peaceful, measures adopted in accordance with Chapters VI and VIII of the UN Charter are thought unlikely to succeed. This reflects existing international law and does not in any way change the law with respect to the use of force.

**Seventh, Member States declared their support for the mandate of the Special Adviser for the Prevention of Genocide.** The Mandate of the Special Adviser for the Prevention of Genocide, appointed in 2004, included tasks directly related to early warning and assessment: (a) to collect existing information, in particular from within the UN system, relating to violations of human rights that could give rise, if nothing were done, to genocide; (b) to bring situations of concern to the Secretary-General and, through him, to the Security Council; (c) to make recommendations to the Security Council, through the Secretary-General, on actions to prevent or halt genocide; (d) to liaise with the UN system on activities for the prevention of genocide and to enhance the capacity of the UN system to analyze and manage relevant information. This commitment of support stands as the foundation for deepening cooperation between ASEAN and the UN in this area.

**Eighth, member states made a specific commitment to strengthen the UN's capacity for early warning.** It is from this specific commitment that the need for a regional capacity for early warning in support of the UN's efforts arises.

In the Southeast Asian context, it is especially important to clarify the relationship between the Responsibility to Protect and norms of sovereignty and non-interference, as these latter principles have long been the bedrocks of peace, friendly relations and cooperation in the region. The Responsibility to Protect is consistent with the principle of non-interference enshrined in the UN Charter (Article 2(7)) and the ASEAN Treaty of Amity and Cooperation (TAC). It bears repeating that the **Responsibility to Protect does not impose any new legal obligations upon states or widen the legal scope for interference in the domestic affairs of states. The concept calls upon states to implement their existing legal commitments in conformity with international law, principally the UN Charter.**

### **3. The UN Secretary-General's Implementation Strategy**

In 2009, UN Secretary-General, Ban Ki-moon issued a landmark report setting out his strategy for *Implementing the Responsibility to Protect*. The report was debated by the General Assembly, which subsequently resolved to continue its consideration of the concept's implementation. The Secretary-General argued that the Responsibility to Protect 'is an ally of sovereignty, not an adversary', that grows from the principle of sovereignty as responsibility rather than through

the doctrine of humanitarian intervention.<sup>4</sup> The concept, he argued, focuses on helping states to succeed, not just on reacting when they fail.

The Secretary-General set out a comprehensive strategy for implementing the Responsibility to Protect, adopting a 'narrow but deep' approach: narrow in its exclusive focus on the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity and the protection of populations from them but deep in its ambition to employ all instruments available to the UN system, regional organizations, Member States, and civil society. This strategy was organized around the notion that the Responsibility to Protect rests on three pillars. According to the Secretary-General, these pillars are non-sequential and of equal importance. The concept itself would collapse if all three pillars did not support it equally.<sup>5</sup> They are:

- **Pillar I: the primary responsibility of the state to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement.** The Secretary-General described this pillar as the 'bedrock' of the Responsibility to Protect, which derives from sovereign responsibility and the international legal obligations already incumbent on states (para. 138 of the World Summit Outcome Document).<sup>6</sup>
- **Pillar II: the international community's responsibility to encourage and assist states to fulfill their responsibility to protect,** particularly by helping them to address the underlying causes of genocide, war crimes, ethnic cleansing and crimes against humanity, build the capacity to prevent these crimes, and address potential problems before they escalate (paras. 138 and 139 of the World Summit Outcome Document).<sup>7</sup> The Secretary-General identified four specific aspects of this Pillar II responsibility: (1) Encouraging states to meet their pillar one responsibilities (para. 138); (2) helping states to exercise their responsibility; (3) helping states build their capacity to protect; (4) assisting states 'under stress before crises and conflicts break out'.
- **Pillar III: the international community's responsibility to take timely and decisive action to protect populations from the four crimes** through diplomatic, humanitarian and other peaceful means (principally

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<sup>4</sup> Ban Ki-moon, *Implementing the Responsibility to Protect: Report of the Secretary-General*, 12 January 2009, A/63/677, para 10(a).

<sup>5</sup> *Ibid.*, para. 12.

<sup>6</sup> *Ibid.*, para 11(a).

<sup>7</sup> A/60/L.1, 20 September 2005, para. 139.

in accordance with Chapters VI and VIII of the UN Charter) and, on a case-by-case basis, should peaceful means 'prove inadequate' and national authorities are manifestly failing to protect their populations, other more forceful means through Chapter VII of the UN Charter (para. 139).<sup>8</sup>

The Secretary-General also suggested that the UN strengthen its partnerships with regional organizations to facilitate rapid cooperation, and dedicated a whole report to this issue in 2011.<sup>9</sup>

#### 4. Implementation in Other Regions

Implementing the Responsibility to Protect is a global challenge that has been taken up by states and regional organizations around the world, and not just in the West. There is much to be learned by looking at how other regions have interpreted their commitments and begun to build their capacity to support states in protecting populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

##### The Importance of Regional Arrangements

As previously mentioned, the UN Secretary-General's third report on the Responsibility to Protect, issued in 2011, focused on the role that can be played by regional and sub-regional arrangements in implementing the concept. The report argued that regional and sub-regional arrangements had important roles to play in helping states fulfill the Responsibility to Protect and in supporting the UN's efforts. This is reflected in recent diplomatic practice where regional and sub-regional arrangements have played significant roles in preventing genocide, war crimes, ethnic cleansing and crimes against humanity and responding to crises. Most notably, the African Union (AU) sponsored Kofi Annan's mediation efforts in Kenya (2008), leads peacekeeping efforts in Somalia, played a leading role in responding to the crisis in the Central African Republic and is a crucial partner in Darfur; the OSCE led international responses to communal violence in Kyrgyzstan; ECOWAS played a key diplomatic role in Côte d'Ivoire and Guinea and is at the fore of international responses to the crisis in Mali; and the League of Arab States and Gulf Cooperation Council played important roles in Libya, Yemen, and Syria.

Not surprisingly, therefore, the UN Secretary-General argued that regional and

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<sup>8</sup> A/60/L.1, 20 September 2005, paras. 138-140. See *Implementing the Responsibility to Protect*.

<sup>9</sup> Ban Ki-moon, *The Role of Regional and Sub-Regional Arrangements in Implementing the Responsibility to Protect. Report of the Secretary-General*, A/65/877-S/2011/393, 28 June 2011.

sub-regional arrangements could fulfill important functions in relation to all three pillars of the Responsibility to Protect:

- Pillar I: by connecting global standards to local and national action and encouraging compliance; responding to displacement and refugee flows; providing good offices and mediation; supporting conflict prevention capacity; establishing regional norms; resolving existing conflicts; promoting justice and reducing impunity.
- Pillar II: by building civilian, policing and military capacity to respond to crises, developing mediation capacity, supporting security sector reform and strengthening the rule of law, sharing information for crisis analysis and early warning.
- Pillar III: by sharing information; developing regional response doctrines; evaluating implementation of targeted sanctions; developing regional tools for cooperating with the ICC.

Each region is different. They have different norms, capacities and interests, which means that each region should pursue its own path towards mainstreaming the Responsibility to Protect; one which fulfills the commitments made to the international community as a whole but which is also consistent with other regional principles.

For example, Sub-Saharan Africa has been especially active in building institutions, capacities and policies to implement the Responsibility to Protect and achieve its goals of prevention and protection. The founding document of the African Union (AU), the Constitutive Act adopted by AU Member States in 2000, embraces the 'right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity' (Article 4 (h)). Since then, the AU has taken concrete steps towards the establishment of a comprehensive regional architecture for the maintenance of regional peace and security. This architecture includes the Peace and Security Council, comprised of Member States and charged with resolving conflicts, the Continental Early Warning System, the Panel of the Wise, a Peace Fund and the African Stand-by Force. These all make significant contributions to the region's capacity to implement the Responsibility to Protect.

Governments in Latin America have also been active in taking their own initiatives to advance implementation of R2P. In April 2012, the Auschwitz Institute for Peace and Reconciliation established the *Latin American Network for Genocide and Mass Atrocities Prevention* in cooperation with Argentina's Ministry of Foreign Affairs and Ministry of Justice, Security and Human Rights. The Network has eighteen member governments and 'was conceived as

a capacity-building mechanism for the region, as well as a forum to support the development of more effective policy to prevent genocide and other mass atrocities'. Its members are expected to appoint a national focal point to 'coordinate policy and share information' with each other. The Auschwitz Institute will develop a training curriculum that will be used, when approved by the member governments, to train selected officials on the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity.

### National Focal Points

There are certain specific measures that Member States can take to mainstream the Responsibility to Protect within national administrations. These include the designation of a **Responsibility to Protect focal point** or interagency mechanism. Focal points can help to coordinate national efforts to mainstream and operationalize the Responsibility to Protect concept, and spearhead engagement with regional and global diplomatic discourse on the issue.

Many states have already taken this step of appointing a national Responsibility to Protect focal point. In 2010, Denmark and Ghana launched an initiative to establish a global network of Responsibility to Protect focal points. Australia and Costa Rica have since joined the organizing group. At present, around forty States representing all regions have appointed national Responsibility to Protect focal points. Within Asia, most recently the Republic of Korea appointed a national Responsibility to Protect focal point but, to date, no ASEAN Member State has yet done so. As with any national initiative, each state has approached this focal point function from its own perspective and many different models have been embraced.

In a separate initiative, a series of regional conferences on the prevention of genocide organized by Argentina, Cambodia, Switzerland and Tanzania which began in 2008 led to the creation of a network of genocide and mass atrocities prevention focal points, known as Global Action Against Mass Atrocity Crimes (GAAMAC), and facilitated an exchange of lessons learned.

### Domestic Criminalization of Relevant Crimes

Incorporating obligations under international human rights and humanitarian law into national legislation and taking practical measures for the laws to be implemented strengthens these legal frameworks. Although they have not always strictly replicated international definitions, a number of States, including Argentina, Bolivia, Portugal, Seychelles and Viet Nam, have criminalized genocide, war crimes or crimes against humanity, or all three, in national legislation. Guatemala has set a historical precedent by being the first State to indict a former Head of State on charges of genocide and crimes against humanity.

## 5. Lessons from Implementation

Global implementation of the Responsibility to Protect has progressed rapidly but has not been without its challenges. It is important that states, the UN and regional organizations learn lessons from past experiences. Arguably the most significant challenges have arisen in respect to the crises in Libya and Syria. In relation to Libya, questions stemmed from the controversies associated with the implementation of Security Council Resolution 1973 (2011) in Libya. Concerns were expressed, including by several ASEAN Member States, that the NATO-led coalition which assumed responsibility for enforcing the Security Council's resolution exceeded its mandate by pursuing regime change, sidelined calls for a negotiated settlement, and that some states involved in the operation may have violated the Security Council's arms embargo (imposed by Resolution 1970) by supplying weapons and ammunition to oppositionist forces. In these ways, the NATO-led operation caused a breach of trust with other governments. In response, the government of Brazil proposed 'responsibility while protecting' and called upon the Security Council to adopt a more systematic approach to decision-making on the use of force, to establish mechanisms of accountability, to ensure that its decisions are based on judicious analysis, and to renew its focus on the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity. These are important recommendations, stemming from the lessons learned from Libya, which ought to be revisited.

If Libya provides an important lesson in the need for additional caution and accountability, Syria's ongoing agony provides a painful reminder that much more needs to be done to translate the clear international commitment to the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity into credible and effective international action. Everything that has unfolded in Syria since the first days of the public protests there in 2011 was predicted in advance, much of it by senior UN officials themselves. Yet not nearly enough was done to prevent the country's slide into civil war and exposure to war crimes and crimes against humanity. The principal lesson to be drawn is that there is now an urgent need to move beyond rhetorical support for the prevention of these crimes towards the establishment of partnerships, institutions, capacities, strategies and actions designed to achieve this goal.

Beyond these two major lessons are countless others that ought to inform the mainstreaming of the Responsibility to Protect in Southeast Asia and elsewhere. For example, experiences in Kenya and Yemen point to the value of diplomacy and mediation as forms of prevention and conflict resolution and to the merits of deep cooperation and coordination between regional organizations and the UN in the use of those tools. The ongoing process of reform and reconciliation in Myanmar, supported by various external partners including ASEAN, is a testament to the value of encouraging and assisting governments in their own efforts. The use of peacekeepers to prevent atrocities and protect populations

in the Central African Republic and South Sudan, among other places, shows both the value of that tool and its limitations. Meanwhile, attacks by Boko Haram in Nigeria and the UN's campaign against non-state armed groups in the Democratic Republic of the Congo remind us of the threats that come from non-state and extremist armed group sources and of the need to pay more attention to the need to assist states to protect populations from these violent actors.

The Responsibility to Protect has come a remarkably long way in a short space of time. It has done so largely by showing how existing international law and institutions can be marshaled to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity while protecting other cherished principles such as sovereignty and the international rule of law. As the UN, its Member States, and other international and regional organizations become more actively involved in the protection of populations from genocide, war crimes, ethnic cleansing and crimes against humanity, concerns will continue to be raised especially with respect to the mandating and management of the use of force, economic sanctions and other means of coercion, which might be implemented unjustly or might be used to serve the political design of certain states. There is also concern relating to the potential adverse impact of the implementation of the Responsibility to Protect on the social and political stability of the concerned countries, especially in relation to the use of military force. It will be imperative that lessons are learned and demands for accountability satisfied. Establishing space for dialogue on the lessons of past experience and opportunities to improve responses in the future will play an important role in implementing the Responsibility to Protect.

## PART III: THE RESPONSIBILITY TO PROTECT IN THE SOUTHEAST ASIAN CONTEXT

The UN Secretary General's 2011 Report on the Responsibility to Protect highlighted the role of regional arrangements in the implementation of this concept. As one of the world's most successful regional organizations, the role of ASEAN in advancing the principles and objectives of the Responsibility to Protect is an important consideration therefore.

The Southeast Asian region has enjoyed relative peace, security and economic progress over the last few decades. The establishment of ASEAN in 1967 has been credited for much of the peace and prosperity that the region now enjoys. Significantly, after fifty years, the countries in Southeast Asia have decided to establish an ASEAN Community in 2015 that will be founded on the three pillars of a political and security community (APSC), an economic community (AEC) and a socio-cultural community (APSC). The ASEAN 3-pillared Community is envisioned to be a people-centered and caring community where the region's peoples '**live in peace...in a just, democratic and harmonious environment**'.<sup>10</sup> As noted earlier, the commitments contained in the Responsibility to Protect converge with ASEAN's vision of a peaceful, just, democratic, people-centered and caring community. As such, the Responsibility to Protect provides ASEAN with a pathway towards realizing its own vision, as well as supporting ASEAN's responsibility to care about its own peoples.

This section examines the relationship between ASEAN's commitment to a caring community and the Responsibility to Protect. It reviews the mechanisms that ASEAN has already developed to assist states and peoples to resolve conflict, protect human rights, and – thereby – prevent genocide, war crimes, ethnic cleansing and crimes against humanity.

### 1. Situating the Responsibility to Protect in Southeast Asia

The peace that post-colonial Southeast Asia now enjoys has been the result of the resolve of the Member States of ASEAN to avoid war with each other and instead work together toward building regional peace and national development.

However, it is useful to note that Southeast Asia's peaceful environment has not always been so. Its historical past contains examples of atrocities against civilian populations. Indeed, for much of the Cold War, several populations in Southeast Asia experienced considerable risk of genocide, war crimes, ethnic cleansing and crimes against humanity. This was due to several reasons, three

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<sup>10</sup> Cha-am Hua Hin Declaration on the Roadmap for an ASEAN Community (2009-2015), *ASEAN Secretariat*, 2009.

of which stand out: interference and intervention from outside, the struggle for decolonization and practices of state consolidation. Seared in the memories of many societies in the Southeast Asia region is the violence that ensued as a result of the battles for independence against different colonial masters— French, Dutch, British, Japanese and Americans. The post-colonial experience of nation building among many countries in ASEAN also saw difficult periods of political transition as peoples endured civil wars, fought against sometimes cruel dictatorial regimes, managed ethnic tensions and confronted deep divisions in multi-ethnic societies.

Since the end of the Khmer Rouge's reign of terror in Cambodia in 1979, however, and almost unnoticed by the rest of the world, the region has been transformed. There are fewer cases of genocide, war crimes, ethnic cleansing and crimes against humanity in Southeast Asia today than at any point in history for which we have reliable records. Though tensions and issues certainly remain, as they do in most parts of the world, in 2014 there are no major active cases in Southeast Asia. Academics are only now starting to actively analyze the causes of this significant transformation. Although significant global transformations clearly played an important role, such as the end of the Cold War, globalization and the expansion of international trade, and the decline in external interference, four factors inside the region also stand out.

First, the promotion of regional peace and cooperation, characterized by the termination of violent interstate conflict, ending of civil wars in Cambodia, Indonesia, and the Philippines, and growth of regional institutions such as ASEAN has dramatically reduced the incidence and scale of armed conflict in the region, which is the primary context in which genocide and other mass atrocities are perpetrated. The growth of regional cooperation has also given Southeast Asia the potential to develop the tools it needs to address future challenges to peace.

Second, the region's growing economies have produced increased national income and individual wealth and well-being, reducing the economic sources of instability. It is well known that economic development contributes to peace, and the growth achieved in Southeast Asia has certainly supported this goal.

Third, the region has turned its back on authoritarian governments – many of which, such as the Khmer Rouge, were responsible for the genocides and mass atrocities of the Cold War – and is increasingly embracing democratic reform. But whilst democracies are the most stable and peaceful forms of government, it is important to acknowledge both that democracy can take many forms and that democratic transition and consolidation can create additional challenges and risks that require careful management. Democratic consolidation is not a simple or linear process and remains at an early stage in much of the region, yet the underlying progress is unmistakable.

Fourth, ASEAN Member States have increasingly recognized that sovereignty entails responsibilities of care and protection as well as rights. Primary among those responsibilities is the duty of the state to protect its populations from arbitrary violence.

There is no one single factor that can explain the region's transformation to greater peace and security. Whatever the precise cause, significant progress has been made in Southeast Asia and a period of shelter from genocide, war crimes, ethnic cleansing and crimes against humanity ushered in. As new challenges arise and transitions commence, **the challenge for the region is one of how to build on this success in order to ensure a permanent transformation to greater peace and security.**

## **2. Why Should ASEAN be Proactive?**

As the leading regional organization in East Asia, ASEAN has an important role to play in preventing genocide, war crimes, ethnic cleansing and crimes against humanity. The Association's ongoing efforts to build a 'a community of caring societies', which promotes a political and security community where people 'will live in peace with one another and with a world at large in a just, democratic and harmonious environment',<sup>11</sup> protects human rights, and the special rights of women and children, and works hard to resolve conflicts and maintain peace, make important contributions to the goals of preventing the very worst of crimes and protecting populations from them.

ASEAN has therefore already done much to lead and contribute to the protection of Southeast Asia's peoples from genocide, war crimes, ethnic cleansing and crimes against humanity. Its ongoing leadership could be facilitated by the adoption of more proactive engagement with the Responsibility to Protect.

The most obvious reason why ASEAN should be proactive in mainstreaming the Responsibility to Protect is that its own Member States agreed in 2005 that regional organizations had an important role to play. At the 2005 World Summit, the region's Heads of State and Government identified at least seven distinct roles for regional organizations in their commitment to the Responsibility to Protect. Regional organizations should:

- Encourage and help states to fulfill their primary responsibility to protect (para. 138);
- Support the UN in establishing an early warning capability (para. 138);
- Help states build the capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity (para. 139);

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<sup>11</sup> ASEAN Political and Security Community Blueprint, <https://aseansec.org>

- Assist states under stress before a crises breaks out (para. 139);
- Support the mission of the Special Adviser of the UN Secretary-General on the Prevention of Genocide (para. 140);
- Utilize peaceful measures under Chapter VIII of the UN Charter to respond to crises involving genocide, war crimes, ethnic cleansing and crimes against humanity (para. 139);
- Cooperate with the UN Security Council in the application of measures, including Chapter VII measures, when peaceful means are inadequate and national authorities are manifestly failing to protect their populations (para. 139).

In addition, the adoption of a proactive approach by ASEAN to mainstreaming the Responsibility to Protect is critical for ensuring that the concept is developed and implemented in a manner **consistent with existing regional norms such as sovereignty and non-interference and fully sensitive to the regional context**. There are multiple potential pathways towards the implementation of the Responsibility to Protect and no single solution to the problem of genocide, war crimes, ethnic cleansing and crimes against humanity. ASEAN Member States have already demonstrated their capacity to make significant progress in improving the well-being of their populations through cooperation through the development of its own norms and institutions. A proactive stance on the promotion of the Responsibility to Protect in Southeast Asia would ensure the adoption of an approach that is distinctly Southeast Asian and tailored to the specific needs of the region.

There are other benefits too. A proactive approach would make ASEAN a world leader in this field and award the region a stronger voice in global deliberations. It would also help to support and enhance key national and regional capacities and therefore enable states in the region to build the capacity they need to exercise their primary responsibility to protect – strengthening sovereignty, peace and order.

The idea that regional organizations should adopt a proactive stance on matters relevant to the Responsibility to Protect has also won support from Asia's only permanent member of the UN Security Council, China. In a 2010 Concept Note submitted to the UN Security Council, China argued that UN Member States should identify and make effective use of their respective 'comparative advantages in the maintenance of peace and security, in particular the prevention, management and resolution of conflicts. Furthermore, it argued that regional organizations are advantaged in devising 'early warning mechanisms' that can enable 'early responses to disputes and emerging crises', and can 'encourage the countries concerned in the region to resolve differences and

problems peacefully through dialogue, reconciliation, negotiation, good offices and mediation'. A proactive approach to implementing the Responsibility to Protect would strengthen ASEAN's global standing and promote opportunities for deeper partnerships beyond the region.

### **3. Existing ASEAN Arrangements**

The adoption of a proactive approach to protecting populations from genocide, war crimes, ethnic cleansing and crimes against humanity does not imply a demand for huge new bureaucracies, legal treaties, or other kinds of major regional architecture beyond what already exists and what ASEAN Member States have already committed to. Thanks to the evolution of ASEAN as a political and security community with its commitment to being a community of caring societies, Southeast Asia is already well endowed with norms, institutions capacities and mechanisms that can be utilized to support the goals of the Responsibility to Protect. After all, the goals of the Responsibility to Protect align closely with the aspirations and commitments made by the Member States of ASEAN.

The overall framework was established by the ASEAN Charter, which was adopted on the fortieth anniversary of ASEAN on 20 November 2007. According to the Charter, ASEAN's purpose is 'to intensify community building through enhanced regional cooperation and integration by establishing an ASEAN Community' that is 'politically cohesive, economically integrated and socially responsible'. Directly relevant to the Responsibility to Protect is the Charter's enunciation of a 'collective responsibility' to peace among its Member States and the 'renunciation of aggression and of the threat of use of force'. The Charter also includes people-centered principles, including respect for fundamental freedoms and the promotion and protection of human rights as well as commitments to the UN Charter and International Humanitarian Law.

The ASEAN Charter helped give rise to the **ASEAN Political Security Community (APSC)** in 2009. The ASEAN Political Security Community Blueprint provides the framework for consolidating – both by deepening and broadening - political and security cooperation among ASEAN member states mainly in five important areas: political development, norm shaping and sharing, conflict prevention, conflict resolution and post-conflict peacebuilding. The APSC remains a work in progress but there are several areas in which its work and aspirations relate directly to the goals of the Responsibility to Protect. Three elements stand out as being particularly relevant. First, the APSC's provisions for the establishment of an ASEAN early warning mechanism. Second, the Community's emphasis on building support for post-conflict peacebuilding measures. Third, its support for the promotion and protection of human rights in the region through the ASEAN Intergovernmental Commission on Human Rights

(discussed in more detail later).<sup>12</sup> Each of these areas of work has developed independently of the Responsibility to Protect, yet each promises to contribute to the fulfillment of its goals in Southeast Asia. They also serve to demonstrate how existing mechanisms for promoting political and security cooperation can be used to advance the protection of populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

A more recent addition to the institutional and normative framework for caring for and protecting the peoples of Southeast Asia is the **ASEAN Declaration on Human Rights**, adopted on 18 November 2012. The Declaration established a framework for human rights cooperation in ASEAN and made an important contribution to the ASEAN community-building process. Among its principles, the Declaration emphasizes that, 'it is ultimately the primary responsibility of all ASEAN member states to promote and protect all human rights and fundamental freedoms' and that 'every person and the peoples of ASEAN have the right to enjoy peace within an ASEAN framework of security and stability, neutrality and freedom'.<sup>13</sup>

More directly, **the Declaration affirms basic individual rights, which would be clearly violated by the perpetration of genocide, war crimes, ethnic cleansing and crimes against humanity.** Notably, paragraph 11 declares that '[e]very person has an inherent right to life which shall be protected by law. No person shall be deprived of life save in accordance with law'. Paragraph 12 affirms that '[e]very person has the right to personal liberty and security. No person shall be subject to arbitrary arrest, search, detention, abduction or any other form of deprivation of liberty'. Paragraph 14 states that '[n]o person shall be subject to torture or to cruel, inhuman or degrading treatment or punishment'. As we noted earlier, therefore, **the responsibilities of protection stem, therefore, not just from international law and global commitments, but also from the commitments that ASEAN Member States have made to each other.**

Beyond these important statements of principle and direction, there are other significant mechanisms in ASEAN that are particularly relevant to the implementation of the Responsibility to Protect and prevention of genocide, war crimes, ethnic cleansing and crimes against humanity. These are the:

- ASEAN Intergovernmental Commission on Human Rights (AICHR).

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<sup>12</sup> Rizal Sukma, 'The ASEAN political and security community (APSC): opportunities and constraints for the R2P in Southeast Asia' *The Pacific Review* 25, no.1 (2012), 146-147

<sup>13</sup> 'ASEAN Human Rights Declaration', *ASEAN Statements and Communiqués*, signed 18 November 2012, <http://www.asean.org/news/asean-statement-communiques/item/asean-human-rights-declaration>

- ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC).

Similarly, there are also institutions and entities **associated** with ASEAN, such as:

- ASEAN Institute for Peace and Reconciliation (AIPR).
- ASEAN Parliamentarians for Human Rights (APHR).

These mechanisms remain in the formative stage and have limited mandates. Nevertheless, they constitute significant advances by themselves and create many opportunities for building capacities capable of assisting states and societies in the region to resolve disputes and prevent violence. The strength of these mechanisms comes from their close linkage with other established instruments and institutions in ASEAN, such as the Zone of Peace, Freedom and Neutrality (ZOPFAN), the Treaty of Amity and Cooperation (TAC), the Southeast Asian Nuclear Weapons Free Zone (SEANWFZ), the ASEAN Regional Forum (ARF), and the ASEAN Defence Ministers Meeting (ADMM) and the ADMM Plus Partners Meeting.

#### ASEAN Intergovernmental Commission on Human Rights (AICHR)

The AICHR was established on 23 October 2009, sixteen years after ASEAN first committed to establishing a regional human rights mechanism and in accordance with Article 14 of the ASEAN Charter. The AICHR serves as a consultative, inter-governmental body and is mandated to promote the human rights and fundamental freedoms of the peoples of ASEAN to ‘complement the building of the ASEAN Community’ and to utilize the ASEAN Human Rights Declaration as a framework for regional human rights cooperation. It is also charged with the promotion of human rights and freedoms under international law, the UN Charter and International Humanitarian Law (which is, of course, directly relevant to the Responsibility to Protect), as well as with enhancing regional cooperation to complement national and international efforts on the promotion and protection of human rights.<sup>14</sup>

The role of national and regional human rights institutions in protecting and promoting fundamental human rights is well understood. As the UN Secretary-General pointed out in his 2013 report on the Responsibility to Protect, such institutions play a vitally important role in the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity, by resolving human rights related disputes, helping to eliminate all forms of discrimination, and promoting the peaceful management of difference within societies. As the region’s most significant human rights body, therefore, the AICHR has a vital role to play in

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<sup>14</sup> *Terms of Reference of ASEAN Intergovernmental Commission on Human Rights*

preventing genocide, war crimes, ethnic cleansing and crimes against humanity and the ability to make a significant positive difference in this regard.

In addition to the contribution it makes through its underlying work as a regional human rights institution, AICHR's configuration today gives it the potential to make a positive difference in three specific areas.

- First, in relation to the goal of capacity building for the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity, the AICHR is mandated to promote capacity building for the effective implementation of international human rights treaty obligations undertaken by ASEAN.
- Second, in relation to the question of early warning and assessment, the AICHR is mandated to be a repository of information on human rights conditions in ASEAN Member States.
- Third, in relation to the need to strengthen collaboration between regional and sub-regional arrangements, and between these institutions and the UN, the AICHR is mandated to consult and engage in dialogue with national, regional and international entities on the promotion and protection of human rights.<sup>15</sup>

Under its current Terms of Reference, the AICHR is limited to reporting on individual member's human rights situations and does not include discussion of human rights concerns affecting the region. AICHR cannot accept complaints from non-government organizations about human rights violations or issues obtaining to member states. Although the protection of human rights is part of the principles outlined in its Terms of Reference, this has not yet been fully operationalized. As a result, AICHR currently focuses on the promotion of human rights in the region through education and training, as well as consultations with relevant stakeholders in each ASEAN member state.

#### ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC)

The ACWC is an intergovernmental and consultative body established in February 2010 in accordance with international conventions such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC), the ASEAN Vientiane Action Programme 2004-2010, the ASEAN Charter and both the ASEAN Political Security Community and the ASEAN Socio-Cultural Community

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<sup>15</sup> Herman Joseph Kraft, 'RtoP by increments: the AICHR and localizing the Responsibility to Protect in Southeast Asia' *The Pacific Review* 25, no. 1 (2012), 46-47

Blueprints.<sup>16</sup> The ACWC's primary aims are to promote and protect the human rights and fundamental freedoms of women and children in ASEAN and to uphold, promote, protect, respect and fulfill the rights of women and children in ASEAN to live in peace, equality, justice, dignity and prosperity.

The relevance of the ACWC to the prevention and protection goals of the Responsibility to Protect lies in the fact that it is mandated to, 'promote the implementation of international instruments' related to the rights of women and children which includes rights prescribed by the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, the CEDAW, Beijing Platform for Action, UNICEF's World Fit for Children agenda, International Humanitarian Law and other international human rights instruments related to women's and children's rights to which ASEAN member states are parties.<sup>17</sup> The ACWC is also mandated to 'build [the] capacities of relevant stakeholders at all levels, including administrative, legislative, judicial, civil society, community leaders, women and children machineries, through the provision of technical assistance, training and workshops' which can help prevent human rights violations and their escalation into violent conflict.<sup>18</sup>

The ACWC's mandate also focuses on the protection of the rights of women and children in ASEAN. An important achievement of the ACWC is the *Declaration on the Elimination of Violence Against Women and Elimination of Violence Against Children*, which was adopted by ASEAN leaders in 2013. Among other things, the Declaration specifically recognized pertinent UN resolutions on Women, Peace and Security (i.e., Security Council Resolutions 1325, 1820, 1888 and 1889) and identified a number of measures that ASEAN—collectively and through its individual member states—could adopt to eliminate violence against women. These include the adoption of laws, policies, and measures 'to investigate, prosecute, punish and, where appropriate, rehabilitate perpetrators' as well as 'protect women and children victims/survivors and witnesses'.

The commission has conducted consultations with civil society groups in the region on how to implement these Declarations, besides conducting research and exchanging good practices among Member states as well as continuing engagement with the UN and ASEAN dialogue partner countries (for example, Australia and New Zealand) on promoting the protection of rights of women and children. Like the AICHR, the ACWC is for now limited to promoting and building awareness in the region about the protection of rights of women and children. However, ACWC has underscored the importance of adhering to international

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<sup>16</sup> *Terms of Reference ASEAN Commission on the Protection and Promotion of the Rights of Women and Children* (Jakarta: ASEAN Secretariat, February 2010), 1-2

<sup>17</sup> *Ibid.*, p. 3

<sup>18</sup> Mely Caballero-Anthony, 'The Responsibility to Protect in Southeast Asia: opening up spaces for advancing human security' *The Pacific Review* 25, no. 1 (2012), 129

norms within the framework of CEDAW and CRC in the protection of women and children against violence, specifically in the context of conflicts, trafficking, internal displacements, statelessness, and discrimination against minority groups, which are all relevant to the preventive aspects of the Responsibility to Protect. As part of its mandate, the ACWC is to encourage its Member States to monitor and undertake periodic review of national legislations, policies, regulations, and practices affecting the rights of women and children.

Similarly, there are also institutions and entities **associated** with ASEAN, such as:

### ASEAN Institute for Peace and Reconciliation

The ASEAN Institute for Peace and Reconciliation was launched in 2012 but is not yet fully operational. The first meeting of its Governing Council was held in Jakarta in December 2013 and a work plan is still being negotiated. Although not officially an ASEAN body, the AIPR is nonetheless mandated by its Board represented by ASEAN officials to conduct research activities on peace, conflict management, and conflict resolution, as well as the promotion of those activities identified in the ASEAN Political-Security Community Blueprint. Among themes covered by this mandate are: experiences and good practices in ASEAN on peace, conflict management, and post-conflict rebuilding; gender mainstreaming in peacebuilding, peace processes, and conflict resolution; and dispute settlement mechanisms in ASEAN with a view to enhancing regional mechanisms for the pacific settlement of disputes. The AIPR will also engage in capacity building activities through seminars and the training of government officials, scholars, and think tanks in conflict management and conflict resolution. The AIPR's mandate appears to be not limited to inter-state conflicts and, given its proposed structure and potential funding sources, it can also undertake policy-relevant research activities related to the Responsibility to Protect and associated issues. As the Institute is primarily an Indonesian initiative and is based in Jakarta, it can also be an important mechanism for building a network within the ASEAN to support the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity.

### ASEAN Parliamentarians for Human Rights

The ASEAN Parliamentarians for Human Rights is a region-wide grouping of parliamentarians dedicated to the promotion of human rights and supportive of the aspirations of the Responsibility to Protect. In March 2014, the United Nations Office of the Special Adviser on Genocide Prevention (OSAPG) and the ASEAN Parliamentarians for Human Rights (APHR) organized a seminar in Bangkok on the role of parliamentarians in preventing genocide, war crimes, ethnic cleansing and crimes against humanity. The potential contribution of parliamentarians was earlier highlighted by the Inter-Parliamentary Union's

(IPU) 2013 resolution on *Enforcing the Responsibility to Protect: The Role of Parliament in Safeguarding Civilians' Lives*<sup>19</sup> Among the comprehensive list of relevant measures and tools recommended by the UN-ASEAN Parliamentarians meeting were:

- Efforts to promote the signing and ratification of relevant international treaties (especially the Genocide Convention, the Geneva Conventions and Protocols, the Rome Statute of the International Criminal Court, and the Refugee convention and protocol);
- The enacting of domestic laws against genocide, war crimes, ethnic cleansing and crimes against humanity, and their incitement;
- The adoption of measures to ensure that domestic criminal and military laws conform to international standards;
- The monitoring of human rights reports presented in the UN Human Rights Council and use of these reports by parliaments to conduct investigations and advocacy in promoting human rights protection at home, including filing of complaints;
- Efforts to advocate for the greater independence of the ASEAN Intergovernmental Commission on Human Rights (AICHR) and its representatives;
- The inclusion of the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity on the agenda and program of activities of the ASEAN Inter-Parliamentary Association (AIPA);
- Stronger engagement between the ASEAN region and other regions (such as Europe, Latin America and sub-Saharan Africa) and inter-parliamentary dialogue within and between regions aimed at mainstreaming the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity;
- Efforts to promote a regional declaration or convention against genocide, war crimes, ethnic cleansing and crimes against humanity;
- Further promotion of the protection of women and children against sexual violence, especially in conflict areas;

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<sup>19</sup> For the full text of the resolution, see <http://www.ipu.org/conf-e/128/res-1.htm>.

- Promotion of the rights of minorities through ensuring adequate legislation in accordance with international human rights norms and standards;
- The promotion of national and regional dialogue addressing factors associated with heightened risk and vulnerability to genocide, war crimes, ethnic cleansing and crimes against humanity in Southeast Asia;
- The development of action plans relevant to building a national architecture for preventing genocide, war crimes, ethnic cleansing and crimes against humanity, including the allocation of any necessary resources and funds through the national budget;
- The promotion of national and regional early warning and response systems as part of a region-wide architecture for the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity.

In view of this extensive agenda for action, the APCR could consider taking the initiative in forming a Southeast Asian network on the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity as part of its human rights advocacy in the region. As a counterpart of the already established Latin American and African networks, this network could include national governments, but also individual parliamentarians, political parties, and representatives from civil society groups and academic institutions in the region who are committed to mainstreaming the prevention of these crimes. Were the Latin American and African models to be emulated, organizations such as AIPR and the Asia Pacific Centre for the Responsibility to Protect could be utilized to provide support.

### Institutional Gaps

Although significant progress has been made in the development of regional capacity in Southeast Asia, some important gaps remain. Perhaps the most significant of these lies in the field of early warning, which is a necessary precursor to the effective use of quiet diplomacy and other mechanisms available to ASEAN Member States, and preventive diplomacy itself, which remains largely ad hoc. Existing institutions lack sufficient capacity to conduct effective early warning and although it has many talented individuals there are no dedicated pools of diplomats available for mediation and conflict resolution work. As a result, crises often erupt without warning, creating delays and uncertainties about the most appropriate response. The UN has taken steps to improve its capacity for early warning and has also strengthened its diplomatic and civilian capacities, but Southeast Asia has no reciprocal arrangements commensurate with those established, for example, by the African Union. Developing some

modest regional capacity for early warning, diplomacy and liaison with the UN should therefore be a key priority.

#### **4. The ASEAN-UN Partnership**

It is now well known that efforts to prevent mass violence against civilian populations are most effective when regional organizations work in close cooperation with the UN. In a different context, ASEAN has already demonstrated its capacity to work effectively and efficiently alongside the UN, when it marshaled the international humanitarian response to the natural disaster in Myanmar caused by Cyclone Nargis in 2008.

The idea of deepening the partnership between ASEAN and the UN has been expressed by many governments in the region. For example, The Philippines argued in the UN Security Council that it was imperative for the UN to recognize and strengthen the primacy of regional bodies in dealing with peace and security matters.<sup>20</sup> Cambodia has also advocated a stronger partnership between the region and the UN to address common security threats. In 2007, Indonesia noted that there might be occasions where regional arrangements are likely to prove more effective than the UN and that in such cases the UN might task regional bodies to adopt conflict resolution roles. Significantly, in 2011 during Indonesia's chairmanship of ASEAN, it started to display its ability to proactively facilitate efforts at mediating the conflict that broke out between Cambodia and Thailand over a territorial dispute. During that period, the UN endorsed ASEAN's important role in managing the regional conflict.

The need to enhance the ASEAN-UN partnership was identified in the Joint Declaration on Comprehensive Partnership Between ASEAN and the UN, which was adopted at the Bali Summit of Leaders in 2011. The Declaration aimed to advance and intensify the level of cooperation between the two organizations. The Secretariats of the ASEAN and the UN have been working closely since 2011 in implementing the Declaration's thematic activities. Specifically in the area of peace and conflict prevention, the ASEAN-UN workshop on 'Lessons Learned and Best Practices in Conflict Prevention and Preventive Diplomacy' held in Jakarta in April 2013 articulated a set of recommendations that are highly relevant to the Responsibility to Protect. These recommendations could be developed to help improve capacity to prevent genocide, war crimes, ethnic cleansing and crimes against humanity. They included:

- The need to explore ways and means to strengthen the capacities of the ASEAN Member States, the ASEAN Secretary-General, and the ASEAN Secretariat, as well as civil society, particularly in early warning, good offices, mediation and conciliation, and consider how the role of

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<sup>20</sup> UN document, S/PV.5776, 6 November 2007.

the ASEAN Chair could be further institutionalized. It argued that efforts should be made to develop and enhance the Southeast Asian approach to conflict prevention and preventive diplomacy based on experiences in the region and beyond.

- The need for further training and workshops on specific areas regarding peace and security, including with civil society organizations. Relevant themes include good offices, negotiation skills, peacebuilding, rule of law, some aspects of multidimensional peacekeeping in particular civilian capacity, and electoral observation, as well as the role of women in conflict prevention.
- The need to consider the promotion of a 'culture of peace' at multiple levels of society, including educational institutions, within and between ASEAN Member States.
- The suggestion that the AIPR consider documenting lessons learned in relation to ASEAN good offices, mediation, facilitation, and other related areas.

It was envisaged that a significant role could be played by the ASEAN-UN partnership in each of these areas.

In the fifth ASEAN-UN Summit held in Brunei in October 2013, ASEAN leaders welcomed the above recommendations. The Summit also recognized the importance of partnership between ASEAN and the UN in promoting human rights in the region, specifically by encouraging continuing engagement and support from various UN human rights bodies to enhance the work of the AICHR and ACWC.

## **5. Issues in Southeast Asia of concern to the Responsibility to Protect**

It is important to note that the Responsibility to Protect has universal and enduring application. There are no situations in which a state does not have a responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. Likewise, the responsibility to assist states to build the capacity they need to prevent these crimes is an enduring one. As the UN Secretary-General has argued, our questions should not be ones of whether or not the Responsibility to Protect applies, but of how best to realize its goals of prevention and protection in specific situations. All states and societies, including those in the West, have an enduring responsibility to protect that cannot be disregarded.

Although, as we noted earlier, Southeast Asia has experienced a remarkable transformation towards peace and stability in the past few decades, there are a

number of situations in the region that could pose potential future risk of conflict. These are issues of potential concern for ASEAN as a regional organization and the UN more broadly where the Responsibility to Protect may require more efforts from the region to assist the affected states and societies.

Some situations of concern are caused by societal fractures resulting from the wide ethnic diversity and deep ethnic divisions that are found among some societies in Southeast Asia. In some areas, these ethnic differences have been exacerbated by recent flows of migration driven largely by economic factors. As seen in the recent experiences of some countries in the region, communal tensions among Buddhist-Muslims and among Christians and Muslims communities can lead to outbreaks of violence. If not managed well, these incidents of ethnic conflict are tinderboxes of more serious communal violence and could potentially spiral into the perpetration of violence against civilians, leading to humanitarian emergencies. In this regard, the key issues for ASEAN and the wider international community relate to how best to help affected countries manage these difficult ethnic relationships and promote the peaceful resolution of disputes.

A second potential set of future issues relate to conflicts over land, water and other natural resources. Experience has shown that competition over scarce resources can sometimes lead to violent conflict. The prospects of an increasingly water-stressed region do not bode well for food production and access to energy supply especially among the more vulnerable communities in Southeast Asia. Among the most affected will be the agricultural and fishing communities, which are also generally among the least wealthy sectors of societies.

In recent years, incidents of forcible land acquisition have also become a major source of conflict in largely agrarian countries in the region, pitting the needs of economic growth and attraction of foreign investment against the protection of the property rights of small farmers, ethnic minorities, and other rural settlers. Land issues such as these have sometimes resulted in the forced resettlement of minority groups, other forms human rights violations sometimes escalating to violence, and bitterly contested criminal charges against protesting farmers. Given that these conflicts relate to people's livelihoods and land, it is not difficult to see how they might give rise to the sorts of violent confrontations and crimes which the Responsibility to Protect seeks to prevent. Here, processes of dialogue and mediation in a context where the values of the ADHR are promoted and protected may be useful ways of assisting the amelioration of these problems.

A third issue relates to the protection of minority religious groups. Minority religious groups in some parts of the region continue to face exclusions and discrimination – which is, as the UN Secretary-General noted in his 2013 report on the Responsibility to Protect, one of the principal underlying sources of heightened risk of genocide, war crimes, ethnic cleansing and crimes against

humanity. Thus, addressing all forms of discrimination against groups is one of the most effective forms of prevention. Sometimes, discrimination occurs at the provincial level owing to the balance of forces and influence at that level. In these situations, the question is one of assisting the state to ensure compliance with national legislation and, where appropriate, to resolve local conflicts. In some other cases, practices of discrimination stem from dated national legislation which need to be brought into line with ASEAN Community standards as set out in the ADHR. Processes to facilitate dialogue and reflection on these issues, as well as to provide legislative support and assistance with managing transitions, may prove helpful in this regard. Successful cases of national-based mediation in countries such as Indonesia and The Philippines, which has helped ease religious-based tensions that have periodically escalated into communal violence, provides useful templates that could be used to inform the development of stronger regional capacities.

Each of these issues, and others not mentioned here, has the capacity to generate tensions and conflicts capable of spilling across national boundaries into the wider ASEAN Community. There is an imperative, therefore, for the ASEAN Community to work together to assist states and other stakeholders to resolve disputes and manage differences peacefully.

**To address these sets of concerns, and others that may arise in the future, the Responsibility to Protect should be mainstreamed in the region through existing ASEAN institutions, norms and mechanisms. The core principles of protection and prevention advanced by the Responsibility to Protect are not alien to ASEAN or to its norms and practices. Mainstreaming the Responsibility to Protect is integral to the ongoing development of ASEAN's institutions and mechanisms, as well as in the realization of an ASEAN Community that is peaceful, just, democratic and caring.**

## **PART IV: MAINSTREAMING THE RESPONSIBILITY TO PROTECT IN SOUTHEAST ASIA: RECOMMENDATIONS**

**A caring ASEAN community in Southeast Asia is one that protects its own people from the very worst of crimes known to humanity, namely genocide, war crimes, ethnic cleansing and crimes against humanity. This is no less than what ASEAN Member States have pledged themselves to, through their various commitments to developing the ASEAN Community and through their unanimous commitment to the Responsibility to Protect at the 2005 World Summit.**

The principles and norms of the Responsibility to Protect converge with ASEAN's vision of a peaceful, just, democratic, people-centered and caring community in Southeast Asia. The responsibilities of protection stem not just from international law and global commitments, but also from the commitments that ASEAN Member States have made to each other. For this reason, it is time for ASEAN to take the lead in mainstreaming the Responsibility to Protect as part of its pathway towards achieving its promise to establish a caring community in 2015. What follows is advice on some modest steps that ASEAN, its Member States, and key partners, might take in order to advance this process.

### **1. At the regional level**

**First, raise awareness and public knowledge of the Responsibility to Protect.** An important first step is to raise awareness of the national commitments made with respect to the Responsibility to Protect and the regional aspirations with which these are associated. It is imperative that the Responsibility to Protect is properly contextualized in ASEAN's language and that the concept is demystified in order to avoid further misunderstandings. We see this as promoting the culture of caring in the ASEAN Community, something which ASEAN Member States have themselves committed to, by embedding the Responsibility to Protect into the norms, values and principles already articulated and adopted in the region whilst at the same time emphasizing that these regional norms, values and principles are embedded in the Responsibility to Protect and are not alien to it.

There are a number of avenues through which this might be achieved:

- **Enhancing awareness of the Responsibility to Protect through education.** One of the ways this could be achieved is through the holding of more dissemination workshops and meetings on the Responsibility to Protect among the different stakeholders of ASEAN. A key objective in these workshops and meetings is to address possible misperceptions and differences in institutionalizing its principles and

norms of the Responsibility to Protect. Various organizations, including the Asia Pacific Centre for the Responsibility to Protect and the Centre for Non-Traditional Security, have organized educational workshops and have established networks of stakeholders across the region. These activities need to be expanded and made more systematic.

- **Strengthening dialogue among high level policy makers on the importance and relevance of the Responsibility to Protect for regional peace and security.** Efforts should be made to include, and highlight the salience of, the Responsibility to Protect in high level official meetings and retreats where the agenda includes peace and security and where matters of good governance, law and human security are discussed. This can be done by stressing the centrality of prevention and state responsibility to the Responsibility to Protect, where capacity building, assistance and cooperation are needed, and the concept's relevance to ASEAN's aspirations and commitments.
- **Encouraging regular discussion of the Responsibility to Protect at security dialogues and meetings in the region.** Questions raised by the Responsibility to Protect, and its capacity to add value to the strengthening of regional cooperation and capacity could be discussed in existing dialogue on matters of peace and security. These include the regular meetings of the ASEAN Regional Forum, the ASEAN Defence Ministerial Meetings, and the ASEAN Regional Forum.
- **Mainstreaming the Responsibility to Protect in the curricula and training courses of government agencies, particularly in the security sector, and the provision of educational resources.** Considering the national commitments of ASEAN Member States to the concept of the Responsibility to Protect, the military, police, justice and law agencies of the region should be encouraged to have regular discussions on the importance of the Responsibility to Protect and to develop and share curricula and training courses on the prevention of genocide and other mass atrocities, human rights, and other related topics. These national training courses could be facilitated and supported by entities such as the AICHR (which is training government officials in human rights on best practices) and think tanks and other academic institutes in the region, including the Asia Pacific Centre for the Responsibility to Protect. These entities should be encouraged to support this work by developing model curricula and offering training courses as well as options for postgraduate education and training in this area. Some of this work should be undertaken in cooperation with the UN Office of the Special Advisers on Genocide Prevention

and the Responsibility to Protect, which undertakes training and related activities.

- **Promoting inter-parliamentary dialogue amongst ASEAN parliamentarians**, particularly on the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity, in line with the 2013 resolution of the Inter-Parliamentary Union which highlighted the role of parliamentarians in mainstreaming the Responsibility to Protect and protecting populations from harm. This could be achieved through the ASEAN Interparliamentary Assembly which meets regularly and which has a regular interface with ASEAN leaders during the annual ASEAN Summits or, initially, through the ASEAN Parliamentarians for Human Rights Group, perhaps with the support of a relevant think-tank or institute.
- **Incorporating into the ASEAN Institute for Peace and Reconciliation's (AIPR) research agenda the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity, the protection of women and children in conflict areas, the protection of minority groups, and other related issues.** In addition, AIPR could consider leading work on developing case studies and lessons learned in partnership with other regional research institutions such as the Centre for Non-Traditional Security, Asia Pacific Centre for the Responsibility to Protect, and ASEAN Institute for Peace and Democracy to build a repository of knowledge on prevention best practices.
- **Encouraging ASEAN think tanks, track two bodies, as well as research and academic institutions to help raise awareness of the Responsibility to Protect through regular publications, conducting workshops and seminars.** The region's media should also be encouraged to join in the education and dissemination efforts geared at raising more awareness and promoting better understanding of the Responsibility to Protect.

**Translating core documents and texts into national languages.** Whilst English is the common language of ASEAN, deepening awareness of the meaning and scope Responsibility to Protect and establishing a working knowledge of the concept across the region requires that core texts relating to it be translated into other national languages. Translating core texts would help officials, the media, and civil society to better understand and relate to the Responsibility to Protect and facilitate a 'training the trainers' approach to awareness raising that would increase the number of people and institutes engaged in this practice.

**Second, develop and strengthen regional capacity for early warning and assessment through the existing institutions, mechanisms and relevant sectoral bodies within ASEAN.** There is a need to act regionally to overcome challenges at the international level, yet the region has no early warning capability for genocide, war crimes, ethnic cleansing and crimes against humanity. This makes it more difficult to anticipate crises before they emerge and, thereby, craft effective regional responses to them focusing on mediation and conflict resolution. It is important to foster habits of early warning and of responsiveness to it. But early warning must be unbiased, meaningful and accurate. There is a need, therefore, to cultivate a regional capacity for early warning and assessment. The work of AICHR, the ACWC, as well as the work of the AIPR, and other think tanks such as the ASEAN Institute for Peace and Democracy could provide useful starting points for monitoring emerging issues of concern with a view to addressing and finding early solutions to potential problems.

Track two organizations, think tanks and networks such as the Asia Pacific Centre for the Responsibility to Protect in partnership with other research institutions in the region should also be encouraged to work on developing early warning mechanisms. In addition, it would be necessary to encourage these institutions to engage with forums like the Council for Security and Cooperation (CSCAP), the ASEAN-ISIS and the Network of ASEAN Defence Institutes (NADI) to share their work and analyses of potential flashpoints. One potential avenue to consider would be the establishment of a network or partnership for prevention amongst some grouping of these, and other, organizations. Whilst the ultimate goal should be to establish an official regional early warning capacity, ideally within ASEAN itself, this work might be usefully commenced and developed through such semi-official channels as these.

**Third, strengthen regional consultation and exchange on issues relating to the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity and the protection of vulnerable populations from these crimes, in accordance with ASEAN frameworks and instruments.** ASEAN has already established instruments related to the objectives set out in the Responsibility to Protect. These frameworks and instruments include, among others, the ASEAN Charter, the ASEAN Political and Security Community, the ASEAN Treaty of Amity and Cooperation, the Treaty on Southeast Asia Nuclear Weapons Free Zone, ASEAN Agreement on Disaster Management and Emergency Relief and the ASEAN Humanitarian Assistance (AHA) Centre. These frameworks provide potentially useful platforms for strengthening regional consultations on the norms and practices advanced by the Responsibility to Protect.

**Fourth, consider incorporating the salience of the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity into the**

**future agenda of the AICHR.** The prevention of these four crimes is closely related to the promotion of human rights within ASEAN, and is very much a necessary part of promoting a just and caring ASEAN community. The potential for integrating elements of prevention into AICHR's work plan in the medium term should therefore be explored when the Commission's Terms of Reference are reviewed by Member States. Further, the 'right to peace' highlighted in the ASEAN Declaration Human Rights (ADHR) provides an important pathway to promoting a culture of preventing of genocide, war crimes, ethnic cleansing and crimes against humanity.

**Fifth, support relevant civil society efforts to promote human rights protection and advance the norms and principles of atrocities prevention.**

It should be recognized that civil society organizations have important roles to play in both promoting and implementing the Responsibility to Protect. Their grassroots involvement positions them as natural early warning mechanisms in reporting developing situations that may be of concern. This includes the work done by the ASEAN People's Forum, which meets annually and which, through its task force on Human Rights, publishes regular assessments of human rights promotion and protection in ASEAN and submits these assessments to the AICHR.

## **2. At the national level:**

Many of the recommendations outlined below are not new to governments in the region. Nonetheless, these ideas are offered with a view to strengthening the resolve and capacity of ASEAN Member States to implement their own commitments to International Humanitarian Law and other relevant principles and instruments.

**First, Member States should continue and further develop dialogue amongst stakeholders on building a national architecture to support the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity.**

Given the national commitments made by ASEAN Member States to the Responsibility to Protect, International Humanitarian Law and to the development of a caring community in Southeast Asia, governments should take steps to develop their own national architecture to protect their peoples from genocide, war crimes, ethnic cleansing and crimes against humanity. When it comes to building national architectures for preventing these four crimes, there is no single template that can be applied in every country. In some cases, as in Tanzania, prevention architecture might be built around a national committee for genocide prevention. In the US, an 'Atrocities Prevention Board' was established to integrate responses. Some countries, such as Argentina, are taking a legislative approach whilst others vest their national human rights institutions with responsibilities for prevention and others take a less formal approach. Governments and societies need to determine for themselves which

approach best suits their own circumstances and needs. In some cases, a national human rights commission may be part of this national architecture. National dialogue amongst stakeholders is a good starting point for ascertaining national needs and identifying the approach that best serves those needs within the national context.

**Second, ASEAN Member States should consider signing, ratifying and implementing relevant international treaties and conventions relating to the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity and protection of vulnerable populations** (including the Rome Statute of the International Criminal Court, the Geneva Conventions and Additional Protocols, relevant aspects of International Human Rights Law, the Convention on the Prevention and Punishment of Genocide, and International Refugee Law). They might also consider reviewing, periodically, their relationship with relevant instruments of international law. As ASEAN Member States share in the regional aspirations to build a caring and sharing ASEAN Community, they should also consider passing their own national laws against genocide, war crimes, ethnic cleansing and crimes against humanity.

**Third, Member States should consider appointing a senior-level official as national focal point for the Responsibility to Protect, to coordinate national efforts and lead engagement in regional and global dialogue.** Given that UN Member States are invited to participate and contribute to the annual global dialogue on the implementation of the Responsibility to Protect, it would be useful if ASEAN Member States appointed national focal points for the Responsibility to Protect. Around forty governments have now appointed national Responsibility to Protect focal points to coordinate the mainstreaming of policy within the government and facilitate dialogue and cooperation between governments and with the UN. They are important for Member States because they facilitate coordination across government and afford a stronger global voice in the ongoing dialogue about the implementation of the Responsibility to Protect.

Focal points participate in a global network of focal points, which advances dialogue and cooperation on the full panoply of issues relating to the Responsibility to Protect. There is no single model for where the focal point should sit within government or what the specific domestic roles of that position should be, and individual governments might ask the advice of the Network's secretariat housed in the Global Center for the Responsibility to Protect on the different models that have been utilized. Potential appointees to this role may include the Commissioners of national human rights commissions or other appropriate bodies such as the Attorney-General or Ombudsman. Alternatively, the focal point may be housed within the Foreign Ministry or office of the head of government. Or, the position may relate to a government-wide committee comprising several ministries. Each of these models has been utilized by

governments from the Global South as well as from the Global North. Whatever the precise configuration of this role, the principal tasks of the national focal point would be to coordinate national efforts on atrocity prevention and lead national engagement in regional and global dialogue. As the UN Secretary-General recommended, states should also assign adequate resources or establish other national mechanisms to implement this mandate.<sup>21</sup>

**Fourth, ASEAN Member States should give urgent consideration to the UN Secretary-General's recommendation that all UN Member States should conduct a national assessment of risk and resilience and participate in dialogue and peer review.** This assessment could use the AFramework on the prevention of genocide developed by the UN's Special Adviser on the Prevention of Genocide, which will shortly be updated to take account of the other relevant crimes, namely war crimes, ethnic cleansing and crimes against humanity. As recommended by the UN Secretary-General, the review should be system-wide and should include the identification of vulnerable populations and an assessment of existing structures for resilience. Civil society should be included in the review process. In addition, member states should consider participating in peer review processes, especially the Universal Periodic Review of the Human Rights Council.<sup>22</sup>

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<sup>21</sup> UN Document, A/67/929-S/2013/399, 9 July 2013.

<sup>22</sup> UN Document, A/67/929-S/2013/399, 9 July 2013.



## **PART V: SHARING THE RESPONSIBILITY TO PROTECT: ASEAN'S PARTNERSHIP WITH THE UN**

The implementation of the Responsibility to Protect is a shared responsibility involving individual states, regional organizations and the UN as a whole. The UN cannot be expected to address all relevant issues that arise in the region and indeed the UN Charter itself expresses a clear preference for regional solutions where possible. Nonetheless, the UN can lend legitimacy to existing ASEAN instrumentalities and the two organizations can use their respective strengths most effectively in partnership with one another. The prevention of genocide, war crimes, ethnic cleansing and crimes against humanity and protection of vulnerable populations works best when the UN and regional organizations such as ASEAN work together in close collaboration. As such, strengthening the partnership between these two organizations is central to building the region's capacity to fulfill its commitment to prevent genocide and other mass atrocities and protect populations from them. The key to forging effective partnerships in this context lies in establishing 'anticipatory relationships' between ASEAN and the UN and in focusing on functional cooperation.

The prevention or early termination of genocide, war crimes, ethnic cleansing and crimes against humanity requires the forging and constructive use of relationships with local elites and parties to various conflicts. This is a particularly difficult proposition for global bodies like the UN, which are often far removed from the conflict itself, which is why partnership with regional arrangements is particularly useful. The utilization of networks and relationships in the face of a prevention challenge or serious crisis is made much easier if those relationships exist prior to the crisis and easier still if there are pre-established mechanisms for liaison.

Southeast Asia has already begun to develop national focal points and networks relating to peacekeeping, disaster response and humanitarian operations, often in partnership with the UN. More importantly, regional mechanisms to promote ASEAN-UN partnerships are already in place. Acting within this framework, more can be done to strengthen this collaboration and promote the implementation of the Responsibility to Protect. Relevant actions may include:

- **Strengthening High-Level Meeting between ASEAN and the UN.** The high level ASEAN-UN meetings held during the annual ASEAN Summits provide an opportunity for ASEAN leaders and the Secretary General of the UN to forge closer relationships. The annual meetings also provide an excellent platform to exchange ideas about priorities, concerns and challenges and develop future strategies. They also provide the UN Secretary-General with the opportunity to encourage

ASEAN's participation when serious crises emerge. Leaders should give consideration to deepening the scope of these high-level meetings and to including matters of relevance to the Responsibility to Protect in the agenda.

- **Promoting regular dialogue on peace and security.** Building on the ASEAN-UN meeting held between the Secretaries-General of the UN and ASEAN, as well as the Secretary-General of the UN and ASEAN Foreign Ministers, regular consultations should be encouraged to exchange analysis of peace and security related issues, including those related to the Responsibility to Protect. As well as building relationships and creating processes and modalities for officials-level interaction between ASEAN and the UN, these regular meetings might also examine the implementation challenges facing the two organizations and explore ways in which they might also work together. In particular, these meetings might facilitate the exchange of ideas about early warning frameworks and assessments and best practices in fields such as mediation, as well as facilitating the two-way flow of information and advice.
- **The provision of training and information on best practice by the UN.** The UN and its agencies have significant experience in fields such as early warning, conflict assessment, the Responsibility to Protect, genocide, peacekeeping, the management of population displacement, protection, relevant international law, and other related topics. For example, the UN's office on Genocide Prevention and the Responsibility to Protect has developed a strong repertoire of training programmes on issues relating to the prevention of genocide and other atrocity crimes. This could be usefully offered to members of the ASEAN secretariat as well as officials from national governments on a regular basis. What is more, training should be two-way with the ASEAN secretariat providing a seminar for UN officials on ASEAN and the region more broadly. This two-way training raises capacity, builds mutual understanding and facilitates future collaboration. Training and information sharing might usefully also address lessons learned from past experience and best practices developed in the field.
- **Young leaders dialogue on the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity.** A young leaders dialogue bringing together future leaders from the UN with those in ASEAN would facilitate the exchange of ideas and building of relationships among the next generation of leaders who will be responsible for preventing genocide, war crimes, ethnic cleansing and crimes against humanity and protecting populations from them.

There are also steps that the UN itself might consider taking in order to improve its own capacity to cooperate more effectively with ASEAN and advance the goals described earlier. These include:

- **The UN's Office of the Special Adviser on the Prevention of Genocide could consider doing more to engage with ASEAN, its Member States and relevant civil society groups in Southeast Asia.**

In particular, UN officials could allocate more time to visiting the region and engaging in dialogue and building relationships with Member States and ASEAN. The Office could also make itself a significant partner in implementing recommendations relating to awareness raising, training and education, early warning and assessment, the appointment of national focal points, the development of national assessments, and the strengthening of the partnership between ASEAN and the UN.

Although individually modest, taken together these initiatives would open important lines of communication between the UN and the ASEAN region and ensure that regional expertise, interests and insights are brought to the fore in the implementation of the Responsibility to Protect, strengthening the overall capacity to prevent the incitement and commission of genocide, war crimes, ethnic cleansing and crimes against humanity.



## **PART VI: CONCLUSION**

Southeast Asia has experienced genocide, war crimes, ethnic cleansing and crimes against humanity and now there is a shared Responsibility to Protect all populations in Southeast Asia and beyond from these four heinous crimes. This is a responsibility solemnly entered into by all ASEAN Member States in 2005 and a responsibility that converges with the commitment that these same governments have made to each other, through ASEAN. A ‘sharing and caring’ ASEAN Community, which the Association’s Member States aspire to achieve in 2015, is a community that protects its peoples from the worst of crimes known to humanity – the four crimes of the Responsibility to Protect. As such, the Responsibility to Protect provides ASEAN with a major pathway towards realizing its vision of a caring and sharing community in Southeast Asia and supports ASEAN’s responsibility to care for the protection of its own people.

This report has demonstrated that, far from being an alien concept, the Responsibility to Protect flows from the commitments made by Southeast Asian governments themselves and corresponds closely with ASEAN’s principles and norms. What is more, it has shown that ASEAN already has the institutions and mechanisms it needs to mainstream the Responsibility to Protect in Southeast Asia and strengthen the protections afforded to populations in this region. It has also set out some modest recommendations for consideration, observing that these are meant only as potential first steps and not as a complete agenda. Broader agendas and pathways should be the subject of further dialogue between governments and their partners.

In that vein, the ASEAN-HLAP stands ready to continue to assist ASEAN, its Member States, the UN and other stakeholders in mainstreaming the Responsibility to Protect in Southeast Asia.

## THE HIGH-LEVEL ADVISORY PANEL ON THE RESPONSIBILITY TO PROTECT IN SOUTHEAST ASIA

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Photo courtesy of ASEAN Secretariat

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