

Asian Values and ASEAN Way

Zain Maulana, Ph.D

- A set of values, rooted in Asian cultures and ethics, promoted by Asian political leaders and intellectuals as alternative to western political values including liberal democracy, human rights and capitalism.
- Prominent figures: Soeharto of Indonesia, Lee Kuan Yew of Singapore and Mahathir of Malaysia.

Asian Values

- **Cultural relativism of human rights.**

- ASEAN Human Rights Declaration (AHRD): 'all human rights are universal, indivisible, interdependent and interrelated. At the same time, the realisation of human rights must be considered in the regional and national contexts, bearing in mind different political, economic, legal, social, cultural, historical, and religious backgrounds' (2013: Point 7).
 - **Economic development must be prioritized.**
 - Lee Kuan Yew said: '... the ultimate test of the value of a political system is whether it helps that society to establish conditions which improve the standard of living for the majority of its people ...'.
 - **Respecting others and leaders, and family loyalty.**
 - **Consultation and consensus (musyawarah dan mufakat).**
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- **The doctrine of ASEAN based on:**

- The principles of non-interference in the internal affairs of sovereign state.
- Non-use of force.
- Soft and informal approach.
- Consensus and consultation, rather than a rigid institutional mechanism.

ASEAN Way

ATROCITY CRIMES IN SOUTHEAST ASIA: ROHINGYA AND THE WAR ON DRUGS

Zain Maulana

The Plight of the Rohingya

- The minority Rohingya group has often been called the most persecuted refugee group on Earth. According to international reports, the violence which has been inflicted upon the minority Rohingya group for decades, can be regarded as crimes against humanity and crimes of genocide Amnesty International (Amnesty International 2017; OHCHR 2017).
- The issue of citizenship has been central to the Rohingya problem. The 1982 Citizenship Law, ethnic Rohingya have never existed in Myanmar.
- The Citizenship Act facilitates the Rohingya being subjected to extraordinary violence, racism, marginalisation, oppression and persecution, and other forms of human rights violations with the intention of erasing the Rohingya's identity and permanently removing the people from Myanmar.
- Following the 'clearance operations' on 25 August 2017, OHCHR Special Rapporteur on the Situation of Human Rights in Myanmar, Yanghee Lee described the situation as 'institutionalised discrimination' and 'long-standing persecution' of the Rohingya population

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- Around 392 predominantly Rohingya villages were completely or partially destroyed by the military forces between August 2017 and March 2018, thousands of Rohingya including children were killed and nearly 725,000 Rohingya fled to Bangladesh and were living in camps and settlements throughout the District of Cox's Bazar, making it one of the largest refugee camps in the world.
- The government also burned and bulldozed the villages to destroy evidence of crimes and to establish new security force bases.

- On 11 November 2019, the Republic of The Gambia requested provisional measures be taken by the International Court of Justice (ICJ). The Gambia argues that Myanmar has committed and continues to commit genocidal acts against members of the Rohingya group. They maintain that Myanmar's action toward Rohingya has constituted a violation of their obligations under the Convention.

ASEAN's Response

- Most ASEAN countries are reluctant to describe of the Rohingya issue as a crime against humanity or a crime of genocide.
- The Rohingya issue has been largely defined as a complex problem seen through the lens of national and regional stability and peace, and involving the issues of state sovereignty, ethnic conflict, extremism and radicalism. In line with this, ASEAN states tend to frame the issue at national affair and a domestic problem for Myanmar.
- From a humanitarian point of view, the case of Rohingya has been over-simplified and is simply portrayed as involving refugees and illegal trafficking.

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- The regional responses to the Rohingya issue are very limited, and to some extent trying to give assistance is still problematic.
 - Soft and incremental approach.
 - ASEAN Retreat Meeting.
 - Trust Fund.

War on Drugs in the Philippines

- After taking office in late June 2016, the Philippines' President Rodrigo Duterte launched the war on drugs within the country, through large scale extrajudicial and vigilante killings.
- By September 2017, the Philippines Drug Enforcement Agency (PDEA) claimed there had been nearly 4,000 deaths during operations. By June 2019, the Philippines National Police (PNP) reported that at least 6,600 people had been killed during the operations. Human Rights Watch mentioned that unidentified gunmen have killed thousands more drug suspects, which would bring the total death toll to more than 12,000. An opposition Senator in the Philippines claimed that the number of deaths from the war on drugs has surpassed 20,000. Since the war on drugs continues, the Chairperson of Commission on Human Rights of the Philippines, Chito Gascon, has said that the policy has brought the total death toll to more than 27,000.

- The UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, has pointed out that the extrajudicial killings have violated international law. Amnesty International and Human Rights Watch consider Duterte's war on drugs to constitute crimes against humanity.

- The government claim that the war on drugs is for 'the sake of peace and future of the society and nation'.
- The government claims the 'license to kill' drugs suspect within the country.
- The country's presidential spokesperson, Harry Roque, has stated that 'deaths in the drugs war do not constitute crimes against humanity, as the ongoing war on drugs is an exercise of the police's power in dealing with the problem of drugs'.
- The government also consider international criticism an 'official insult' to the sovereignty of the country

ASEAN's Response

- There has been no clear response from ASEAN and its member countries (such as meetings, joint statements and other forms of response) to this issue.
- ASEAN principles and approaches, and common interest.
- Ralf Emmers (2007) noted, ASEAN's drugs arrangements have been created and developed according to its basic norms, to ensure their full support and acceptance by the all member countries. Consequently, the war on drugs in the Philippines is viewed in line with this understanding.

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- By realising Southeast Asia is one of the busiest drug trafficking regions in the world, with its centre known as 'Golden Triangle', ASEAN governments consider that combating the illegal trafficking and abuse of drugs as critical as the other primary objectives of ASEAN, such as maintaining the development, national resilience and security of the nations and region
 - The countries recognise that drug abuse is socially and economically harmful, and that it seriously endangers the development programmes of the member countries.
 - The states realise that drugs, especially their illegal trafficking, are inextricably linked to other transnational crimes such as arms-smuggling and money laundering, which can cause serious political and security threats to the region

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- Most ASEAN countries, as in the case of the Rohingya, do not necessarily define the Philippines' drugs war as an atrocity crime. Consequently, the Philippines' war on drugs is neglected in any ASEAN forum including the meeting of AICHR, ADMM, and ASEAN Summit.

The Responses of Southeast Asian Countries to Mass Atrocities: the cases of Rohingya and the War on Drugs

1. Introduction

There are notable debates regarding the diffusion of R2P in Southeast Asia. Generally, they can be categorised into two camps when explaining the diffusion of R2P in the region. Some scholars take an optimistic stance, arguing that ASEAN and its member countries have made significant progress in promoting and localising R2P in the region.¹ In the light of ASEAN's response to the humanitarian crisis in Myanmar in the wake of Cyclone Nargis, and the voiced support of most ASEAN countries for R2P at the UN forum, it has been argued that the principle of non-interference is in the process of being recalibrated to permit expressions of concern, offers of assistance and even the application of limited diplomatic pressure in response to major humanitarian crises.² It has been emphasised that ASEAN member states have softened their interpretation and application of regional principles, especially non-interference and state sovereignty, when responding to the catastrophe.

The establishment of several human rights-related bodies, have also been explained as a normative shift of ASEAN's non-interference principle and the acceptance of sovereign

¹ Alex Bellamy and Sara E. Davies, 'The Responsibility to Protect in the Asia-Pacific Region', *Security Dialogue*, 40/6: 547-574 (2009); Alex Bellamy and Mark Beeson, 'The Responsibility to Protect in Southeast Asia: Can ASEAN Reconcile Humanitarianism and Sovereignty?', *Asian Security*, 6/3: 262-279 (2010); Herman Kraft, 'RtoP by Increments: The AICHR and Localizing the Responsibility to Protect in Southeast Asia', *Pacific Review*, 25/1: 27-49 (2012).

² Bellamy and Beeson, 'The Responsibility to Protect in Southeast Asia: Can ASEAN Reconcile Humanitarianism and Sovereignty?'.

responsibility amongst ASEAN countries.³ This argument is also emphasised by the ASEAN High Level Advisory Panel (ASEAN-HLAP) which argues that ASEAN already has important mechanisms and instruments, including the AICHR and ACWC that are particularly relevant to the implementation of R2P.⁴ ASEAN countries claim that the ASEAN frameworks and mechanisms relating to human rights contain the core elements of R2P, especially prevention and capacity-building.⁵

In contrast to those optimistic views, others argue that there is too little evidence to claim that ASEAN and its member states are preparing to incorporate or localise R2P into regional arrangements.⁶ As Capie argued, the promotion of R2P in the ASEAN context is largely advocated by outsiders, especially the APCR2P-led networks.⁷ While outsiders and non-state actors have played significant roles in promoting R2P in Southeast Asia, ASEAN countries have maintained their stance on sovereignty being an inalienable and unequivocal right of state rather than a responsibility.⁸ While ASEAN states such as Thailand⁹ and Indonesia¹⁰

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

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

⁵ Interviewees 11 and 18

⁶ David Capie, 'The Responsibility to Protect Norm in Southeast Asia: Framing, Resistance, and Localization Myth', *The Pacific Review*, 25/1: 75-93 (2012); Rizal Sukma, 'Political and Security Community (APSC): Opportunities and Constraints for the R2P in Southeast Asia', *The Pacific Review*, 25/1: 135-152 (2012); Srirapha Petcharamesree, 'ASEAN Human Rights Regime and Mainstreaming the Responsibility to Protect: Challenges and Prospects', *Global Responsibility to Protect*, 8/2-3: 133-157 (2016).

⁷ Capie, 'The Responsibility to Protect Norm in Southeast Asia: Framing, Resistance, and Localization Myth'.

⁸ See Seng Tan, 'Providers Not Protectors: Institutionalizing Responsible Sovereignty in Southeast Asia', *Asian Security*, 7/3:P201-217 (2011).

have given unanimous support to R2P at the UN meetings, the implementation of the principle still needs action rather than necessarily rhetoric.

Some others have examined the relevance of ASEAN human protection norms and instruments in the promotion of R2P in the the region. By examining the relevance of the ASEAN Political Security Community (APSC), Sukma has argued that the APSC was not necessarily designed to provide a normative and legal basis for ASEAN to address any specific security and humanitarian problems such as atrocity crimes. The APSC was formulated without any direct or implicit reference to R2P.¹¹ Therefore, Petcharamesree has argued that ASEAN needs a ‘paradigm shift’ in its human protection norms and instruments to enable its member countries to care for and protect the people.¹²

There is still little evidence that ASEAN countries are preparing to accommodate or localise R2P in the region. As mentioned, Bellamy and his colleagues tend to base their arguments concerning the support of ASEAN states for R2P on statements by the countries at international level, especially at the UN General Assembly meetings or in dialogues on R2P and the ASEAN’s response to Cyclone Nargis. At this point, while the former argument does not automatically indicate that all ASEAN states have the same understanding and position of R2P in the local context of the states, the latter argument on Cyclopedia Nargis does not make a relevant case for R2P.

⁹ Keokam Kraisoraphong, ‘Thailand and the Responsibility to Protect’, *The Pacific Review*, 25/1: 1-25 (2012).

¹⁰ Lina Alexandra, ‘Indonesia and the Responsibility to Protect’, *The Pacific Review*, 25/1: 51-74 (2012).

¹¹ Sukma, ‘Political and Security Community (APSC): Opportunities and Constraints for the R2P in Southeast Asia’, p. 138-139.

¹² Petcharamesree, ‘ASEAN Human Rights Regime and Mainstreaming the Responsibility to Protect: Challenges and Prospects’.

In response to the existing debate, an article recently published in a special issue of this journal used the atrocity crimes against Rohingya in Myanmar as empirical evidence to assess the implementation of the R2P norm in Southeast Asia.¹³ It argues that Indonesia's 'quiet diplomacy' and soft approach to the Myanmar government on the Rohingya issue is an R2P-based response, especially where pillar 2 is concerned and thus represents the viability of implementing R2P in Southeast Asia.

Against this backdrop, this article uses the humanitarian crises of Rohingya and the Philippines' war on drugs as empirical evidence to explain the diffusion of R2P in the region. Specifically, cases of atrocity crimes in Southeast Asia are used to understand the way ASEAN and its member states interpret and react to the cases and thus it creates an opportunity to examine the understanding and standing position of the states with regard to human rights protection and R2P norm. Analyses of the cases provide an insight into how the R2P norm is actually interpreted and contested in the ASEAN context. This article proposes an argument that emphasises the problematisation of R2P by ASEAN governments. It reflects the rejection, rather than the acceptance or implementation of the norm in the region. It evidences that ASEAN governments exhibit subsidiary behaviour in the sense that the countries have used normative principles such as state sovereignty, non-interference and self-determination to offer normative resistance to the diffusion and application of R2P in the context of the region.

¹³ Mohamad Rosyidin, 'Reconciling State's Sovereignty with Global Norms: Indonesia's Quiet Diplomacy in Myanmar and the Feasibility of the Implementation of Responsibility to Protect (RtoP) in Southeast Asia', *Global Responsibility to Protect*, 20: 11-36 (2020).

This article proceeds as follows. The first section presents the theoretical debates on norm diffusion and contestation. It emphasises the discursive approach to norm especially the role of state, as local actors, and regional governance in constraining the use of international norms like R2P. The second section comprises two case studies of atrocity crimes against Rohingya in Myanmar and the war on drugs in the Philippines. It analyses the perspective and response of ASEAN countries to the atrocity crimes as empirical cases that enable the examination of the state of R2P diffusion in the region. It suggests subsidiary behaviour by ASEAN countries to refuse external interference especially when the R2P norm is taken into account, and to justify their limited and incremental response to the atrocity crimes. The last section is the conclusion.

2. Norm Contestation: the Role of Local Actors and Regional Governance

In the systematic study of the compliance (and non-compliance) of states with international norms, some scholars, especially amongst those of early norm scholarship, have expressed concern regarding the process of ‘socialisation’¹⁴ that relies on the stable qualities of norms and the role of transnational actors.¹⁵ This process implies the (re)construction of a standard for states’ behaviour to international norms. It follows the ‘logic of appropriateness’ whereby the quality of norms is considered stable, the validity of norms is unproblematic and the

¹⁴ Socialisation is defined as a process of inducting actors into norms and rules of a given community. See Kai Alderson, ‘Making Sense of State Socialization’, *Review of International Studies*, 27(3): 415-433 (2001); Martha Finnemore and Kathryn Sikkink, ‘International Norm Dynamics and Political Change’, *International Organization*, 52/4: 887-917 (1998). It can also be understood as ‘the process that is directed toward a state’s internalisation of the constitutive beliefs and practices institutionalised in its international environment’, see Frank Schimmelfennig, ‘International Socialization in the New Europe: Rational Action in an Institutional Environment’, *European Journal of International Relations*, 6/1: 109-139 (2000), p. 111-112.

¹⁵ Finnemore and Sikkink, ‘International Norm Dynamics and Political Change’; Margaret E. Keck and Kathryn Sikkink, ‘Transnational Advocacy Networks in International and Regional politics’, *International Social Science Journal*, 51/159: 89-101 (1999).

social facticity, once established, is taken as equally stable.¹⁶ Wiener explains this as a behaviourist approach to norms.¹⁷

In contrast, some other norm scholars apply a reflexive or discursive approach to norms.¹⁸ This approach emphasises that norms, as sets of complex institutionalised ideas, are dynamic and flexible, and contested in nature and thus norms are subject to contestation even after their institutionalisation.¹⁹ This reflexive/discursive approach emphasises that norms have dual qualities in that they are both structuring and socially constructed through interaction within a particular context, and while, by definition, they can remain stable over particular periods, they also always remain flexible.²⁰ Wiener explains that the meaning of a norm is not fixed, but it is contextually 'in use' by agents.²¹ At this point, norms are mediated by agents, in the sense that they 'give meaning to the norms and compare them with the broader normative environment'.²²

¹⁶ Antje Wiener, 'The Dual Quality of Norms and Governance Beyond the State: Sociological and Normative Approaches to 'Interaction'', *Critical Review of International Social and Political Philosophy*, 10/1: 47-69 (2007).

¹⁷ Antje Wiener, 'Contested compliance: interventions on the normative structure of world politics', *European Journal of International Relations*, 10/2: 189-234 (2004).

¹⁸ Mona L. Krook and Jacqui True, 'Rethinking the Life Cycles of International Norms: the United Nations and the Global Promotion of Gender Equality', *European Journal of International Relations*, 18/1: 103-127 (2012); Antje Wiener, *A Theory of Contestation* (Springer, 2014).

¹⁹ Krook and True, 'Rethinking the Life Cycles of International Norms: the United Nations and the Global Promotion of Gender Equality'; Alexander Betts and Phil Orchard, *Implementation and World Politics* (Oxford: OUP, 2014).

²⁰ Wiener, 'The Dual Quality of Norms and Governance Beyond the State: Sociological and Normative Approaches to 'Interaction'.

²¹ Antje Wiener, 'Enacting Meaning-in-use: Qualitative Research on Norms and International Relations', *Review of International Studies*, 35/1: 175-193 (2009).

²² Krook and True, 'Rethinking the Life Cycles of International Norms: the United Nations and the Global Promotion of Gender Equality', p. 108.

Taking a discursive approach, this article draws on the argument regarding the concept of norm implementation²³ and norm subsidiarity²⁴ to explain the way ASEAN countries interpret R2P in the local context of the region. It suggests a critical assessment and understanding of local interpretation of international norms in the context of the actor's local norms and practices. It is important to address the local interpretation of international norms to examine the extent to which state(s) tend to accept (or resist) and comply (or not comply) with international norms. Addressing local interpretations is necessary to understand the implementation of international norms in practice. The way states interpret international norms informs the standpoint on whether the state is preparing for adoption, localisation, translation, or resistance. In other words, the examination of local understanding of international norms could inform the degree of compliance (or non-compliance) of state with the norms.

The assumption regarding the contestable nature of norms suggests that a state or collective of states may have different interpretations of international norms and different attitudes to them in their local context. Focusing on the behaviour of states to international norms in their local context, it is possible to consider whether a norm has been accepted and internalised by a state or collective of states. By doing so, it provides the analytical tools to reveal and understand the method or mechanism a state uses when accepting (or resisting) international norms in their local context. During this process, states' responses to, and interpretations of, international norms are influenced by so-called three sets of structures – ideational (local cultures and values), institutional (bureaucratic identities and constitutional frameworks), and

²³ Betts and Orchard, 'Implementation and World Politics'.

²⁴ Amitav Acharya, 'Norm Subsidiarity and Regional Orders: Sovereignty, Regionalism, and Rule-Making in the Third World', *International Studies Quarterly*, 55/1: 95-123 (2011).

material structure (collective interests) of the state(s).²⁵ Literature has shown that ideational and institutional structures matter in both facilitating and constraining the process of norm translation and implementation.²⁶ As cultures shape experiences and the expectations of a state, international norms can potentially be understood and interpreted in parallel with actors' local cultures and values.

While ideational and institutional factors are relatively common in norm literature, some scholars emphasise the significance of material structures, such as the interests of a state, as an important factor in influencing the behaviour of states towards international norms at the implementation stage.²⁷ Unlike rational choice and regime theorists,²⁸ norm scholars emphasise that the interests of actors in the implementation process do not necessarily reflect pure strategic action on the part of a state. In this process, norms remain the central factor that guide the attitude of a state in interpreting and applying particular international norms. While states may use their interests in understanding and interpreting particular international norms, they tend to justify their actions and interpretations through reference to the existing international norms and laws. In the case of the US policy on torturing terrorist prisoners, Birdsall (2016) shows that while the government emphasises their international commitment

²⁵ Betts and Orchard, 'Implementation and World Politics'.

²⁶ Betts and Orchard, 'Implementation and World Politics'; Amitav Acharya, 'How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism', *International Organization*, 58/2: 239-275 (2004); Lisbeth Zimmermann, 'Same Same or Different? Norm Diffusion Between Resistance, Compliance, and Localization in Post-Conflict States', *International Studies Perspectives*, 17/1: 98-115 (2016).

²⁷ Betts and Orchard, 'Implementation and World Politics'; Andrea Liese, 'Exceptional Necessity-How Liberal Democracies Contest the Prohibition of Torture and Ill-Treatment When Countering Terrorism', *Journal of International Law and International Relations*, 5/1: 17-47 (2009); Andrea Birdsall, 'But We Don't Call It 'Torture'! Norm Contestation During the US 'War on Terror'', *International Politics*, 53/2: 176-197 (2016).

²⁸ For the application of rational choice and regime theory in the study of norm, see Schimmelfennig, 'International Socialization in the New Europe: Rational Action in an Institutional Environment'; Kees V. Kersbergen and Bertjan Verbeek, 'The Politics of International Norms: Subsidiarity and the Imperfect Competence Regime of the European Union', *European Journal of International Relations*, 13/2: 217-238 (2007).

to the prohibition of torture, they attempt to redefine the actual meaning of torture and make arguments that their policy is in line with existing international legal obligations. This state's action also implies a general strategy of norm translation, whereby if a state has different interests in particular international norms, they seek to reinterpret the meaning or practice of the norms, rather than contesting the norms' validity. To a larger extent, a similar strategy is used by ASEAN countries in interpreting and resisting the use of R2P in cases of mass atrocities in the region.

At the implementation stage, rather than always adopting an international norm, state(s) may refuse to accommodate and apply it. Through the concept of norm subsidiarity, Acharya (2011) explains that states, as local actors, may reject international norms by creating or upholding their local rules in order to protect their autonomy from being dominated, violated or abused by more powerful actors. On the one hand, local actors often use normative principles such as state sovereignty, non-interference and self-determination as shields to offer normative resistance to international norms or institutions. On the other, local actors attempt to justify their right to formulate and apply their own principles to deal with problems without intervention by outsiders or any higher authority. Even though the local or regional principles are not always effective for dealing with their issues, the principles enjoy greater legitimacy and recognition from the states in the region. Local actors resist foreign norms as they assume that the norms are not necessary or worthy of being borrowed, adopted and implemented.²⁹

²⁹ Amitav Acharya, 'Norm Subsidiarity and Regional Orders: Sovereignty, Regionalism, and Rule-Making in the Third World'.

3. Analysing the Relevant Cases: ASEAN responses to Atrocity Crimes

The Southeast Asian region has seen a historic decline in mass violence in the last two decades³⁰, therefore the recent mass violence directed at Rohingya in Myanmar and the war on drugs in the Philippines are worthy of investigation. Both cases reflect systematic violence inflicted on the population and how they shape humanitarian crises and have serious implications for human rights. Reports from authoritative organisations and institutions, including UN bodies and human rights-related organisations, state that the governments of Myanmar and the Philippines are committing violent act upon their people in a systematic and widespread manner. Both cases constitute atrocity crimes and thus they are relevant to R2P. This article suggests that it is crucial to examine ASEAN's understanding and behaviour in the context of the timely empirical R2P-relevant cases in Southeast Asia to understand the extent to which R2P is being accepted or implemented in the context of the region.

3.1. Let's us Help Them: ASEAN's Responses to Rohingya Issue

The minority Rohingya group has often been called the most persecuted refugee group on Earth.³¹ According to international reports, the violence which has been inflicted upon the

³⁰ Alex Bellamy, *East Asia's Other Miracle: Explaining the Decline of Mass Atrocities* (Oxford: Oxford University Press, 2017).

³¹ Amnesty International, 'Who Are Rohingya and What is Happening in Myanmar?', 26 September 2017, <https://www.amnesty.org.au/who-are-the-rohingya-refugees/>, accessed 16 March 2020; United Nations Human Rights Office of the High Commissioner, 'Human Rights Council Opens Special Session on the Situation of Human Rights of the Rohingya and Other Minorities in Rakhine State in Myanmar', 5 December 2017, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22491&LangID=E>, accessed 16 March 2020.

minority Rohingya group for decades, can be regarded as crimes against humanity and crimes of genocide.³²

The issue of citizenship has been central to the Rohingya problem. According to the 1982 Citizenship Law, ethnic Rohingya have never existed in Myanmar. The Country's authorities deny the existence of the people of Rohingya by claiming that they are not part of Myanmar. As the consequence, the Citizenship Act facilitates the Rohingya being subjected to extraordinary violence, racism, marginalisation, foppression and persecution, and other forms of human rights violations with the intention of erasing the Rohingya's identity and permanently removing the people from Myanmar.³³

Following the 'clearance operations' on 25 August 2017, OHCHR Special Rapporteur on the Situation of Human Rights in Myanmar, Yanghee Lee described the situation as 'institutionalised discrimination' and 'long-standing persecution' of the Rohingya population.³⁴ It was reported that around 392 predominantly Rohingya villages were completely or partially destroyed by the military forces between August 2017 and March 2018, thousands of Rohingya including children were killed and nearly 725,000 Rohingya

³² Human Rights Watch, 'All You Can Do is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State', 22 April 2013, <https://www.hrw.org/report/2013/04/22/all-you-can-do-pray/crimes-against-humanity-and-ethnic-cleansing-rohingya-muslims>, accessed 16 March 2020; United Nations Human Rights Office of the High Commissioner, 'Flash Report: Interviews With Rohingyas Fleeing From Myanmar Since 9 October 2016', 3 February 2017, <http://www.ohchr.org/Documents/Countries/MM/FlashReport3Feb2017.pdf>, accessed 16 July 2019.

³³ United Nations Human Rights Council, 'Report of the Independent International Fact-Finding Mission on Myanmar', 12 September 2018, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=23575&LangID=E>, accessed 17 July 2019.

³⁴ United nations Office of the High Commissioner on Human Rights, 'Statement by Ms. Yanghee Lee Special Rapporteur on the Situation of Human Rights in Myanmar at the 34th Session of the Human Rights Council', 13 March 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21355&LangID=E>, accessed 17 July 2019.

fled to Bangladesh and were living in camps and settlements throughout the District of Cox's Bazar, making it one of the largest refugee camps in the world.³⁵ The government also burned and bulldozed the villages to destroy evidence of crimes and to establish new security force bases.³⁶ A report from the APCR2P in 2019 on the 'Regional Atrocity Risk Assessment' categorised the Rohingya issue as very high risk ongoing atrocity crimes. Accordingly, the Independent International Fact-Finding Mission on Myanmar concluded they have sufficient information to claim that Myanmar military committed the acts of genocide against the Rohingya.³⁷

On 11 November 2019, the Republic of The Gambia requested provisional measures be taken by the International Court of Justice (ICJ), under the Court's jurisdiction on Article 36 paragraph 1 of the Statute of the Court and on Article IX of the Genocide Convention, for the protection of Rohingya in Myanmar. The Gambia argues that Myanmar has committed and continues to commit genocidal acts against members of the Rohingya group. They maintain that Myanmar's action toward Rohingya has constituted a violation of their obligations under the Convention. In response, Myanmar contends that the Court does not have jurisdiction under Article IX of the Genocide Convention, claiming that The Gambia is not acting on its own behalf, but rather as a 'proxy' of and 'on behalf of' the Organisation of Islamic

³⁵ United Nations Office of the High Commissioner on Human Rights, 'Oral Update of the High Commissioner for Human Rights on Situation of Human Rights of Rohingya People', 3 July 2018, https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session38/Documents/A_HR_38_CRP.2.docx, accessed 7 June 2019; United Nations Human Rights Council, 'Report of the Independent International Fact-Finding Mission on Myanmar'.

³⁶ Human Rights Watch, 'World Report: Myanmar Events of 2018', <https://www.hrw.org/world-report/2019/country-chapters/burma>, accessed 7 June 2019.

³⁷ United Nations Human Rights Council, 'Report of the Independent International Fact-Finding Mission on Myanmar'.

Cooperation (OIC) and they claim no dispute existed when The Gambia filled the Application to the Court.³⁸

In different argument in response to international criticism, most ASEAN countries are reluctant to describe of the Rohingya issue as a crime against humanity or a crime of genocide. The Rohingya issue has been largely defined as a complex problem seen through the lens of national and regional stability and peace, and involving the issues of state sovereignty, ethnic conflict, extremism and radicalism.³⁹ In line with this, ASEAN states tend to frame the issue at national affair and a domestic problem for Myanmar. ASEAN and its member states have therefore emphasised that although all parties, including themselves and the wider international community, should help Myanmar in addressing the situation in Rakhine State, the responses and assistance should respect the sovereignty and dignity of the country.

Thailand's Representative to ASEAN stated that 'we cannot simplify the issue of Rohingya as one specific issue ... instead, we are looking at the case of Rohingya in a broader context'.⁴⁰ From a humanitarian point of view, the case of Rohingya has been over-simplified and is simply portrayed as involving refugees and illegal trafficking.⁴¹ A statement from one of the ASEAN countries' stakeholders even attempts to link the current Rohingya situation to

³⁸ International Court of Justice, 'Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The gambia v. Myanmar)', 23 January 2020, <https://www.icj-cij.org/files/case-related/178/178-20200123-PRE-01-00-EN.pdf>, accessed 5 April 2020.

³⁹ Interviewees 11, 16 and 20.

⁴⁰ Interviewee 11.

⁴¹ Interviewee 16.

historical events during the 14th century, when there were conflicts among kingdoms in Myanmar and the King of Rakhine (formerly Arakan).⁴²

As well as seeing the Rohingya issue as a vast and complex problem, some ASEAN countries consider there to be no clear criteria for defining the situation as atrocity crimes. It is argued that it is not easy to claim an event constitutes an atrocity crime. The large number of refugees does not automatically mean that ethnic cleansing or crimes against humanity are being committed, since the flight of Rohingya to Bangladesh has been seen as having been caused by multiple factors. These include: military operations related to the issue of separatism, communal conflicts between ethnic Rohingya and Rakhine, and more recently, the issue of religion-based conflict between Muslims and Buddhists.⁴³ Up to this point, Rohingya issue has not been considered an R2P case; instead the states suggest that the Rohingya case should be seen proportionately and comprehensively.⁴⁴ The countries emphasise that there is no urgency to apply R2P because there are no mass atrocities in the region. In considering whether the Rohingya crisis constitutes atrocity crimes, one interviewee stated that:

We can question the definition of atrocity crimes and systematic persecution. We believe that the Nazis carried out clear, systematic persecution. The case of Rwanda can also be considered as atrocity crimes. But in the case of the Rohingya, there has been a military operation that has caused civilian casualties. This is not systematic persecution because the casualties happened as a result of the military operation.⁴⁵

According to this statement, the countries do not see any systematic violence being committed by the national authorities of Myanmar upon the Rohingya; they see it simply as the impact

⁴² Interviewee 20.

⁴³ Interviewee 20.

⁴⁴ Interviewees 16 and 18.

⁴⁵ Interviewee 16.

of military operations against the militant movement and insurgencies. A former Indonesian Representative to ASEAN has stated that based on information acquired from Interpol regarding the Myanmar government, a militant group in Rakhine State does exist and it has been trained by particular terrorist groups that have ties with groups in the Middle East.⁴⁶ In arguing this, Indonesia and most ASEAN countries appear to believe that the Rohingya crisis is not due purely to violence inflicted by the government on the Rohingya people, in terms of genocide or ethnic cleansing, but to a military operation against extremism.

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

I and other ASEAN countries colleagues came to a village and saw probably around 13 houses had been burned. We went into the houses and there was nothing inside them. There were no any household items; they were empty. Probably they had taken all their stuff, burned their homes, taken some pictures and spread them via the media and social media. Moreover, we saw some demonstrations when some other ASEAN Ambassadors and I visited Rakhine State. We saw that the language that they used in their posters was very good English. They used very good sentences in the posters. It seems that the posters were not written by the Rohingya. As we know, most of them are very poor and not well-educated. Probably only a few of the people can speak English, so the words in the posters were too sophisticated for them. We doubted that it was purely by the Rohingya.⁴⁷

The description suggests that what people and the media have said about the issue is not entirely true. Again, ASEAN and the most member states have suggested that it is necessary to fully comprehend the issue to be able to understand its complexity. Therefore, it has been suggested that all parties should move beyond the debate concerning whether the case is a crime against humanity or ethnic cleansing. It has been said that ASEAN is not really interested in focusing on the labelling of the crisis, whether as a crime against humanity or

⁴⁶ Interviewee 16.

⁴⁷ Interviewee 16.

ethnic cleansing. It is argued that if labelling is identical to blaming and shaming, ASEAN tends to focus on solutions.⁴⁸ Regardless of the debate and controversy around the situation, ASEAN states have emphasised that the most important thing is to help Myanmar in dealing with the problems.⁴⁹

Above all, Singapore has emphasised that regardless of the argument over the complexity of the issue, and the controversy over whether the Rohingya case constitutes a crime against humanity or the crime of genocide, it is Myanmar's domestic problem and national affairs.

The Office of the Singaporean Ministry of Foreign Affairs has stated that:

Indeed, there is a humanitarian issue in the Rakhine State of Myanmar, but it is still debatable whether or not the case is an atrocity crime. For sure, it is a domestic issue of Myanmar. We have to respect the sovereignty of Myanmar and we must be very careful when addressing this issue. Singapore does not want to interfere with Myanmar in this case.⁵⁰

To that point, ASEAN and its member states do not want their responses to be considered as interventions in Myanmar's domestic affairs (Interviewee 8) as they believe that each member country has the right to decide what is best for their nation.⁵¹ ASEAN states have emphasised that 'if we want to help, we must knock on their doors'.⁵² Therefore, ASEAN countries believe that despite their having the capacity to provide assistance, the Rohingya issue must be addressed by the government of Myanmar itself and they must arrive at their own solution, without undermining the basic rights of the Rohingya.⁵³ This is representative of the region-wide tendency to resist external interference and resolve peace and security

⁴⁸ Interviewee 23.

⁴⁹ Interviewees 6 and 15.

⁵⁰ Interviewee 6.

⁵¹ Interviewee 11.

⁵² Interviewee 20.

⁵³ Interviewee 8.

issues in line with a conservative, Westphalian mindset – a mindset which is arguably at odds with the normative developments that underpin R2P. ASEAN countries put their regional principles – especially state sovereignty and self-determination – first when dealing with the issue. It suggests that ASEAN still prioritises its regional order and stability, by upholding regional principles rather than human protection.

As a consequence of the ASEAN's perspective, regional responses to the Rohingya issue are very limited, and to some extent trying to give assistance is still problematic. At this point, assistance from ASEAN or individual state in the region should be comprehended within the framework of ASEAN norms and approaches. For instance, the Indonesian government has tended to take a soft approach to the Myanmar authorities when showing their concern regarding the situation. The state emphasised that 'condemnation and sanctions are not necessarily a good way to show our concern about the problem'.⁵⁴ The country believes that 'a good and trusted relationship among states is the key to solving a cross-border problem ... and this is what Indonesia did to Myanmar'.⁵⁵ To this point, Rosyidin argues that the quiet diplomacy and soft approach of Indonesia to Myanmar implies the R2P-based action, especially the pillar 2.⁵⁶

Reflecting the successful Indonesian approach to bringing the Rohingya issue into an ASEAN meeting (called the ASEAN Retreat Meeting), the states believe that ASEAN

⁵⁴ Interviewee 16.

⁵⁵ Interviewee 15.

⁵⁶ Mohamad Rosyidin, 'Reconciling State's Sovereignty with Global Norms: Indonesia's Quiet Diplomacy in Myanmar and the Feasibility of the Implementation of Responsibility to Protect (RtoP) in Southeast Asia'.

countries should discuss the Rohingya problem together as an ‘ASEAN family’.⁵⁷ The Retreat Meeting claimed that Myanmar is slowly changing to become more open, especially with its ASEAN neighbours. More importantly, it was claimed that taking opportunities for engagement and consultation, one of which was the Retreat Meeting, is the key to dealing with regional problems including the situation in Rakhine State. An interviewee emphasised that:

Dialogue and engagement with Myanmar are highly important to be able to understand the issue comprehensively, find an appropriate solution, and convince each other to reach a ‘comfort level’ among the member states to act collectively.⁵⁸

In conjunction with the Retreat Meeting, the Rohingya issue has also been addressed by the member states, as part of their regional concerns regarding irregular movement and irregular migration. The ASEAN adopted its regional declaration on the irregular movement of persons in 2015, in Kuala Lumpur, Malaysia. One of the follow-up actions taken in the wake of the declaration was the provision of a so-called ‘trust fund’ to support humanitarian and relief efforts that deal with the challenges resulting from irregular migration of persons in the region.

The Deputy Permanent Representative of Singapore to ASEAN has stated that ‘we have used a ‘Trust Fund’ from ASEAN to Myanmar to help the country to deal with the problem. We do not want to interfere with the country, but we are willing to help them respond to the

⁵⁷ Interviewees 11 and 16.

⁵⁸ Interviewee 8.

problem'.⁵⁹ It is argued that the fund is important because it gives the Myanmar authorities the financial capacity to address the situation and support the development of the country.

With regard to the soft approach of Indonesia and most ASEAN countries to Myanmar on the issue of Rohingya, this article emphasises that it is a step too far to claim that quiet diplomacy and a soft approach by Indonesia and most ASEAN states to Myanmar on the Rohingya issue make the case for there being 'R2P in practice' or the implementation (without adoption) of the R2P norm. Rather, it suggests a subsidiary behaviour of the ASEAN governments to R2P. If we look at the motives and perspectives influencing their behaviour, it implies an embedded desire to resist to international interference especially when the R2P norm is taken into account, and to justify their limited response to the Rohingya issue. As explained above, the Rohingya issue has significantly been defined through the lens of security and regional stability and peace rather than as a human protection issue or atrocity crimes. At this point, it is problematic to claim that a state or collective of states response constitutes an R2P-based action unless they are seeing the issues as atrocity crimes. A soft and incremental approach as part of the limited response by ASEAN and its member states to the Rohingya issue reflects the centrality of the ASEAN norms rather than the implementation of the R2P norm.

3.2. The Philippines' War on Drugs: ASEAN's Silent Response

The attitude of ASEAN and its member states to the war on drugs in the Philippines suggests they perceive it in a similar way to the Rohingya issue. It indicates the strong influence of the ASEAN norms that construct their perspective and the reaction of member countries to the problem.

⁵⁹ Interviewee 4.

After taking office in late June 2016, the Philippines' President Rodrigo Duterte launched the war on drugs within the country, through large scale extrajudicial and vigilante killings. Based upon a range of authoritative sources, including UN bodies and international human rights networks, it can be argued that Duterte's deadly war on drugs constituted atrocity crimes. The government has committed unlawful mass murder and the enforced disappearance of persons intentionally and systematically, with regard to those suspected of being drugs lords and users.

The war on drugs has caused a large number of deaths, and widespread fear and terror among the entire population. By September 2017, the Philippines Drug Enforcement Agency (PDEA) claimed there had been nearly 4,000 deaths during operations. By June 2019, the Philippines National Police (PNP) reported that at least 6,600 people had been killed during the operations. Human Rights Watch mentioned that unidentified gunmen have killed thousands more drug suspects, which would bring the total death toll to more than 12,000.⁶⁰ In addition to this, thousands of anti-government activists and members of the political opposition were also arrested and detained, with many allegedly subjected to ill-treatment and possibly torture.⁶¹

Despite there having been a decline in the intensity of the killings in the war on drugs since the PDEA took over the anti-drugs operations from the PNP in October 2017, extrajudicial

⁶⁰ Human Rights Watch, 'World Report 2018: Philippines events of 2017', <https://www.hrw.org/world-report/2018/country-chapters/philippines>, accessed 7 June 2019.

⁶¹ Global Centre for the Responsibility to Protect, 'Atrocity Alert: International criminal court initiates examinations of Venezuela and the Philippines', 14 February 2018, <http://createsend.com/t-j-6166BB014256D4AC2540EF23F30FEDED>. Accessed 10 March 2018.

killings have still been consistently carried out by the government.⁶² An opposition Senator in the Philippines claimed that the number of deaths from the war on drugs has surpassed 20,000.⁶³ Since the war on drugs continues, the Chairperson of Commission on Human Rights of the Philippines, Chito Gascon, has said that the policy has brought the total death toll to more than 27,000.⁶⁴ (Ellis-Petersen, The Guardian, 19 December 2018).

The UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, has pointed out that the extrajudicial killings have violated international law (High Commissioner's Global Update of Human Rights Concerns, 7 March 2018). International human rights networks such as Amnesty International and Human Rights Watch consider Duterte's war on drugs to constitute crimes against humanity (Amnesty International, 30 January 2018). The ICC, through its prosecutor Mrs. Fatou Bensouda, has stated that the Office of the Prosecutor (OTP) will begin a preliminary examination to establish the facts regarding whether there is a reasonable basis to believe that the crime, under its jurisdiction, has been or is being committed (International Criminal Court, 8 February 2018). If the result of the examination confirms a crime against humanity, an official ICC investigation will commence.

In response, the Philippines' government has refuted any criticisms of, and pressures on, their policy. The government claim that the war on drugs is for 'the sake of peace and future of

⁶² Asia Pacific Centre for Responsibility to Protect, 'Atrocity Crimes Risk Assessment Series: the Philippines', Volume 7, September 2018, <https://r2pasiapacific.org/files/2497/Risk%20Assessment%20The%20Philippines%20FINALwith%20images%20opti%281%29.pdf>, accessed 2 October 2018.

⁶³ Ted Regencia, Al-jazeera, 'Senator: Rodrigo Duterte's Drug War Has killed 20,000', 22 February 2018, <https://www.aljazeera.com/news/2018/02/senator-rodriigo-duterte-drug-war-killed-20000-180221134139202.html>, accessed 24 February 2019.

⁶⁴ Hannah Ellis-Petersen, The Guardian, 'Duterte's Philippines drug war death toll rises above 5,000', 19 December 2018, <https://www.theguardian.com/world/2018/feb/08/icc-claims-crimes-against-humanity-duterte-philippines>, accessed 24 February 2019.

the society and nation' (Human Rights Watch Report, 2017). The country's claim of sovereignty is also used by the government to justify the strategy behind the war on drugs. The country's presidential spokesperson, Harry Roque, has stated that 'deaths in the drugs war do not constitute crimes against humanity, as the ongoing war on drugs is an exercise of the police's power in dealing with the problem of drugs'.⁶⁵ The government claims the 'license to kill' drugs suspect within the country.⁶⁶ They also consider international criticism an 'official insult' to the sovereignty of the country.⁶⁷ In the regional context of Southeast Asia, there has been no clear response from ASEAN and its member countries (such as meetings, joint statements and other forms of response) to the Philippines' war on drugs, other than a few general statements cited in the media.⁶⁸

By realising Southeast Asia is one of the busiest drug trafficking regions in the world, with its centre known as 'Golden Triangle', ASEAN governments consider that combating the illegal trafficking and abuse of drugs as critical as the other primary objectives of ASEAN, such as maintaining the development, national resilience and security of the nations and region. The countries recognise that drug abuse is socially and economically harmful, and that it seriously endangers the development programmes of the member countries. As mentioned in the

⁶⁵ Lian Buan and Jodesz Gavilan, Rappler, 'International criminal court takes 1st step in probe Duterte drug war', 8 February 2018, <https://www.rappler.com/nation/195492-icc-the-hague-netherlands-duterte-drug-war-killing>, accessed 27 September 2019.

⁶⁶ Human Rights Watch, 'License to Kill: Philippines Police Killings in Duterte's War on Drugs', 2 March 2017, <https://www.hrw.org/report/2017/03/02/license-kill/philippine-police-killings-dutertes-war-drugs>, accessed 27 September 2019.

⁶⁷ Hannah Ellis-Petersen, 'ICC Launches Crimes Against Humanity Inquiry Into Duterte's War on Drugs', 8 February 2018, <https://www.theguardian.com/world/2018/feb/08/icc-claims-crimes-against-humanity-duterte-philippines>, accessed 27 September 2019.

⁶⁸ Ed Davies and Stefano Reinhard, 'Indonesia Drug Czar Warns Methamphetamine Seizures Tip of Iceberg', 28 July 2017, <https://www.reuters.com/article/us-indonesia-drugs/indonesia-drug-czar-warns-methamphetamine-seizures-tip-of-iceberg-idUSKBN1AD17N>, accessed 8 August 2018; Paterno Esmaguél II, 'Singapore Says It Respects Philippines' Drug War', 21 March 2017, <https://www.rappler.com/nation/164819-singapore-philippines-war-drugs-duterte-lee>, accessed 8 August 2018.

ASEAN Leaders Declaration on a Drug-Free ASEAN in 2015, governments in the region emphasise that ‘apart from the suffering caused to individuals, particularly the young, illicit drug abuse and trafficking weaken the social fabric of nations, represent direct and indirect economic costs to governments and entail criminal activities which could threaten the stability of states’. The states realise that drugs, especially their illegal trafficking, are inextricably linked to other transnational crimes such as arms-smuggling and money laundering, which can cause serious political and security threats to the region.⁶⁹

In response to the situation, ASEAN member states emphasise that every single country in the region should give attention to the problem of drugs and addressing it. Within the frameworks of ASEAN drugs control, the ASEAN governments have been able to build cooperation and collaboration (within the region and beyond) on the issue. On behalf of the member countries, the Chairman of ASEAN, at the 31st ASEAN Summit in November 2017, emphasised that the governments in the region need to recognise that drug problems are too difficult and complex to be addressed by individual states. It is not only cooperation that is needed, ASEAN governments also welcome any assistance, including initiatives such as capacity-building and intelligence information sharing to help deal with the problem.⁷⁰

Along with cooperation and collaboration in combating the illegal trafficking and abuse of drugs, ASEAN countries emphasise that each nation should respect the sovereignty of the

⁶⁹ ASEAN, ‘Joint Declaration for a Drug-Free ASEAN’, 12 October 2012, http://asean.org/?static_post=joint-declaration-for-a-drug-free-asean, accessed 7 March 2018.

⁷⁰ ASEAN, ‘The 31st ASEAN Summit: Chairman Statement’, 13 November 2017, <http://asean.org/storage/2017/11/final-chairman%E2%80%99s-statement-of-31st-asean-summit.pdf>, accessed 18 February 2018.

others, especially in deciding the most appropriate approaches to dealing with the problem.

At the 4th ASEAN Ministerial Meeting on Drugs Matters in 2015, the countries emphasised:

Each country has the sovereign rights and responsibility to decide on the best approach to address the drug problems in their country, taking into account the historical, political, economic, social and cultural context and norms of its society. The transnational challenges posed by the world drug problem should be addressed with full respect for the sovereignty and territorial integrity of states, and the principle of non-intervention in the internal affairs of states. Every government and its citizens should be free to decide for themselves on the most appropriate approach to tackle its own drug problem. There is no one-size-fits-all approach towards addressing the drug issue, as each country has its own unique set of challenges.⁷¹

This joint statement shows that despite the ASEAN frameworks and instruments on drugs control encouraging cooperation and collaboration, the implementation of the commitment is still understood within the context of ASEAN norms on state sovereignty and non-interference. As Ralf Emmers noted, ASEAN's drugs arrangements have been created and developed according to its basic norms, to ensure their full support and acceptance by the all member countries.⁷² Consequently, the war on drugs in the Philippines is viewed in line with this understanding.

Most ASEAN countries suggested that ASEAN cannot simply condemn or take action regarding the situation in the Philippines because the war on drugs policy is one of the country's methods of law enforcement against illegal drugs smugglers and users. Indonesia's

⁷¹ ASEAN, 'The 4th ASEAN Ministerial Meeting on Drug Matters (AMMDM)', 20 October 2015, <http://www.asean.org/wp-content/uploads/2015/10/Position-Statement-on-Drugs-endorsed-and-adopted-by-the-4th-AMMD-on-29-October-2015-Langkawi-Malaysia.pdf>, accessed 15 February 2015.

⁷² Ralf Emmers, 'International Regime-Building in ASEAN: Cooperation Against the Illicit Trafficking and Abuse of Drugs', *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, 29/3: 506-525 (2007).

Head of the Anti-Narcotics Agency, for example, showed his sympathy lay with Duterte's policy by saying that 'he is taking care of his citizens'.⁷³

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

ASEAN has had collective understanding and commitment to combat the illicit trafficking and abuse of drugs since the 1970s as stated in several mechanisms and series of meetings (such as AMMDM, ASOD and also AMMTC and SOMTC), in order to tackle this issue. If something happens as a consequence of the war on drugs, it is a national domestic problem of the country.⁷⁴

In a similar vein, another interviewee said:

We realise there are casualties of the war on drugs in the Philippines, but it is a complex problem. The war on drugs has a comprehensive agenda. The drugs problem correlates with transnational crimes, the development of the country, social-health issues and law enforcement. We cannot simply condemn or take action on the situation. We have a commitment in the ASEAN to fight against the abuse and illegal trafficking of drugs. But also we cannot interfere with the country's domestic problems. The enforcement of laws against drug smugglers and users is a state sovereignty issue.⁷⁵

Most ASEAN countries, as in the case of the Rohingya, do not necessarily define the Philippines' drugs war as an atrocity crime. Consequently, the Philippines' war on drugs is neglected in any ASEAN forum including the meeting of AICHR and ASEAN Summit. One of the ASEAN countries' Representatives to the ASEAN Senior Officials on Drug Matters

⁷³ Ed Davies and Stefano Reinhard, 'Indonesia Drug Czar Warns Methamphetamine Seizures Tip of Iceberg'.

⁷⁴ Interviewee 23

⁷⁵ Interviewee 25

(ASOD) and ASEANAPOL (the front guard of ASEAN drugs control) stated that they never discuss the case either formally or informally at ASEAN level.⁷⁶

At the 23rd meeting of the AICHR in February 2017 in the Philippines, the commission did not discuss the human rights issues related to the drugs war. While the commission discussed the human rights-based approach to the implementation of the ASEAN Convention Against Trafficking in Persons, unfortunately they did not discuss at similar human rights-based approach to the implementation of measures to combat drug abuse.⁷⁷ At the time of writing, this issue is still being neglected by the AICHR, including in the 2018 and 2019 AICHR Annual Reports. The reports made not one mention of drugs, including the issue of the war on drugs in the Philippines.

At the highest level meetings of ASEAN, despite the general problems and challenges presented by drugs always being raised and reinforced at every ASEAN Summit Meeting, the Philippines' war on drugs has been ignored at the last six Summits since Duterte launched his deadly policy (the 28th to 34th between 2016 and 2019). Instead of addressing the war on drugs in the Philippines, ASEAN governments have reinforced their joint commitment to a zero-tolerance approach in realising the regional vision of a Drugs-Free ASEAN.⁷⁸ At the 34th ASEAN Summit in June 2019, the ASEAN countries again reaffirmed their commitment

⁷⁶ Interviewee 26

⁷⁷ ASEAN, 'The 23rd ASEAN Intergovernmental Commission on Human Rights (AICHR)', 15 February 2017, <http://aichr.org/press-release/press-release-23rd-meeting-of-the-aichr-13-15-february-2017-boracay-the-philippines/>, accessed 18 February 2018.

⁷⁸ ASEAN, 'The 28th-29th ASEAN Summit Meeting: the Chairman Statement', 6-7 September 2016, <http://asean.org/storage/2016/08/Final-Chairmans-Statement-of-the-28th-and-29th-ASEAN-Summits-rev-fin.pdf>, accessed 18 february 2018.

to addressing the scourge of drugs through their regional drug control arrangements in order to achieve their goal of freedom from drug abuse and trafficking.⁷⁹

While there was no criticism directed at the Philippines from ASEAN and its member states, Duterte, as the host of the 30th ASEAN Summit in April 2017, used the opening ceremony to remind his ASEAN colleagues of the threat posed by illegal drugs to community-building as drugs have ended the hopes, dreams, futures, and lives of countless people, especially the young. Furthermore, Duterte has urged ASEAN collectively to strengthen its political will and cooperation in order to destroy the threat before it destroys societies.⁸⁰

As in the Rohingya case, the way ASEAN countries interpret and respond to the extrajudicial killings carried out as part of the Philippines' war on drugs suggests the centrality of ASEAN principles and approaches that inform the member states' perspective and behaviour in response to the problem. In a broader sense, it indicates a rejection by countries in the region of international interference especially when R2P norm is taken into account.

4. Conclusion

The way ASEAN and its member states perceive and respond to the mass atrocities in the region implies the significant influence of ASEAN principles and approaches on the member countries. The regional principles, diplomacy cultures and common interest of the states in

⁷⁹ ASEAN, 'The 34th ASEAN Summit: the Chairman Statement', 23 June 2019, https://asean.org/storage/2019/06/Final_Chairs-Statement-of-the-34th-ASEAN-Summit-rev.pdf, accessed 17 August 2019.

⁸⁰ ASEAN, '*The 30th ASEAN Summit: Remarks of President Duterte as the Opening Ceremony*', 29 April 2017, <http://asean.org/remarks-president-rodrigo-roa-duterte-opening-ceremony-30th-asean-summit-picc-manila-philippines-29-april-2017/>, accessed 18 February 2018.

preserving their regional autonomy and stability have significantly contributed to shaping the perspective of the countries in their interpretation and response to the cases as complex problems and internal affairs of the states.

The regional responses to the cases has indicated a general understanding by the ASEAN region of R2P and their reluctance to implement the norm in the context of the region. Despite most ASEAN countries being aware of human rights issues in the two cases explored, the states tend to show subsidiary behaviour. The countries view the cases largely from the perspective of political sovereignty and self-determination, attempt to resist external interference, and wish to preserve their regional principles and identities. They emphasise that a state or regional organisation may have different mechanisms and approaches with regard to addressing their problems. It has been claimed that ASEAN principles and approaches are already in place to address the problem and, more importantly, that regional principles and approaches are the most suitable instruments to use when taking into account the characteristic of the region. This is not to suggest that ASEAN has made no progress on human rights protection issues, but the way ASEAN and the member states perceives and responds to the atrocities in the region indicates neither has the R2P norm been internalised nor are the member states implementing or preparing to adopt the norm.