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The Responsibility to Protect in Southeast Asia: Can ASEAN Reconcile Humanitarianism and Sovereignty?

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The Responsibility to Protect in Southeast Asia: Can ASEAN Reconcile Humanitarianism and Sovereignty?

ALEX J. BELLAMY and MARK BEESON

Abstract: *This article explores how relevant the "Responsibility to Protect" (RtoP) principle is in Southeast Asia. Southeast Asia is usually thought of as a region that is highly resistant to external "interference" in its domestic affairs and relatively impervious to the influence of externally generated norms. The article explores the potential relevance of RtoP through an analysis of the impact of Cyclone Nargis on Myanmar. Although the military regime in Myanmar was initially resistant to external intervention, pressure from both the United Nations and especially fellow members of the Association of Southeast Asian Nations (ASEAN) caused the regime to change its behavior. The authors argue that this marks an important shift in intra-ASEAN relations and suggests that even in Southeast Asia where sovereignty is still jealously guarded, external norms and ideas can have a decisive impact in propitious circumstances.*

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Introduction

The Responsibility to Protect (RtoP) principle has come a long way in a relatively short space of time. From inauspicious beginnings, the principle was endorsed by the UN General Assembly in 2005 and unanimously reaffirmed by the UN Security Council in 2006 (Resolution 1674). The principle has also become part of the working language of international engagement with grave humanitarian crises: the Security Council referred to the RtoP in mandating the UN-African Union hybrid mission for Darfur (Resolution 1706, 2007); and both Kofi Annan and Ban Ki-moon used RtoP in relation to their diplomatic efforts to resolve the postelection conflict in Kenya. More controversially, in the wake of Cyclone Nargis and the government of Myanmar's refusal to accept foreign assistance in May 2008, French Foreign Minister Bernard Kouchner proposed that the RtoP be invoked to legitimize the forcible delivery of humanitarian assistance without the government's consent.[1] However, there remains significant disquiet among governments about the meaning, scope, and application of the RtoP.[2] Most notably, some governments – including Algeria, Egypt, and Sudan – argued that they did not in fact endorse the principle in 2005 and only committed to further deliberation. Several members of the General Assembly's powerful Fifth Committee (Budget) resisted the appointment of a Special Adviser with an RtoP mandate.[3] More generally, governments in Asia, Africa, and Latin America have questioned the relationship

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between RtoP and other cherished principles. In Southeast Asia, despite a tension between RtoP and the principles of noninterference and consensus decision making, the principle is making some normative headway.

However, implementing the RtoP requires international consensus about the principle's meaning and scope and the measures necessary to realize it: the principle must be "localized" – incorporated into regional patterns of norms – if it is to be "operationalized."[4] Consequently, we need to better understand the composition of norms, values, and interests in any given region, their sources and authority, and their relationship to RtoP because localization requires the reconciliation of new global norms with preexisting regional norms. In other words, to gain traction in Southeast Asia, RtoP needs to become compatible with other regional norms. Despite the Association of Southeast Asian Nations's (ASEAN) history of resisting external reformist pressure, there is evidence that normative change is occurring as a consequence of interaction between global, regional, and domestic forces.

The aim of this article is to examine the extent to which RtoP is compatible with existing norms in Southeast Asia and identify realistic pathways for implementing the RtoP in the region. To that end we proceed in five parts. First, we briefly examine the nature and evolution of RtoP. Second, we consider the historical backdrop for Southeast Asia's central regional norms. Third, we examine the evolution of ASEAN. Fourth, we trace how the region responded to the major humanitarian crisis in Myanmar that followed in the wake of Cyclone Nargis. Finally, we reflect on what all this tells us about the nature of sovereignty in Southeast Asia and prospects for implementing the RtoP.

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RtoP: From Idea to Norm

One of the few real achievements of the UN's 2005 World Summit was the adoption of the RtoP principle. As agreed by UN member states, the RtoP principle rests on three equally important and nonsequential "pillars": first, the responsibility of the state to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity, and from the previously listed crimes; second, the international community's duty to assist the state to fulfill its responsibility to protect; and third, the international community's responsibility to take timely and decisive action, through peaceful diplomatic and humanitarian means and, if that fails, other more forceful means, in a manner consistent with Chapters VI (pacific measures), VII (enforcement measures), and VIII (regional arrangements) of the UN Charter, in situations where a state has manifestly failed to protect its population from the four crimes.[5] In April 2006, the UN Security Council reaffirmed RtoP and indicated its readiness to adopt appropriate measures where necessary (Resolution 1674, 2006).

RtoP's intellectual and political origins lay in older ideas about "sovereignty as responsibility" and their rearticulation in various forms in the 1990s as a response to the commission of genocide, mass atrocities, and forced displacement in that decade. Sovereignty has always entailed both rights and responsibilities. Even theorists most associated with the defense of unbridled sovereign power conceded this point. Thomas Hobbes, for example, insisted that the contract between individuals and the

state would be voided "if the sovereign threatened the individual with death" or "could no longer fulfill the function for which he or she is given power." In this situation, wrote Hobbes, sovereign power "is no longer owed obedience, is no longer indeed a sovereign."[6]

These ideas were given new impetus in the 1990s as a result of the emergence of a number of decidedly "uncivil" wars and developed in two different contexts – a discussion about sovereign responsibilities in the face of internal displacement and a debate about the so-called "right" of humanitarian intervention. The contemporary idea of sovereignty as responsibility was developed by the UN's Special Representative on Internally Displaced Persons (IDPs) Francis Deng and Roberta Cohen, a senior fellow at the Brookings Institution, in the 1990s.[7] Their principal challenge was how to persuade governments to improve protection for IDPs, and they developed the idea of sovereignty as responsibility to fit this purpose.[8] The concept's starting point was recognition that the primary responsibility for protecting and assisting IDPs lay with the host government.[9] No legitimate state, they argued, could quarrel with the claim that they were responsible for the well-being of their citizens, and in practice, no governments did in fact quarrel with this proposition. Where a state was unable to fulfill its responsibilities, it should invite and welcome international assistance.[10] Such assistance helped the state by enabling it to discharge its sovereign responsibilities and take its place as a legitimate member of international society.[11] During major crises, troubled states faced a choice: They could work with international organizations and other interested outsiders to realize their sovereign responsibilities or obstruct those efforts and sacrifice their good standing and sovereign legitimacy.[12] As such, sovereignty as responsibility focused on the obligations of host governments and maintained that effective and legitimate states were the best way to protect vulnerable populations. This left unanswered the problem of what to do when a state refused to request assistance or when the state itself committed genocide and mass atrocities, pitting a sovereign's right to noninterference – enshrined in Articles 2(4) and 2(7) of the UN Charter – against a sovereign's putative responsibilities.

This dilemma was most pointed in relation to the question of humanitarian intervention, and in the midst of the highly contentious global debate about the legitimacy of NATO's 1999 intervention in Kosovo, the concept of sovereignty as responsibility was picked up by UN Secretary General Kofi Annan.[13] Mindful of the apparent contradictions between the rights and responsibilities of sovereignty, Annan challenged international society to develop a way of reconciling the twin principles of sovereignty (and protection of self-determination) and fundamental human rights. That challenge was taken up by the Canadian government, which created the International Commission on Intervention and State Sovereignty (ICISS). Chaired by Gareth Evans and Mohammed Sahnoun, the Commission developed the phrase "RtoP," set out the case for it, and focused on developing ideas in relation to humanitarian intervention.[14]

Although UN member states adopted the language of RtoP, they chose to not adopt the ICISS's recommendations wholesale and to frame the new principle around the idea of sovereignty as responsibility. As Edward Luck has argued, it is important not to confuse what we would like the RtoP principle to be with *what it actually is.*[15] In particular, member states rejected the ICISS's calls for RtoP to include criteria to guide decision

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making about when to intervene; a code of conduct for the use of the veto; and the potential for coercive interference in the domestic affairs of states not authorized by the UN Security Council. In its place, they articulated a vision of RtoP based on the three pillars noted above and embedded in existing international law.[16] RtoP's principle imperative shifted from a focus on coercing states into compliance into one of assisting states to build the capacity to protect and working through existing institutions to respond effectively when they fail to do so.

But we should not succumb to the view that the RtoP principle that emerged from the 2005 World Summit was too weak or insubstantial to make a positive contribution to strengthening global humanitarianism. First, the World Summit clarified the principle's scope. At the request of Pakistan, it was agreed that RtoP applies to genocide, war crimes, ethnic cleansing, and crimes against humanity. Each of these has fairly precise legal meanings grounded in existing international law. Second, the World Summit has clarified relevant roles and responsibilities. In line with the doctrine put forth by Francis M. Deng and Roberta Cohen, all states have a primary responsibility to their own populations. All other states have a responsibility to assist their peers in fulfilling this primary responsibility. Should a state manifestly fail in its responsibility, the various bodies of the UN in partnership with relevant regional arrangements have a responsibility to use whatever means they determine as necessary and appropriate. Significantly, all measures should be consistent with the UN Charter. Third, the agreement clarified that there is no such thing as an "RtoP event or crisis" in that there is no moment at which something becomes relevant to RtoP. A state's responsibility does not appear and evaporate, nor does the world's responsibility to assist and support that state or the Security Council's responsibility to take all necessary means when appropriate. In other words, it is not the nature of the responsibility that changes but the most appropriate means of preventing genocide, war crimes, crimes against humanity, and ethnic cleansing, and protection of vulnerable populations in any given situation. Finally, it is important to stress that as a product of the largest-ever gathering of heads of state and government, the agreement produced by the 2005 World Summit carries immense political weight. The key question is whether such moral authority and suasion is sufficient to overcome entrenched local norms.

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Asia's Different Standard?

Local practices are potentially crucial because states – even regions – remain surprisingly different. Unremarkable as this assertion may be, it is at the heart of the present discussion: Simply put, some states or regions are likely to prove more receptive to RtoP because of their unique historical experiences. This is nowhere truer than in Southeast Asia. What we now think of as Southeast Asia has been exposed to historical forces over which the region has generally had little control. As a consequence, the states of the region have been preoccupied with shoring up sovereignty and consolidating domestic security.[17]

With the sole exception of Thailand, all of contemporary Southeast Asia was colonized by one European power or another. Indeed, it took the Second World War and the actions of another Asian power – Japan – to break Europe's stranglehold over the

region. Even then, the path to independence was often far from smooth and the developmental challenges of the postindependence period remained formidable. Indonesia's would-be indigenous leaders, for example, not only had to persuade the Dutch to leave through force of arms, but they also had try to create a nation where none had existed before; it was no coincidence that Benedict Anderson's celebrated exploration of the *creation* of national imaginaries focused so intently on Southeast Asia.[18] It is also no coincidence that the militaries across Southeast Asia have often played a prominent part in national development and politics, and this has given an additional importance to security as a focus of domestic policy.[19] Indeed, it needs to be remembered that the military has been a key actor in nation-building projects that have often remained incomplete and only partially realized, which is why Indonesia and the Philippines in particular contain within them the unresolved contradictions of a colonial rather than a national political architecture.[20]

Even in contemporary Malaysia, the impact of the colonial period is visible in its multiracial society and inscribed in its public policies. One of the key tasks of Malaysian governments since 1969 has been to maintain harmony among the indigenous *bumiputeras* on the one hand and descendants of the Chinese and Indian laborers the British imported on the other.[21] Such ethnically inspired imperatives, especially when combined with the legacy of an economic development trajectory distorted by the needs of empire, have profoundly influenced Malaysian attitudes to the outside world. Former prime minister Mohamad Mahathir embodied two ideas that are especially significant in trying to understand why the region remains so unreceptive to RtoP: First, the story of modern Malaysia owes more to an East Asian tradition of public policy and development than it does to anything from "the West." Japan's postwar model of state-led development, self-reliance, and "soft" authoritarianism had a marked impact on Mahathir's thinking in particular and Malaysian public policy more generally.[22] The second point to make is that this model was not only different from the idealized Anglo-American experience, but it was also hugely successful. The "miraculous" rise of East Asia cannot be understood without recognizing how important and distinctive this process was and how this influenced the thinking of the region's political elites.

In this context, Mahathir has a significance that transcends Malaysia, as he was one of the key architects of the so-called "Asian values" discourse which came to embody a growing self-confidence – even hubris – in the region as economic expansion gathered pace. At the heart of the Asian values rhetoric was the idea that the countries of the region had been so successful because they subscribed to a "different standard" of norms and behavior:[23] hard work, family values, and especially respect for authority were the supposed foundations upon which the Asian success story was built. However, the Asian economic crisis of the late 1990s pulled the rug out from under the Asian miracle and appeared to put an end to the claims about the alleged superiority of East Asia's developmental practices.

And yet this period is more than an historical curiosity; the idea that Asia offers an alternative and possibly superior pattern of development has not gone away. On the contrary, the seemingly inexorable rise of China, especially when compared with the self-induced economic catastrophes that have gripped the Anglo-American economies, have seen a resurgence in the idea that Asia is not only different but historically destined

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to assume the dominant position in the international system.[24] For example, Kishore Mahbubani, has recently argued that "Asians are proving to be capable of delivering a more stable world order" than their Western counterparts, largely because China is playing such a pivotal and adroit role.[25] The significance of China in this context is not simply that the so-called "Beijing consensus" provides an alternative to the increasingly discredited Washington variety,[26] but that it provides a potential ideological bulwark against the more general influence of Western norms.

China's growing importance highlights two issues that merit emphasis when considering why the region remains resistant to RtoP. First and most importantly perhaps, China's success will not only reinforce the attractiveness of alternative developmental paradigms like the so-called Beijing consensus, but its own domestic development serves as a powerful reminder that there is nothing inevitable about the course of social or political development. One of the most striking features of China's transition to a market economy is that there has been no concomitant shift to liberal democracy or political pluralism. On the contrary, China's authoritarian, interventionist state appears to be becoming more important and central rather than less.[27] Likewise, there is no sign that China's growing capitalist class is at all concerned about acquiring greater political freedom of action.[28] China, like much of Southeast Asia before it, appears to be following a regional trajectory that prioritizes economic development and social stability over political liberalism.[29] In such circumstances, anything that is seen as potentially destabilizing the existent regional political order is likely to be given short shrift.

The continuing fragility of a number of East Asian polities makes the easy embrace of external norms problematic. The great paradox of the region is that for all the talk of "strong states," many lack legitimacy and effective capacity.[30] Unlike the pioneering developmental states of Northeast Asia, Southeast Asian states generally lack the ability to implement policy effectively: powerful vested interests combined with the lack of a competent, noncorrupt bureaucratic infrastructure continue to plague much of Southeast Asia. Consequently, it remains a moot point whether many states in the region could actually implement the RtoP even if there was the requisite political will to do so.[31] Only the city-state of Singapore can boast truly effective governance, and even here, the ability of the state to insulate Singapore from the consequences of an unprecedented economic reversal has raised questions about the competence and performance legitimacy of a state that remains partially democratic at best.[32]

In such circumstances, it is perhaps unsurprising that Southeast Asia as a whole was generally lukewarm about RtoP, though there is significant evidence that several states in the region have begun to embrace the norm. At least one of the region's governments – the Philippines – was an early supporter of the principle. At a 2004 Security Council on the crises in Darfur, the Philippines voiced strong support for the principle of sovereignty as responsibility and the idea that the Security Council has a responsibility to protect in situations where the national authorities are manifestly failing to do so. In perhaps one of the ASEAN region's clearest endorsements of the RtoP, it insisted: "Sovereignty also entails the responsibility of a State to protect its people. If it is unable or unwilling to do so, the international community has the responsibility to help that State achieve such capacity and such will and, in extreme necessity, to assume such responsibility itself."[33] A few months later, the Philippines reiterated its

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position, insisting that "a State has the responsibility to protect its citizens, and, if it is unable or unwilling to do so, the international community – the Security Council – has the moral and legal authority to enable that State to assume that responsibility."[34] Likewise, Thailand voiced support for the RtoP in 2005 but did not develop its position subsequently. In 2005, Minster of Foreign Affairs Kantathi Suphamongkhon stated that his government saw "merit in the idea of collective responsibility to protect people from genocide, war crimes, ethnic cleansing and crimes against humanity."[35] Although it did not openly endorse the principal at this early stage, Singapore signaled its support by joining the "Group of Friends" of RtoP, which was composed of like-minded Permanent Missions to the UN in New York. A small number of others, however, flatly rejected RtoP and expressed outright hostility.[36] Prior to the 2005 World Summit, Vietnam indicated that it would not support the principle. Vietnam flatly rejected the view that the RtoP was an "emerging norm of international law." Tellingly linking its skepticism about RtoP with its denunciation of preemptive self-defense, Vietnam stated that "Article 51 of the Charter is clear and restrictive in the sense that the inherent right of individual or collective self-defense can be employed only if an armed attack occurs against a Member State. We do not believe, therefore, that Article 51 provides an expanded scope for permitting States to take military action on the basis of a perceived imminent threat. Nor are we convinced that responsibility to protect is an emerging norm of international law."[37] While Vietnam's position changed after it took up its nonpermanent seat on the Security Council in 2008, North Korea and Myanmar remained implacably opposed. The majority, though, chose to sit on the fence and not take a firm position on RtoP, perhaps reflecting the cautious stance adopted at the 2005 World Summit by Indonesian President Susilo Bambang Yudhoyno. He stated that "we need a consensus on the responsibility to protect people from genocide, ethnic cleansing and crimes against humanity. To this end, force should be used only when all other means have failed."[38] Indonesia endorsed the idea of the RtoP relating to the four crimes (genocide, war crimes, ethnic cleansing, and crimes against humanity) and was also prepared to accept that in some circumstances it was legitimate for the UN Security Council to authorize enforcement measures to protect populations from these crimes. However, as President Yudhoyno's statement infers, Indonesia thought it necessary to continue dialogue to provide clarity on the situations in which the application of enforcement measures might be necessary and appropriate in order to avoid the potential misapplication of the principle.

In the years that followed, however, the region perceptibly warmed to the principle, a fact made clear by the statements made during the 2009 General Assembly debate on RtoP. At this meeting, Indonesia, the Philippines (who used the occasion to announce its decision to join Singapore in the Group of Friends), and Singapore all voiced strong support for the principle. Significantly, Vietnam – one of the region's loudest opponents of RtoP – used the debate to confirm that it had had a significant rethink on the principle. While noting some reservations about the application of coercive measures, Vietnam affirmed the World Summit Outcome Document of 2005 and emphasized that the international community need no longer debate the necessity of RtoP or its scope. Advocating that debate move toward rendering the Outcome Document operational, Vietnam suggested that the secretary general's report represented an excellent ground

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for discussion. Even Myanmar voiced its support for the principal of RtoP.[39] Despite this general warming to the principle, however, there is little evidence of agreement on specific issues relating to its implementation or use in practice, and it is perhaps here that universal principles and local norms rub up against one another most acutely.

The Limits of the ASEAN Way

ASEAN is the most enduring intergovernmental organization to have emerged in what is often still somewhat patronizingly referred to as the "developing world." The nomenclature is not insignificant: At the center of much of the theory and practice of institutionalized interstate cooperation is an implicitly teleological expectation that the West's historical experience provides a model or even an endpoint for institutional development. Of late, the debate about the role of international organizations has become more nuanced, and there is a greater recognition of the role that international organizations can play in discursively defining particular issues or "problems" to be addressed.[40] Nevertheless, the focus of much of this literature has been the activities of organizations from the "North" – understandably enough, perhaps, given their dominance of the international system of which they have become such a ubiquitous part. A key concern in this context has been on the spread of economic ideas – broadly speaking, neoliberalism – and their export to the rest of the world.[41] And yet it is clear that geographically specific social and historical circumstances can generate very dissimilar forms of institutions despite superficial similarities. Consequently, intergovernmental organizations in different parts of the world may have very different guiding principles, operating procedures, and fundamental purposes.[42]

The significance of these briefly stated theoretical considerations is twofold: First, we should not assume that regional organizations are necessarily going to act like, or replicate, the experience of Western Europe or anywhere else. Second, at the very least, we need to consider the possibility that organizations like ASEAN will filter and reconstitute apparently universal ideas or impulses in ways that reflect and accommodate local conditions. It is in this context that the work of Amitav Acharya is especially significant as he has developed a framework with which to explain how externally generated norms are received and meditated within specific local contexts. For Acharya, the key variables that determine the impact of norms are the legitimacy and authority of "key norm-takers," the strength of existing local norms, the credibility and prestige of local actors, indigenous cultural traditions, and the extent to which external norms can be "grafted and pruned."[43] Meaningful normative change ultimately depends on the "successful fusion of foreign ideas with local ones," according to Acharya, in a process of "constitutive localization" in which local actors determine the extent of norm diffusion and adoption in a process that is "evolutionary rather than revolutionary."[44]

Because regional organizations have the potential to mediate external influences, a consideration of the precise historical circumstances in which ASEAN emerged and continues to operate is especially important when trying to assess its potential to play a facilitative or obstructive role as far as RtoP is concerned. The single most important influence on ASEAN's initial formation and its subsequent development has been

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the pursuit of security, and this more than anything else helps to explain the continuing preoccupation with sovereignty that distinguishes the policy orientation of both ASEAN and its individual members. This desire for security has manifest itself most immediately in the preoccupation with domestic stability and the need to consolidate the process of nation building. Significantly, the pursuit of security has also had regional and extraregional components. It needs to be remembered that ASEAN emerged in the late 1960s as a response to tensions within Southeast Asia itself and between the "superpowers." Not only was there the reality or potential for conflict between a number of Southeast Asian countries, especially Malaysia and its neighbors, but there was the tangible evidence of cold war conflict in Vietnam. For the newly independent, relatively weak states of Southeast Asia, solidarity in the face of growing geopolitical tensions made sense.[45]

Despite the fact that the Bangkok Declaration,[46] which established ASEAN in 1967, made much of the prospects for social and cultural cooperation, this has always been more of an aspiration than a serious policy goal. Unlike the European Union – the modus operandi of which the ASEAN states have studiously avoided – the Southeast Asian states have consciously not developed institutional structures that might impinge on the autonomy and sovereignty of individual member states. While the European Union has a powerful executive body in the European Commission with the capacity to initiate legislation that will ultimately shape the behavior of member states, the ASEAN grouping has deliberately kept its own Secretariat small and relatively powerless. Similarly, whereas the policies of the European Union are enshrined in European law and enacted within individual member states, there is no similar process in ASEAN. On the contrary, the agreements that do exist are nonbinding and reached through consultation and consensus. This informal, nonlegalistic style is the essence of the so-called "ASEAN Way," which is one of the most distinctive aspects of regional politics in Southeast Asia. The essence of the ASEAN Way is a desire to avoid losing face and is embodied in a decision-making process that favors a high degree of consultation and consensus. In short, the ASEAN Way is intended to avoid what are seen as the negative consequences of Western bargaining styles which emphasize confrontation and legalism.[47]

Sympathetic accounts see such practices as a consequence of Southeast Asian cultural traditions.[48] Critics suggest that ASEAN's diplomatic practices result in policies that reflect the lowest common denominator, in which the goal is problem avoidance rather than resolution.[49] Yet, however we explain the underlying dynamics, the net effect has been to make ASEAN's members reluctant to, or incapable of, addressing contentious issues. This lack of capacity or political will has become even more pronounced since ASEAN has gone through a process of "widening," in which it has expanded from its original membership of Singapore, Thailand, the Philippines, Indonesia, and Malaysia to include Vietnam, Laos, Cambodia, Brunei, and most contentiously of all, Burma. Unlike the European Union, which has also gone through a process of widening, there has been no concomitant process of "deepening." On the contrary, the inclusion of new members with complex domestic political situations, spotty human rights records, and limited state capacities has made agreement on contentious issues even less likely.

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There are signs that some of ASEAN's more "progressive" members are recognizing the limits of the ASEAN Way and have begun to encourage reform amongst the membership. Thailand, for example, has stressed the need for "flexible engagement," in which members might have a greater influence over the domestic affairs of fellow members. Significantly, however, such initiatives have not led to major changes in the way that ASEAN actually operated or any discernible increase in ASEAN's influence over member states.[50] Indeed, to the extent that there were meaningful discussions about the need for substantive change in the way that ASEAN operated, they occurred in the aftermath of the Asian economic crisis and were largely driven by radically changed material circumstances. Despite the possible benefits to be derived from greater economic cooperation and sovereignty pooling, there has been a notable reluctance to compromise domestic sovereignty and autonomy.[51] The more recent, much trumpeted "ASEAN Charter," which incorporates commitments to promoting human rights, democracy, the rule of law, good governance, and all the other staples of best political practices, has also failed thus far to bring about significant change in the behavior of member states, highlighting a continuing gap between rhetoric and reality in ASEAN policy implementation.[52] This observation is not at odds, however, with the claim that external norms can have some impact in Southeast Asia. The key issue is about the extent of their influence and the manner in which they are reshaped by, and reconfigured to suit, contingent local circumstances.

The key problem as far as successful implementation of the Charter is concerned, which reflects internationally recognized standards of good governance, is that it is dependent on consensus being achieved among ASEAN's membership. Consequently, the proposed agreement is likely to focus only on the promotion of human rights rather than their protection and contain no prospect of sanctions (such as suspension of membership) against those governments that violate the Charter's commitment to human rights. As a result, even sympathetic observers of the region are not optimistic about the chances for substantial reform.[53]

At first blush, evidence to support this gloomy prognosis about ASEAN's institutional incapacity and limited political will can be seen in the association's response to the major humanitarian crisis in Myanmar in 2008. But this case also gives rise to a modest degree of optimism that ASEAN governments are increasingly recognizing the need for the association to take a somewhat more proactive and positive stance in responding to grave humanitarian emergencies in its neighborhood and that the Secretariat is beginning to show some – albeit very nascent – signs of an emerging capacity to respond to such emergencies. Noel Morada suggests that there is evidence that ASEAN's "opinion leaders" are becoming more receptive to the idea that humanitarian crises requite a level of response and commitment that might necessitate overriding or rethinking established modes of diplomatic practice in Southeast Asia.[54] This suggests that although much of the region remains cautious about RtoP, the principle is not as alien – and alienating – as might first appear and that there are some in the region, including some governments, who think that ASEAN ought to play a role in preventing and responding to major humanitarian emergencies. As the preceding analysis makes clear, this would constitute a major shift in thinking about the association's purpose. In this context, therefore, *any* change in the underlying normative consensus is highly significant.

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ASEAN and Humanitarian Crises in Southeast Asia: Cyclone Nargis

On May 3, 2008, Cyclone Nargis struck Myanmar, devastating the Irrawaddy Delta area and leaving much of the region under water. Approximately 138,000 were left dead or missing in the cyclone's wake.[55] Around 1.5 million people were displaced by the cyclone (estimates vary between 1.2 and 1.9 million). Despite the massive scale of the humanitarian catastrophe confronting Myanmar and the government's obvious inability to respond in an effective and timely fashion, the country's military regime initially blocked access to humanitarian agencies, inhibiting the delivery of urgently needed supplies and medical assistance. The disaster occurred shortly before a constitutional referendum aimed at legitimizing the military government, which went ahead despite the humanitarian crisis in the country's South.

Nongovernmental organizations (NGOs), UN agencies, and states offered assistance, but Myanmar's military government was slow to issue visas for foreign aid workers and UN personnel and insisted on distributing the aid itself – raising fears that much of the cash and supplies would be siphoned off by the military and would never reach the intended recipients. The junta also restricted the movement of aid workers, fearing that they might distribute prodemocracy propaganda and encourage social unrest. The UN's Office for the Coordination of Humanitarian Affairs (OCHA) and Oxfam reported that, at the most, only a quarter of the required aid was being allowed into Myanmar and that the aid that did arrive was not being effectively distributed. Reports also began to emerge of military officers hoarding aid for themselves and selling it on the black markets.[56]

Frustrated by this lack of progress, on May 7, the French Foreign Minister Bernard Kouchner proposed that the UN Security Council invoke the "RtoP" to deliver aid without the consent of the Myanmar government. This proposal was reiterated by the French Ambassador to the United Nations and repeated by commentators, analysts, and politicians, primarily in Europe and North America. When the European Union met to discuss its response to the cyclone and the French proposal to invoke the RtoP, France's junior Minister for Human Rights Rama Yade told reporters, "We have called for the 'responsibility to protect' to be applied in the case of Burma."[57]

Kouchner's proposal was rejected by the Chinese and ASEAN representatives on the Security Council – Indonesia and Vietnam – all of whom argued that the RtoP did not apply to natural disasters.[58] Supporting China's view that the situation in Myanmar should not be placed on the UN Security Council's agenda, Indonesia stated that "there are other better forums to discuss the humanitarian dimension of the Myanmar situation" and that "the last thing we would want is to give a political spin to the technical realities and the situation on the ground."[59] ASEAN governments maintained that Myanmar must not be coerced into accepting humanitarian assistance and rejected the possibility of forcibly delivering supplies without the junta's consent. The views of China, Indonesia, and Vietnam hardened after Kouchner's proposed invocation of the RtoP, because they did not believe that the principle applied in this case and because they were concerned about the potential for the principle's scope to be broadened, widening the potential for coercive interference in domestic affairs.

It might be thought that the positions taken by Indonesia and Vietnam contradicted their cautious support for RtoP. However, recognizing the international condemnation

being heaped on Myanmar and the expectation that "something be done" about opening humanitarian access, ASEAN took upon itself the role of working with the UN Secretary General to secure the regime's acquiescence to the delivery of international aid and then played a significant role in helping to coordinate the delivery of that aid. To be sure, ASEAN's response to the cyclone was slow, hesitant, and ad hoc. And yet, some ASEAN members and officials thought it appropriate for the association to engage with this issue and that some of the region's parliamentarians and civil society groups *expected* ASEAN to play a constructive role.[60] This was in sharp contrast to the association's role in relation to the earlier crises in Cambodia and East Timor. In both of those cases, ASEAN had assiduously avoided playing a constructive role until actors outside the region had taken the lead and the affected states had granted their consent.[61]

On May 5, ASEAN Secretary General Surin Pitsuwan called upon all ASEAN member states to "provide urgent relief assistance" to the cyclone's victims, and three days later, the ASEAN secretariat established the ASEAN Cooperation Fund for Disaster Assistance.[62] The fund's terms of reference reflect the political tightrope that the ASEAN secretariat was walking. On the one hand, careful not to overstep the mark by appearing to be "politicizing" humanitarian relief and therefore contravening the principle of noninterference, the terms of reference required that donors not place conditions on the use of their contributions. On the other hand, eager to assure donors that the fund would not be misused, the terms placed their own conditions on how the fund might be used, stressing that donations must only be used to alleviate the suffering of the cyclone's victims.[63] Member states responded with a combination of ad-hoc diplomacy aimed at persuading Myanmar to grant humanitarian access and offers of bilateral humanitarian assistance. On May 8, Thailand's then Supreme Commander Boonsrang Niumpradit successfully interceded to help secure Myanmar's consent to the use of US military aircraft to deliver aid. The following day, ASEAN Secretary General Surin Pitsuwan contacted Myanmar's leaders requesting that they admit ASEAN relief and rescue teams to assist in the relief effort "immediately."[64] Surin envisioned what he described as a "coalition of mercy" for Myanmar, in which ASEAN would lead a partnership composed of UN agencies and the World Bank in delivering emergency relief and assisting in the reconstruction of the affected areas.[65]

The generals rejected Surin's entreaties and only allowed the dispatch of a small Emergency Rapid Assessment Team (ERAT) to assess the water, sanitation, health, logistical, and food needs of victims of Cyclone Nargis. The team had to be rapidly pieced together from scratch by ASEAN officials and did not arrive in Myanmar until May 13 – fully ten days after the cyclone had passed. The ERAT – ASEAN's first – was pieced together in cooperation with the ASEAN Committee on Disaster Management (ACDM), which has been responsible for coordinating and implementing regional disaster management since it was formed in 2003 though had only fulfilled such a role once before – in response to the crisis in Aceh following the Boxing Day tsunami.[66] A further six days later, the ERAT reported that the humanitarian situation was dire and that there was a major risk of a further large death toll as a result of disease and malnutrition. It proposed that ASEAN lead a humanitarian partnership involving the United Nations, neighboring countries, and NGOs to delivery much-needed humanitarian relief and assist the government with rebuilding.[67] This message was sugarcoated with

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the "manifestly untrue" claim that the government of Myanmar had "tried its level best to meet the demands" of the cyclone's victims.[68]

On May 19, the ASEAN held a special foreign ministers "watershed" meeting to decide its course of action.[69] The regime's refusal to grant the association humanitarian access acted as something of a circuit breaker. Abandoning a long history of quiet – some might say mute – diplomacy in relation to Myanmar's human rights record, several Southeast Asian foreign ministers put considerable pressure on Myanmar's Nyan Win. As Singapore's George Yeo explained, "We had to suspend all our political reservations [about putting overt pressure on Myanmar] and say look, let's concentrate on the humanitarian efforts."[70] Indeed, Indonesia's Foreign Minister Hassan Wirayuda reportedly suggested that should the junta reject ASEAN's entreaties a second time, the association would be unable to prevent the UN Security Council adopting more coercive measures.[71] Eventually, Myanmar relented and consented to the establishment of the ASEAN Humanitarian Task Force for the Victims of Cyclone Nargis. As envisioned by Surin, the task force was an ASEAN-led coordinating mechanism for distributing aid effectively and included the deployment of additional health and medical relief workers drawn mainly from Southeast Asia. Following the May 19 meeting, the government of Myanmar agreed to the immediate deployment of medical teams from ASEAN countries and pledged that it was prepared to accept the assistance of international and regional experts. Surin followed up with a visit to Yangon on May 20–21 at Nyan Win's invitation. During his visit, Surin met with a member of the junta's leader, General Thein Sein, to set out in detail the necessary steps for implementing the May 19 agreement with the full endorsement and support of the government of Myanmar.[72] A few days later, UN Secretary General Ban Ki-moon visited Myanmar to reaffirm the agreement. Ban met with the prime minister and stressed the urgent need for officials to accept international assistance. After Ban's visit, officials in Myanmar agreed to permit much greater access to humanitarian aid workers.[73]

Although painfully slow, uncoordinated, and ad hoc, ASEAN did eventually succeed in persuading the government of Myanmar to grant humanitarian access and in coordinating a major international relief and rehabilitation effort. Despite the lengthy delays in delivering aid supplies and assistance, the much-predicted second round of deaths due to disease and malnutrition was avoided. However, the restrictions placed on the delivery of aid meant that while it was effective in helping to forestall an impending catastrophe, progress on reconstruction has been much slower and progress on moderating the regime's abuse of its own population has been virtually nonexistent.[74] The Cyclone Nargis episode helped highlight, once again, ASEAN's limited institutional capacity. Despite having agreed guidelines on disaster response, it took the organization fully two weeks to organize a plan for the coordination of humanitarian relief. Had disease broken out rapidly in the affected areas, the consequences might have been catastrophic. Nonetheless, there were many significant "firsts" for the region. Not least were the first deployment of the ERAT and the first time that ASEAN had taken the lead in coordinating a major humanitarian effort in partnership with the UN. Indeed, Surin later commented that the effort constituted something of a "baptism" for the association.

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Conclusion: Reconciling Humanitarianism and Sovereignty?

What lessons can be drawn from the preceding analysis about the potential for ASEAN to reconcile humanitarianism and sovereignty? Sovereignty remains the bedrock of regional order, credited with establishing regional peace and security and facilitating the consolidation of states and regimes. However, there are – albeit nascent – signs that the way sovereignty is conceived in the region is gradually beginning to change. Although there was never any question of ASEAN governments supporting the forcible delivery of humanitarian aid or actively coercing the government of Myanmar, there is plenty of evidence to support the view that several of the region's governments believed that Myanmar was behaving irresponsibly and that it was appropriate for the association and its members to try to persuade the government of Myanmar to change its course, even though the matter in question was a domestic affair. Although many Western commentators have imputed that this impulse was a result of pressure from the West, there is little evidence to support this view and therefore no reason not to think that some governments – especially Singapore and Indonesia, but also the Philippines, Thailand, and to a lesser extent, Malaysia – had come to this view of their own accord.

ASEAN governments responded quickly and positively to the Secretary General's call for them to provide assistance and gradually applied increasing pressure as Myanmar rebuffed efforts to secure better humanitarian access. That pressure included public and private entreaties to the regime's leadership. All of this stands in stark contrast to ASEAN's decision to support and recognize the genocidal Khmer Rouge come-what-may. ASEAN's response to the post–Nargis crisis suggests that the region no longer regards sovereignty as a blanket justification for whatever the state chooses to do to its own population. Rather, in the activism shown by both the Secretariat and a number of governments was an implicit understanding that sovereigns have certain responsibilities and that among those responsibilities is a duty to facilitate, or at least permit, the delivery of humanitarian assistance. Although we share the view that RtoP did not apply in this case, because of the principle's limited scope, the region's response does indicate the tentative emergence of a new conception of responsible sovereignty. Put differently, there is at least some evidence that norm diffusion is occurring in the region as key states become less hostile to sovereignty-challenging principles, and authoritative figures like the ASEAN Secretary General give qualified support to new ideas and principles.

However, this nascent conception of responsible sovereignty may not overcome opposition to interference in the domestic affairs of Southeast Asian states or to spawn a new, capable, regional institutional infrastructure. In Southeast Asia, emerging notions of responsible sovereignty need to become compatible with established regional norms such as noninterference and consensus decision making. This is especially so in a region where such norms are credited with establishing the foundations for a stable and relatively successful regional order. If norm localization is the "process in which external ideas are simultaneously adapted to meet local practices,"[75] then to be diffused successfully, norms must take account of regional preferences and attitudes. In Southeast Asia, this means that RtoP must be reconciled with the principle of noninterference and applied in a manner consistent with it.

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The region's response to Cyclone Nargis offers some guidance for how this reconciliation might happen. Most obviously, it is clear that in all but the very worst of situations, regional engagement with humanitarian crises must be prefaced on the consent of the relevant state. However, it may in some circumstances be legitimate for that consent to be secured by active diplomatic pressure from both other member states and the ASEAN secretariat. Clearly, the fact that ASEAN had already established a mechanism for responding to disasters, replete with commonly agreed guidelines as to the responsibilities of the affected state, neighbors, and the association itself, helped create expectations about the appropriate response and legitimized the application of diplomatic pressure on Myanmar to change course. Ultimately, Myanmar's generals appear to have believed that they faced a choice between the ASEAN path of agreeing to a humanitarian mission imbibed with the region's principles and potentially more coercive measures adopted under the authority of the UN Security Council.

This brings us to a final point about the relationship between a possible new concept of responsible sovereignty and the ASEAN Charter. For the first time in the association's history, the Charter sets out shared expectations about the proper role of states in Southeast Asia. According to Article 2 of the Charter, "Member States shall" show "adherence to the rule of law, good governance, the principles of democracy and constitutional government" (Article 2 [h]) and "respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice" (Article 2[j]). In the event of a "serious breach" of Article 2, the matter should be referred to the ASEAN Summit for a decision (Article 20). This is significant in two respects. First, the standards of responsible sovereignty enunciated in the Charter were consensually agreed to by ASEAN members themselves. In other words, they are shared commitments rather than external impositions, giving them extra weight. Second, were the association to fail to deal with "grave breaches" of its own charter, this would have the effect of delegitimizing the charter and discrediting the association. In other words, members may suffer negative consequences from another member's noncompliance with shared standards of behavior or what the association has agreed that they should do.[76] Although this will not create immediate impetus for doing away with consensus decision making and formal equality, it does suggest that member states and the Secretariat might adopt a more flexible approach, as they did in the aftermath of Cyclone Nargis.[77]

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NOTES

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