Norm Implementation and Contestation: the Case of the Responsibility to Protect in Southeast Asia

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The sub-section of ‘ASEAN’ in the article including the quotations from interviews are largely taken from this thesis especially Chapter V.

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Abstract

This thesis seeks to explain how the Association of South East Asian Nations (ASEAN) interpret the Responsibilityto Protect (R2P) in the context of the region. In doing so, it investigates the response of ASEAN and its member states to atrocity crimes in the region; the crises in Myanmar and the Philippines.

A qualitative case study approach with 26 in-depth elite interviews was conducted, involving 15 interviews with state-based actors of ASEAN countries and 11 interviews with non-state actors. Interview data were analysed by developing themes and identifying the patterns and interrelations among them. Interpretation of the data was conducted, using the conceptual lens of norms especially the concepts of norm contestation, norm subsidiarity, norm implementation and norm robustness. Overall findings were discussed and compared to existing literature regarding the diffusion and implementation of R2P in the ASEAN region. Interpretation of the data was also conducted to learn broader lessons regarding the dynamics of norm diffusion and contestation.

Most ASEAN countries emphasise three interrelated points when refusing the use of R2P principle in the context of the region. First, they question the extent to which atrocity crimes are said to be occurring and therefore whether the application of R2P can be justified. Second, most ASEAN countries argue that atrocity crimes do not even exist in the region. The two cases have been interpreted as complex problems, including the issues of poverty, counter insurgencies and transnational crimes, but ultimately, they have been considered domestic issues and national affairs of the relevant countries. Third, the ASEAN countries emphasise that the region already has its own principles and frameworks for responding to regional problems, including human protection issues. They claim that their frameworks contain the core elements and basic ideas of R2P.

This thesis concludes that R2P diffusion in the ASEAN region has been resisted and problematised rather than accepted or localised. The ASEAN and its member states demonstrate subsidiary behaviour in the sense that they have used their locally constructed norms to offer normative resistance to the diffusion and application of R2P in the context of the region. Regional arrangements have also been used by the ASEAN countries in order to preserve the autonomy of the region as well as to justify their right to use their own mechanisms and approaches to respond to the cases.

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List of Abbreviations

AADMER	ASEAN Agreement on Disaster Management and Emergency Response
ACCORD	ASEAN Cooperative Operation in Response to Dangerous of Drugs
ACTIP	ASEAN Convention Against Trafficking in Persons
ACWC	ASEAN Commission on Women and Children
AHA Centre	ASEAN Coordinating Centre for Humanitarian Assistance
AHRD	ASEAN Human Rights Declaration
AICHR	ASEAN Intergovernmental Commission on Human Rights
AIPR	ASEAN Institute for Peace and Reconciliation
AMM	ASEAN Ministerial Meeting
AMMDM	ASEAN Ministerial Meetings on Drugs Matters
AMMTC	ASEAN Ministerial Meetings on Transnational Crime
APCR2P	Asia Pacific Centre for the Responsibility to Protect
APPAP	Asia Pacific Partnership for Atrocity Prevention
APSC	ASEAN Political Security Community
ASEAN	Association of South East Asian Nations
ASEANAPOL	multinational Police Force of ASEAN
ASEAN-HLAP	ASEAN-High Level Advisory Panel
ASOD	ASEAN Senior Officials on Drugs Matters
ASP	ASEAN Surveillance Process
CICP	Cambodian Institute for Cooperation and Peace
CSIS	Centre for Strategic and International Studies
ECR2P	European Centre for the Responsibility to Protect
EU	European Union
GCR2P	Global Centre for the Responsibility to Protect
HRWG	Human Rights Working Group
ICC	International Criminal Court
ICDAIT	International Conference on Drug Abuse and Illicit Trafficking
ICISS	International Commission on State Sovereignty and Intervention
ICNV	Identity Cards of National Verification
IDPs	Internally Displaced Persons
INTERFET	ASEAN in the International Force in East Timor
IR	International Relations
MoU	Memorandum of Understanding
MP	Members of Parliament
NGOs	Non- Government Organisations
NTS	Non-Traditional Security
OHCHR	Office of the United Nations High Commissioner for Human Rights
OIC	Organisation of Islamic Cooperation
OPT	Occupied Palestinian Territory
OTP	Office of the Prosecutor
PDEA	Philippines Drug Enforcement Agency

PNP	Philippines National Police
RSIS	Rajaratnam School of International Studies
R2P	Responsibility to Protect
SEATO	Southeast Asia Treaty Organisation
TRC	Temporary Resident Card
UDHR	Universal Declaration on Human Rights
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNODC	UN Office on Drugs and Crime
UNSC	United Nations Security Council
UNSG	United Nations Secretary General
US	United States
TAC	Treaty of Amity and Cooperation
VAP	Vientiane Action Programme
WSOD	World Summit Outcome Document

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Chapter 1 Introduction

1.1 Background

At the World Summit in 2005, the majority of states, including the Association of Southeast Asian Nations (ASEAN) countries[1], agreed to endorse the concept of the Responsibility to Protect (R2P). Their aim was to protect the world population from four mass atrocity crimes – genocide, war crimes, ethnic cleansing and crimes against humanity – through emphasising three key responsibilities: national responsibility to protect, international responsibility to assist, and international responsibility for timely and decisive action when states manifestly fail to protect their people. In 2009, the Annual Dialogue on R2P was created to facilitate the debate and contestation surrounding it, and most ASEAN countries were actively involved in this. At this level, most ASEAN countries indicated their acceptance and support regarding the principle of R2P.

In 2005 the Philippines representative summarised the R2P succinctly as ‘a strong political commitment ... which provided a new framework for understanding and applying existing legal obligations concerning the four international crimes’ (Teitt, 2016: 380). In 2015, the country has re-emphasised their commitment to R2P by expressing their agreement with the notion of ‘sovereignty as responsibility’ as the key idea of R2P (the Philippines Statement at the UN General Assembly Informal Dialogue on R2P, 2015). Thailand, another ASEAN country, emphasised that the general concept of R2P is timely and needed in an age of intolerance, insecurity, and violence (Thailand Statement at the at the UN General Assembly Informal Dialogue on R2P, 2015). The Myanmar delegation at the UN General Assembly stated that the ‘international community should avoid any effort to renegotiate at a text already agreed by the world leaders in 2005’ (Myanmar Statement at the UN General Assembly Informal dialogue on R2P, 2009). Indonesia suggested to the international community that it should refrain

[1] ASEAN consists of ten member countries namely Brunei Darussalam, Cambodia, Laos, Malaysia, Myanmar, Indonesia, Philippines, Singapore, Thailand, Vietnam.

from reinterpreting and renegotiating the conclusions of the World Summit, and instead find ways to implement the R2P principle (Indonesia Statement at the UN General Assembly Debate on R2P, 2009). Vietnam and Malaysia emphasised that they were ready to cooperate with the international community, including UN members, regional organisations and civil societies, to prevent and protect people from existing and emerging threats of mass atrocities (Vietnam Statement at the UN General Assembly Interactive Dialogue on R2P, 2012; Malaysia Statement at the UN General Assembly Debate on R2P, 2015). Singapore called for a restraint on the use of a veto in situations of genocide, war crimes, ethnic cleansing and crimes against humanity (Singapore Statement at the UN General Assembly Debate on R2P, 2015).

However, the diffusion and promotion of R2P is still problematic and controversial, including in the regional context of ASEAN (Bellamy and Beeson, 2010; Capie, 2012). In relation to the controversies of R2P in the ASEAN context, there have been notable debates over the extent to which R2P is being accepted and internalised at the ASEAN level. Bellamy argued that the promotion of R2P in the region indicates significant progress as the traditional principle of non-interference has been recalibrated by the member states (Bellamy and Drummond, 2011). In contrast, others emphasise that there is no adequate evidence to argue that ASEAN is prepared to accept and incorporate R2P (Capie, 2012; Sukma, 2012; Tan, 2011). Capie (2012) argue that, the promotion of R2P in ASEAN context is largely advocated by outsiders, especially the APCR2P-led networks rather than the local actors.

The problem of R2P diffusion correlates with the existing debate over international human rights, a debate which includes the universality-relativity of human rights (Donnelly, 1984), the role of the existing international human rights and humanitarian law to address the occurrence of extreme human rights violations (Welsh, 2016; Sikkink, 2017; Bellamy and Luck, 2018) and the ‘cultural diversity’ of state(s) in international politics (Reus-Smit, 2018). These issues emerge as part of the dynamic diffusion of R2P in the ASEAN context (see Chapters 4, 5 and 6). Thus, there is apparently a stark

disconnect between ASEAN members' public support for R2P globally, and their resistance at the regional level.

As will be discussed in Chapter 6, comparing to their statements in international level, ASEAN countries showed a different understanding of and attitude to the R2P principle. The states questioned whether ASEAN and its member states need to adopt R2P. They do not consider their endorsement of R2P at the UN level as automatically implying their adoption of the principle into ASEAN. Most ASEAN countries emphasised that the regional human rights arrangements are already in place to address related issues in the region. In practice, the reluctance of ASEAN countries to subscribe to R2P principles can be seen in the response of the ASEAN and its member states to the crises in Myanmar and the Philippines (See Chapters 4 and 5). Even though most ASEAN governments understand the humanitarian issues in the two cases, the countries are reluctant to define both cases as atrocity crimes. The two cases have been framed as complex issues and have ultimately been considered part of the domestic and internal affairs of the related governments rather than as atrocity crimes.

This thesis is concerned with the dynamic diffusion and contestation of R2P in the context of ASEAN. It analyses the interpretation and attitude of ASEAN countries to R2P in the regional context of ASEAN. This thesis examines the extent to which R2P has been diffused and accepted in the ASEAN and, more broadly, what the implications of this study are for norm contestation literature. It examines ASEAN countries' understanding of R2P principles, and specifically, the perspective and behaviour of the ASEAN and its member states with regard to atrocity crimes in the region, namely the plight of Rohingya (chapter 4) and the war on drugs in the Philippines (chapter 5) as the two on-going mass atrocity cases in the region – the war on drugs in the Philippines has been the first subject of an ICC preliminary examination of a drugs case – in the general situation of the significant reduction of mass violence in the region in the last two decades (Bellamy, 2017).

With regard to the debate, there is a lack of nuanced analysis of norm contestation and a richer empirical analysis of specific cases. Thus, this

research attempts to provides a more comprehensive analysis of R2P diffusion and contestation in ASEAN context through an explanation of the ASEAN's response to all cases of atrocity crimes in the region. This thesis therefore uses the conceptual lens of norms to analyse the cases and draw broader lessons over the contestation of the R2P.

The early work of constructivists on norms focused on the power of norms and their constitutive effect within states (Finnemore, 1996; Katzenstein, 1996; Wendt, 1999). It has been argued that norms have the power to regulate behaviour and constitute the interest and identity of a state as an almost automatic process (Finnemore and Sikkink, 1998). Once norms are internalised, the state will behave in accordance with them. Along with this argument, the study of norms is developed in order to explain important questions, including how norms are created, maintained, diffused and internalised (Finnemore and Sikkink, 1998; Risse-Kappen and Sikkink, 1999, Klotz, 1995). The problem with the work of these constructivists' lies in their static understanding of norms and lack of concern with contestation, as well as the possibility of several outcomes within the dynamic process of norm diffusion and implementation.

Recent norm scholars working within the understanding of the 'contested nature of norms', focus on type of norms (Wiener, 2014) and contestation in the norm diffusion process (Prantl and Nakano, 2011; Krook and True, 2012; Wiener, 2014 and 2018; Acharya, 2018; Deitelhoff and Zimmermann, 2019). They emphasise the critical practice of state to (re)negotiate and re(enact) the meaning of norms (Wiener, 2009). This approach suggests that various outcomes such as rejection, adoption, adaptation, and localisation of norms are possible (Acharya, 2011; Wiener, 2014; Bloomfield, 2016). In addition, recent works on norms attempt to address the nexus and interplay between norm and actor's interests in the implementation and translation of norms (Birdsall, 2016; Betts and Orchard, 2014).

With regard to these works, Betts and Orchard (2014) suggest that the contestable nature of norms means that states may have different interpretations and attitudes to international norms in their local context (national or regional). Their behaviour may include rejecting international

norms. As 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. Betts and Orchard explain that state's responses to international norms are influenced by so-called three sets of structure – ideational, institutional and material – of the state's local context.

In addition, the contestation of norms correlates to the type in question. Wiener (2014) argues that organising principles such as R2P may suffer more complex contestation as they create a legitimacy gap whereby the normativity of norms is negotiated and the procedure for implementing them is still highly contested. In conjunction with this point, Deitelhoff and Zimmerman (2019) note that the way states engage with norms (and their contestation) highlights the robustness of the norms. They argue that the robustness of a norm is high when its addressees express widespread discursive acceptance of its claims (validity) that also generally guide those addressees' actions (facticity). In contrast, when normative claims are discursively rejected by most addressees and do not guide their actions, the robustness of the norm is low.This thesis seeks to analyse the contestation of norms by focusing on R2P in the regional context of ASEAN. It investigates the way the ASEAN countries interpret and respond to atrocity crimes in the region. As explained below (in Section 1.2), the way ASEAN countries interpret and react to atrocity crimes provides the empirical basis for examining the understanding and position of the states with regard to human rights protection and R2P principles in the context of the region. The analysis of the reaction of the ASEAN and its member states to both cases, provides a deeper and more comprehensive understanding how R2P is actually interpreted and contested at the ASEAN level. Therefore, this study is concerned with the diffusion – and contestation – of R2P in ASEAN context with norms used as a conceptual lens to analyse the empirical cases and draw broader lessons from it.

This thesis takes a 'discursive approach' to norms of constructivists. It focuses on several key norm concepts, including norm contestation (Wiener, 2014), norm subsidiarity (Acharya, 2011), norm implementation (Betts and

Orchard, 2014) and norm robustness (Deitelhoff and Zimmermann, 2019). The discursive approach emphasises the dual quality of norms in the sense that norms are both structuring and socially constructed, and they are stable, but always remain flexible by definition (Wiener, 2007). It provides analytical tools to reveal and understand the method or mechanism a state uses when accepting (or rejecting) international norms in their local context. At this point, the state's responses and interpretations of international norms in the implementation stage correlate to the ideational, institutional, and material structure of the local context (Betts and Orchard, 2014). This thesis focuses on several themes, including: the response of ASEAN and its member states to atrocity crimes in the region (Rohingya and the war on drugs); the contestation of norms in terms of how the ASEAN countries contest and problematise R2P; the role of states (as local actors) and regionalism in the dynamic process of norm diffusion.

1.2 Research Aim and Objectives

The overall aim of this study is to explore the dynamic diffusion and contestation of R2P in the context of the ASEAN. In doing so, this study examines the understanding of ASEAN and its member states regarding the R2P principle in the context of the region. It investigates the attitude and reaction of the ASEAN and its member countries to atrocity crimes that are occurring in the region. In order to fulfil this aim, this study has several objectives include:

1. To investigate the response of ASEAN and its member states to atrocity crimes in the region. It focuses on two cases; the issue of Rohingya in Myanmar and the war on drugs in the Philippines. This objectives is addressed in Chapters 4 and 5. It has several tasks:
    a. To understand the atrocity crimes, especially in regard to the role of the related governments in the crimes.
    b. To analyse the ASEAN and its member states's perspective on, and reactions to, the issues.
    c. To explain the factors that constitutes the behaviour of the countries regard the issues.

2. To examine the diffusion and contestation of R2P in ASEAN. This objectives is covered in Chapters 3 and 6. It has several tasks:
   a. To understand the nature of R2P and ASEAN, including ASEAN principles and approaches.
   b. To explain the engagement of ASEAN countries with R2P at the international level. The acceptance and criticism of R2P by the countries is addressed.
   c. To examine the way ASEAN countries interpret and problematise R2P in the context of the region.
3. To understand the dynamic and complexities of norm diffusion and contestation. This objective is covered in Chapters 6 and 7. It suggests one task; to discuss ASEAN countries interpretations on human protection and R2P in related to broader context of norm literature.

1.3 Research Questions

According to the aim and objectives of this research, this thesis focuses on three questions including:

1. How can the gap of ASEAN countries's attitude to and interpretation of, R2P between international and regional context be explained?
2. To what extent R2P is being accepted and internalised in the ASEAN context?
3. What is the implication of R2P contestation in ASEAN for the dynamics of norm diffusion and implementation?

1.4 Rationale to Study R2P and ASEAN

This study focuses on R2P principles and ASEAN (including the principles and approaches called the ASEAN Way[2]) for several reasons. First, this study focuses on R2P and ASEAN because of the occurrence of the alleged

[2] The ASEAN Way is the doctrine related to the ASEAN member states' inter-state relationship, and is based on the principles of non-interference in the internal affairs of sovereign state and non-use of force. In addition, the ASEAN Way is a form of ASEAN inter-state relationship that emphasises on an informal approach to their cooperation based on the mechanism of consensus and consultation, rather than a rigid institutional mechanism. See Chapter 3 for a detail explanation.

atrocity crimes in the Southeast Asian region, especially the cases of Rohingya in Myanmar and war on drugs in the Philippines. As previously mentioned, the region has seen a historic decline in mass violence in the last two decades; 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. Chapters 4 and 5 explain that the governments of Myanmar and the Philippines are committing violence toward their people in a systematic and widespread manner. Both cases constitute the actual risk factor of atrocity crimes and both cases are relevant to R2P, because atrocity crimes are the R2P's core concern.

Second, R2P and ASEAN (including the ASEAN Way) share concerns regarding several universal concepts, namely: state sovereignty, interference (and non-interference) and human rights protection. Along with this, both R2P and ASEAN highlight different constructions of understanding of the concepts (See Chapter 3). On the one hand, R2P emphasises the idea of 'sovereignty as responsibility' in terms of prevention and protection of people from mass atrocity crimes, namely: genocide, ethnic cleansing, war crimes and crimes against humanity. As has been drawn up and agreed by the international community, in the three paragraphs of the R2P section in the 2005 World Summit Outcome Document (WSOD), R2P's principle is to emphasise the responsibility of every single state to protect their population from mass atrocity crimes (Pillar I). The R2P principle explicitly suggests international responses such as international assistance (Pillar II) and the use of coercive and non-coercive measures under chapters VI, VII and VII of the UN Charter, including sanctions and military forces (Pillar III). In short, R2P focuses on both protecting people from atrocity crimes by every single state and international responses if a state is 'manifest failing' to protect their population.

ASEAN is, however, a state-centric organisation that relies on its regional principles and diplomatic culture, especially the strict understanding and application of state sovereignty and non-interference. The sovereign rights of

states are interpreted within the understanding of authority rather than necessarily responsibility. The ASEAN was created primarily to maintain the security and stability of states and the region. At this point, ASEAN principles are critical for the region to enable the member countries to achieve their regional objectives.

Indeed, ASEAN has developed over the last 15 years, especially since the adoption of ASEAN Community Vision in 2003. The vision reflects the regional effort to promote and mainstream the idea of a people-centred and people-oriented agenda, through the creation of ASEAN Charter and several bodies and declarations on human rights. As stated in the Vientiane Action Programme (VAP) in 2004, the adoption of the ASEAN Community is to ensure not only the security of the member states, but also the security and resilience of the people through the wide range of people-centred and people-oriented agendas, such as conflict prevention and resolution, peace building, reduction of poverty, disaster management, the promotion of democracy, human rights and fundamental freedom. However, the ASEAN Community Vision has been implemented in a way which places regional principles at its centre (See the discussion in Chapter 3 and the implementation in practice in Chapters 4 and 5).

Third, the diffusion of R2P in the ASEAN context suggests a contestation of norms between R2P and the ASEAN Way. By looking at the engagement of R2P by ASEAN, in light of the ASEAN Way (See Chapter 3), it is unsurprising that the diffusion of the R2P principle is problematic and contestation – and to some extent resistance – has occurred. However, it is important to examine how the ASEAN states problematise and interpret the R2P principle in the context of the region in order to understand the extent to which R2P has been accepted in the context of the region (See Chapter 6). With regard to norm literature, the examination of ASEAN states' interpretation of R2P may inform the type of behaviour and contestation in which the countries engage. At this point, ASEAN countries tend to resist the diffusion and promotion of R2P by arguing that the concept of R2P needs more clarification and greater consensus at international level. The member states tend to contest R2P through their regional principles and frameworks.

It is emphasised that ASEAN already has set principles and approaches. R2P may not suitable for ASEAN when its characteristics are taken into account and thus any problems (including humanitarian issues) within the region should be addressed through the ASEAN Way. In practice, the use of the R2P principle is rejected by the member countries in their responses to atrocity crimes in the region (See Chapters 4 and 5). In a broader sense, the contestation of R2P in the ASEAN context provides an opportunity to understand the dynamics of norm diffusion and implementation, especially in the context of regionalism.

1.5 Research Design and Methodology

This section presents a detailed explanation of the study methodology and research design. The choice of qualitative research with case study approach is explained. Details of the data collection methods and procedures as well as the data analysis are provided. The data analysis methods are also explained. In addition, ethical considerations of this research are presented in this chapter.

1.5.1 Qualitative Inquiry Approaches

Qualitative research is an information gathering approach that emphasises obtaining in-depth understanding about what, how or why a certain phenomenon, process or experience happens by attempting to make sense of, or interpret the meaning of the phenomenon (Denzin and Lincoln, 2008 and 2011). There are several qualitative inquiry approaches, including: (i) narrative research; (ii) phenomenological research; (iii) grounded theory research; (iv) ethnographic research; (v) case study research (Creswell, 2007). A qualitative research is taken because it enables the development of a thorough understanding of the motivations, reasonings, and actions of particular groups through exploring and interpreting data (Bryman, 1989; Schofiel, 2002). In-depth exploration through a case study approach enables exploration of the aims, questions and objectives of this research. The first objective is to explain how ASEAN countries interpret R2P in the context of the region. This focuses on the ASEAN states' responses to the two empirical cases: the issue of Rohingya in Myanmar and war on drugs in the

Philippines. The second objective is to examine the extent to which R2P has been accepted or internalised in the ASEAN context.

Creswell summarises a case study approach as ‘a methodology, a type of design in qualitative research, or an object of study, as well as a product of inquiry... in which the investigator explores a bounded system (a case) or multiple bounded systems (cases) over time, through detailed in-depth data collection...’ (2007: 73). A case study approach has been chosen because it focuses on a detailed description and analysis of certain cases (Gerring, 2007; Baxter, 2010; Denzin and Lincoln, 2011) and it allows a researcher to examine theories and gain new insight from the evidence (Bryman, 1989). The process of analysing phenomena or cases in a specific context to explain a wider context is the principal characteristic of the case study approach (Gerring, 2007; Baxter, 2010). As previously mentioned, this thesis attempts to explain the dynamics of the diffusion and implementation of R2P in the context of the ASEAN through a specific set of issues that appeared from their interpretation and responses to the cases of Rohingya in Myanmar and war on drugs in the Philippines (Chapters 4 and 5).

The use of a case study approach in investigating the reaction of ASEAN countries to the two cases of atrocity crimes provides a detailed explanation of how the R2P principle is being interpreted in the ASEAN context. The ASEAN countries’ interpretations of the principle of R2P indicates degree to which the countries accept (or reject) the principle. The two mass violence cases chosen reflect the fact that there have only been two in ASEAN since the R2P was signed in 2005. Two cases may not seem that many but when considering that there are only ten countries in ASEAN, the two countries in which the cases occurred actually represent a fifth of the region. Therefore, analysis of the responses of ASEAN and its member states to the two selected cases could represent the extent to which the R2P principle has been accepted in the region.

In a broader sense, this research attempts to understand the dynamics and complexities of norm diffusion, contestation and implementation, especially in the context of regionalism. As stated, the ‘case study approach can be used to examine theories, to gain new insight on particular cases, or to

examine other similar case studies' (Bryman, 1989: 145-146). The case study approach also provides analytical tools to help explain the specific phenomena or cases in the wider context of discourse or debate (Gerring, 2007; Baxter, 2010). In this case, the analyses of the two selected cases are expected to present a contribution in relation to a wider debate in norm literature. A case study approach is common in norm studies research especially among constructivists that analyse and examine them through empirical studies. They include: human rights (Keck and Sikkink, 1999; Risse-Kappen and Sikkink, 1999), gender equality (Krook and True, 2012), whaling bans (Deitelhoff and Zimmerman, 2018; Bloomfield, 2016) and R2P (Prantl and Nakano, 2011; Acharya, 2013; Wiener, 2014 Ralph and Souter, 2015; Stefan, 2017; Hehir, 2019). Some others focus on specific cases such as the mass violence in the war on drugs in the Philippines (Gallagher *et al*, 2019), the Darfur crisis (Evans, 2009) and the Arab spring, including Libya and the unresolved Syrian crisis (Bellamy, 2014; Hehir and Pattison, 2016). With regard to this, the contribution of this thesis – in aligning itself with this well-established body of literature – lies in the two under-researched case studies; Rohingya and the war on drugs whereby the elite interviews with the region's stakeholders were conducted to obtain rich and in-depth detail informations.

A number of qualitative methodological approaches were considered for this research. Narrative research was not selected, as this approach focuses on the experiences and told stories of individuals (Creswell, 2007). Grounded theory was not used because this study is not necessarily aimed to generating a theory from a process, action, or interaction shaped by the views of a large number of participants (Strauss and Corbin, 2008; Creswell, 2007). Ethnographic research was considered, but it does not appear to be appropriate for this study. If an ethnographic research is commonly used to describe and interpret the shared patterns of values, behaviours, and beliefs of a culture-sharing group (Creswell, 2007), this study does not necessarily focus on the behaviour and culture in the sense of individuals' or groups' actions in their daily lives, but rather focuses on states' behaviour (in terms of policy) on certain issues. In addition, ethnographic research is mostly

conducted through participant observation, whereby the researcher immerses themselves in the day-to-day lives of the people to observe and interview the group participants (Creswell, 2007). For this research, participant observation is not needed, as the unit of analysis in this research is the behaviour of a collective of states (ASEAN states) rather than individuals or groups of people. This research does not focus on the daily lives of the states, but on the policies or statements of the states regarding certain cases. In addition, participant observation of ASEAN countries is not feasible for this research. Therefore, a case study using qualitative research was considered to be the most suitable and appropriate approach to exploring the objectives and answering the questions of this research.

1.5.2 Procedures for Conducting a Case Study

Creswell (2007) proposed five important steps for conducting case study research: (i) defining the reasons for choosing to carry out the case study; (ii) case or cases selection; (iii) data collection; (iv) data analysis; (v) data interpretation. Adopting these steps, the design for this study is explained below. A case study approach is chosen because this thesis seeks to obtain an in-depth understanding of ASEAN's interpretation of R2P through analysis of the states' reaction to the issue of the violence against Rohingya in Myanmar and the war on drugs in the Philippines.

1.5.2.1 Data Collection

Generally, the data sources in this research are document-based and field research-based. The document-based data is primarily official statements and documents by the ASEAN and its member states relating to R2P principles, human protection issues and the two cases of atrocity crimes. International reports from the UN and international organisations, especially those human rights and R2P networks related to the topic, were also used. Some reports from the UNHCR, the OHCHR, Amnesty International, Human Rights Watch, the Global Centre for R2P (GCR2P) and the Asia Pacific Centre for R2P (APCR2P) are also used for this research. In addition, sources from newspapers in relation to ASEAN and the case of Rohingya and the war on drugs were used. There were no significant difficulties in

accessing the data, as most of the statements and documents are available on the related websites.

Moreover, this research used field research-based data that was collected from interviews. Interviews are very important in qualitative research; they enable researcher to gain in-depth information about the views and perspectives of the interviewees (Bouma and Atkinson, 1996). Elite interviews with a semi-structured model have been used in this research (Bryman, 2004). Elite interviews are very common as they make for a more focused conversation on the research topic, through the list of prepared questions. At the same time, this model 'provides flexibility to ask further the questions and obtain more answers from respondents' (Bryman, 2004: 113). In the interviews, questions that are not included in the list can be prompted by interviewees' responses. In other words, the interviewer could explore further information from the interviewees that may be crucial to the research. Elite interviews were necessary in order to gain information about how the ASEAN and its member states understand the problem of Rohingya and the Philippines' war on drugs, define and understand R2P principles, human protection, and the ASEAN's principles in the context of the region. In addition, the interviews were crucial to gaining greater insight and broader perspectives to look the dynamics of diffusion related to R2P in Southeast Asia. The interviews were conducted for around one hour each to be able to get in-depth and varied informations. Most of the interviews were tape-recorded, while notes were also taken during all interviews.

Elite interviews, for this study, are divided into two categories: state and non-state participants. The notion of elite 'not only depends on the social and political status of the individual(s), but also depends on their access to related information that can help to answer research questions' (Manheim et al., 2008: 372-73). For the state-based participants, interviews were conducted with ASEAN representatives from Southeast Asian countries, including recent and former ambassadors of the permanent mission office, as well as the related ASEAN bodies and commissions, such as the ASEAN Intergovernmental Commission on Human Rights (AICHR), ASEAN Institute for Peace and Reconciliation (AIPR), and ASEAN Commission on Women

and Children (ACWC). Meanwhile, the non-state participants consisted of experts and organisations who are related to or involved with the R2P mainstreaming project in Southeast Asia, such as representatives of the Centre for Strategic and International Studies (CSIS) in Indonesia, the Cambodian Institute for Cooperation and Peace (CICP) as the partner of the APCR2P in Southeast Asia, Human Rights Working Group (HRWG) and other organisations.

The fieldwork was started by contacting the potential participants in Southeast Asia. Emails were sent to the participants, in which I introduced myself, requested interviews and explained the purpose and procedure of the interview. The necessary documents, such as information sheets and consent forms were sent along with the email. Data collection in the fieldwork was conducted in two phases. In the first term, twenty interviews were carried out in around three months, from the middle of October 2016 to early January 2017. Most of the interviews were conducted face to face. Only a few interviews were carried out through Skype voice calls. The face to face interviews were carried out in Indonesia and Singapore. Indonesia was chosen as the primary site of the fieldwork because all Southeast Asian countries with representatives to the ASEAN have their permanent mission office in Jakarta (the capital city of Indonesia). Interviews were also conducted in Singapore during the Conference on R2P, which ran from 7-8 November 2016 and was hosted by the APCR2P and Rajaratnam School of International Studies (RSIS). Some participants were successfully interviewed during the conference and some others were interviewed by Skype.

In the second round, six interviews were carried out between February and April 2018. In this second phase of interviews, some participants were previous interviewees and others were new participants. Here, all the interviews were conducted through Skype and WhatsApp calls and texts. Interviewing the participants more than once was intended to clarify their previous comments, update the more recent situation, and confirm or challenge the interviewees' arguments on certain issues. During the interviews, all the conversations were tape-recorded (by consent of the

interviewees) and notes were also taken to highlight any keywords and important information from the interviews.

The participants were from five Southeast Asian countries: Cambodia, Indonesia, Malaysia, Thailand, and Singapore. Attempts to interview representatives of other ASEAN countries, such as the Philippines, Myanmar, Vietnam, Brunei Darussalam, and Laos were unsuccessful. Some of the countries responsed to the interview request email, but there was no follow-up afterwards, and some made no response to the interview request email. The email was sent two or three times during the fieldwork, as a reminder, but still received no response. This situation can be explained by the fact that some ASEAN countries are still reluctant to discuss human rights and human protection issues. The topic of this research is probably deemed as sensitive and controversial for the states. As the result, those states' representatives to the ASEAN and their ministries of foreign affairs tend to hesitate to have conversations about R2P and human protection issues in the region.

1.5.2.2 Data Analysis

As has already been mentioned, this research uses relevant information from interviews with the elite (state and non-state) of the ASEAN region. The interviews were designed to obtain the views of ASEAN stakeholders regarding the cases of Rohingya and war on drugs in the light of the ASEAN Way and R2P principle. The interview questions were primarily developed from the literature review on R2P and ASEAN, and research objectives of this thesis. To obtain rich and in-depth information, several types of question were asked (Kvale, 1996), including: introducing questions, follow-up questions, probing questions, specifying questions, and interpreting questions. The participant were primarily asked what, why and how questions to obtain information and explanations related to the perspectives and responses of the relevant countries to the the two empirical cases, the ASEAN Way and the R2P principle. For example, introducing questions were asked such as: 'Can you tell me how your country sees the issues of Rohingya and war on drugs?', 'What is the response of ASEAN to the problems?', and 'Why does your country seem reluctant to accept R2P in

ASEAN, but not in the UN?'. Follow-up and probing questions were also asked in order to obtain more detailed information and explanations, such as, 'Is it the reason why your country and other ASEAN countries tend to use a soft approach to deal with the problems?', 'What kind of attitude does the ASEAN have to the issues?' or 'Does it mean R2P is considered unimportant or unnecessary by the ASEAN?'.

As has already been mentioned, all data from interviews was tape-recorded. Most of the interviews were done in English and a few of the interviews were carried out in Indonesian language (*Bahasa Indonesia*). After the fieldwork was completed, all the data were organised in four stages: data preparation, familiarisation, coding and the process of analysis (Creswell and Creswell, 2018). The analysis process was started by preparing the data. The data preparation included the process of transcribing all the interviews, which were written in English.

After the transcriptions were finished, the next steps were read and examine the data carefully, listening to the recorded interviews to understand the general sense and overall meaning of the data. This was then followed by the process of coding the data. The coding process was carried out by finding keywords based on the questions and objectives of this research, which was done manually. The process of coding was followed by the development of themes and identifying the patterns and interrelations among them. In this process, interpretation of the themes and their meaning in the context of this research has been conducted. The interpretation involved summarising the overall findings, comparing the findings to the literature, and discussing the personal argument of the research (Creswell and Creswell, 2018). An *embedded analysis* (Yin, 2003; Creswell, 2007) of specific aspects of the empirical cases was conducted, which was mainly focused on the way the ASEAN and its member states interpret and respond to the issues. In conjuction with the data analysis, interpretation of the data was conducted in order to learn a broader lesson from the cases regarding the diffusion and implementation of R2P in the ASEAN region.

1.6 Ethical Consideration

Research ethics is crucial as part of data collection in the field. It relates to several important points, including: the issue of informed consent; confidentiality and anonymity; risk of harm and researcher safety. Ethical approval, including the fieldwork risk assessment, was done before data collection. As briefly mentioned in the previous section, all participants were supplied with a brief explanation of the research and consent form by email. Before the interviews, the consent form was also given to interviewees to be signed. Signed consent forms ensured that the participants had agreed to be interviewed as part of the research. In the form, it stated that participant involvement in the interview was voluntary and they had the right to refuse or withdraw from the research. The consent form mentioned that all information in the interview would be kept strictly confidential. The form also informed them that the information in the interview might be quoted for the purpose of this research and other research outputs, such as publications, but would be fully anonymised to ensure their right to privacy and the respect of the participants.

1.7 Contributions of the Research

This section presents the contributions of this research that includes the primary and additional contributions. The primary contribution of this research is related to the existing debate on the extent to which R2P is being accepted or internalised in the ASEAN context. The additional contribution of this research is related to the debate in the norm literature especially with regard to norm contestation.

In the last decade, there have been notable debates over the extent to which R2P is being accepted and internalised at the ASEAN level; those who argue that ASEAN is preparing, albeit slowly, to localise R2P in ASEAN, and those who are sceptical regarding the diffusion of R2P in the region (Bellamy and Beeson, 2010; Bellamy and Drummond, 2011; Capie, 2012; Sukma, 2012; Petcharamesree, 2016; Morada 2016). Some studies have argued that the promotion of R2P in the region indicates significant progress (Bellamy and Beeson, 2010; Bellamy and Drummond, 2011; Kraft, 2012;

Morada, 2016). Bellamy and Beeson (2010) argued that despite Southeast Asia as a whole being generally lukewarm about R2P – due to the countries' lack of capacity to implement policy effectively – there is significant evidence that several states in the region have begun to embrace it. The arguments have relied on two case studies including the experience of ASEAN in response to the humanitarian crisis in Myanmar in the wake of Cyclone Nargis, and the voiced support of most ASEAN countries to R2P in the UN forum (Bellamy and Beeson, 2010; Bellamy and Drummond, 2011). From these two cases, Bellamy and Beeson (2010) argued that most countries in the region expressed their acceptance of R2P, as 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.

Meanwhile, some other scholars emphasise that there is no adequate evidence to claim that ASEAN and its member states are preparing to accept and incorporate R2P into the regional arrangements (Capie, 2012; Sukma, 2012; Tan, 2011). Capie (2012) has argued, the promotion of R2P in the ASEAN context is largely advocated by outsiders, especially the APCR2P-led networks, rather than local actors. Some argue that ASEAN still needs to make an enormous effort and shift fundamentally in the area of human protection (Kraisoraphong, 2012; Alexandra, 2012; Petcharamesree; 2016). The existing ASEAN arrangement such as 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. Specifically, the APSC was formulated without any direct or implicit reference to the R2P (Sukma, 2012: 138-9).

What is missing from this debate is a more nuanced analysis of norm contestation and a more rich empirical analysis of cases relevant to R2P. This research provides both of these things. The contribution of this thesis – in aligning itself with this well-established body of literature – lies in the two under-researched case studies; Rohingya and the war on drugs whereby the elite interviews with the region's stakeholders were conducted to obtain rich and in-depth detail information to explain the diffusion of R2P in the region.

From the analysis of the two cases, in a broader sense, this research attempts to understand the dynamics and complexities of norm diffusion, implementation and contestation especially in the context of regionalism.

This research suggests that to understand the diffusion (and contestation) of R2P in Southeast Asia, it is important to examine ASEAN's understanding and behaviour in the context of the timely empirical R2P-relevant cases in the region; the plight of the Rohingya and the extrajudicial killings committed as part of the war on drugs in the Philippines, not the case of natural disaster such as Cyclone Nargis (See Chapters 4 and 5 for detailed explanations). Along with an explanation of the two cases, it is also crucial to examine the way ASEAN countries interpret the R2P principle in their regional context, rather than necessarily in the context of the UN, to understand the extent to which R2P is being accepted in ASEAN (this discussion is in Chapter 6). At this point, this research emphasises that the promotion and implementation of R2P in the region remains problematic and tends to be rejected, rather than accepted, by the countries. It implies that the commitment of ASEAN and its member states to human protection and R2P principles in the context of the region is still weak. Therefore, this research reinforces the sceptical and resistance views on R2P promotion in the region, by providing a more comprehensive explanation through the examination of ASEAN's responses to all atrocity crimes in the region (as the most relevant cases to examine ASEAN's understanding to R2P principle) and the states' interpretation of R2P in their local context of ASEAN to understand both the extent to which the R2P principle is being accepted and the contestation of norms in the norm's implementation process.

In conjunction with the primary contribution, the additional contribution of this research is related to the debates in IR norm literature with regard to norm contestation and the dynamic responses of states to international norms. This research draws upon the scholarship on norms within the framework of the 'contested nature of norms'; it re-emphasises the significant role of agency, especially local actors and regional governance, in the dynamics of norm diffusion (Wiener, 2014; Acharya, 2011 and 2018). It shows the significance of three sets of structures (namely: ideational, institutional and

material) that influence the process of norm implementation and the construction of states' behaviour (Betts and Orchard, 2014).

This research implies a complement to that on the types of norm contestation and the robustness of norms (Deitelhoff and Zimmerman, 2018 and 2019; Sandholtz, 2019). In the existing literature, some argue that if contestation concerns the application issues surrounding norms (applicatory contestation), it – under specific circumstances – can lead to a strengthening effect of the norms (indicating the high robustness of the norms). Meanwhile, contestation that questions the validity of the norms (justificatory contestation) is likely to weaken them (indicating the low robustness of the norms) (Deitelhoff and Zimmerman, 2019; Welsh, 2019). In complementing the existing literature, this research suggests that despite the possibility that applicatory contestation may, under specific circumstances, strengthen international norms, this type of contestation may also weakened the norms – or to a lesser extent constrain rather than facilitate norm diffusion, if a state or collective of states (as local actors) engage in the applicatory contestation in a form of resistance rather than critical engagement.

In reference to the question of the extent to which R2P has been accepted in ASEAN context, despite the contestation of R2P in ASEAN having occurred in the application aspect of the principle (the states do not refuse the validity of R2P to protect people from mass atrocities), the states tend to refuse the diffusion of R2P through a subsidiary behaviour rather than show an actual effort to accept or localise R2P. As a directive norm, R2P does not guide the perspective and action of ASEAN and the member states in relation to atrocity crimes. As indicated in Chapters 4 and 5 and discussed in Chapter 6, ASEAN countries tend to reject the promotion and the use of R2P in the region not because the countries reject the basic norm of human protection, but because of the application issues of the principle.

1.8 Thesis Structure

Chapter Two critically explains and examines the existing literature on norms in IR theories. It focuses on the developments and debates in the norms literature, and particularly within the constructivist approach to norms. The

explanation of a constructivist approach to norms is vital to understanding the conceptual framework that is used in this research. The theoretical framework provides an understanding for the dynamic behaviour of states and the contestation of norms, especially at the implementation level. With regard to the debate, the chapter suggests a need to focus on the role of regional governance and local actors in understanding international norms in their local environment. At this point, this chapter emphasises on several concepts on norm literatures such as norm implementation, contestation, subsidiarity and norm robustness that are applied in explaining R2P in the context of ASEAN.

Chapter Three provides a broader context to the topic of this research and explains the historical background and development of ASEAN and R2P. This chapter also discusses several key concepts, including state sovereignty, human rights and human protection within the context of the ASEAN and R2P. It argues that both contain different conceptual ideas, objectives and mechanisms. ASEAN was formed on the basis of state sovereignty and a non-interference principle. In ASEAN, the notion of state sovereignty is largely defined alongside the understanding of authority. It has been claimed to be at the heart of the ASEAN's success in creating peace, order and stability. Meanwhile, the creation of R2P reflected a political desire to fill a number of human rights and human protection gaps, in particular related to atrocities. If the primary aim of ASEAN is regional stability and order, R2P was created for the sake of protecting humans from mass atrocities.

Chapter Four explains the response of ASEAN and its member states to the crisis of Rohingya. It explains that the case constitutes an atrocity crime.. The violence against the people has been committed in a systematic and widespread manner through structural and direct violence. The ASEAN states, however, have refused to label the Rohingya crisis as an atrocity crime. Thus the states resist what they see as 'international interference', especially the use of R2P to respond to the problem. Instead, the Rohingya crisis is explained as one created by poverty and counter insurgency in Rakhine State. Above all, the crisis is understood to be a domestic problem

and simply part of Myanmar's national affairs. ASEAN principles and approaches have been used to address the situation and this reaction – as it demonstrates political sensitivities and attitudes toward human rights and state sovereignty – provides an instructive case study for understanding how global norms are contested or resisted in the region.

Chapter Five examines the response of the ASEAN and its member states to President Duterte's war on drugs in the Philippines. Similar to the analysis of Rohingya, this case serves to form a further in-depth empirical chapter of this thesis, as a means of understanding how the ASEAN and its member states respond to atrocity crimes in the region, and the implications of this for regional norms relating to human rights. It argues that even though the extrajudicial killings of Duterte's war on drugs constitute the actual risk factor of atrocity crimes – or an atrocity crime in themselves – the Philippines authorities deny that they are a crime. The government has used a moral and legal narrative to justify the war on drugs. The ASEAN and its member states maintain their silence with regard to policy related to the war on drugs. ASEAN principles have been used to frame the problem in a similar fashion to their framing of the case of Rohingya. The states argue that regardless of the war on drugs' potential impacts, it is a domestic problem and part of the internal affairs of the country. Furthermore, the chapter argues that the silent response of ASEAN states to the war on drugs reflects two factors: the contestation of norms within the ASEAN, between ASEAN principles, regional drugs controls, and the emergence of the ASEAN Community Vision; the common interest of the countries in dealing with illegal drug trafficking and use in their countries and the region.

Chapter Six examines the ASEAN countries' interpretation of R2P in their regional context in order to understand the extent to which R2P has been accepted, contested or resisted within the region. Through an analysis of the states' understanding of R2P and the way the countries contest the principle in practice (as explained in Chapters 4 and 5), the chapter deals with the broader context of norm diffusion and contestation. Within the broader context of norm literatures. It also examines the similarities and differences between ASEAN's behaviour regarding the two selected cases. It focuses on

the factors that influence the perspective and behaviour of ASEAN countries in both cases. It reveals that not only ideational and institutional factors, such as ideas, principles and the culture and characteristics of the organisation, but also the interests of the states, matter when influencing the states in defining and translating norms.

Chapter Seven is the conclusion of this thesis. It re-emphasises the key arguments based on the findings of the thesis. The arguments include the need for a distinction between the nature and process of norm institutionalisation and implementation, the significant role of states and regional governance in norm diffusion, and the effect of norm contestation on international norms. The implications of this thesis for further research are also explained. In the last section of this chapter, the dissemination plans of this research are described.

Chapter 2 Literature Review and Conceptual Framework

2.1 Introduction

This chapter discusses the literature related to norms, culture and identity in the study of international relations (IR). It draws on literature related to constructivism within IR which focuses predominantly on the role of institutionalised norms and cultures in world politics (Lapid, 1996; Jepperson et al, 1996; Wendt, 1999; Reus-Smit, 2018). Specifically, it discusses literature that explains and examines the emergence, diffusion and implementation of norms (Axelrod, 1986; Finnemore and Sikkink, 1998; Risse-Kappen and Sikkink, 1999; Schimmelfennig, 2000; Checkel, 1997; Acharya, 2004). It also discusses the contestation of norms in the dynamic process of norm diffusion and implementation (Wiener, 2004; Betts and Orchard, 2014; Acharya, 2011 and 2013; Bloomfield, 2016). A discussion and examination of the various approaches to norms provides the conceptual framework for this research. This discussion of the IR norms literature provides an important theoretical foundation for assessing the diffusion – or contestation – of ideas such as R2P especially in the ASEAN region. It also identifies how the research in this thesis engages with, and contributes to, the IR literature.

This chapter is organised as follows. Section 2.2 explains the role of ideational structure, including ideas and norms in the constitution of social realities in international politics and the changing nature of international systems. Section 2.3 focuses on identities and the construction of interests and actions. It explains the origins of identities and their role in world politics. Section 2.4 discusses the subsequent development of norms and the debate surrounding them. Several concepts and approaches to norms are explained in this section. Regarding this, section 2.5 outlines the core arguments and limitations of the existing literature and thus offers an alternative analytical tool, in complementary with the existing literature, to explain the implementation of norms and the reactions of state to norms (such as

acceptance, rejection and localisation) in order to address the questions of this study. The last section of this chapter is the conclusion.

Constructivism emerged as a theoretical project to fill the gaps in the study of IR that have been ignored by neorealists and neoliberals, including the content and sources of state interests and the social fabric of world politics (Checkel, 1998). Since its emergence in the study of IR, Finnemore and Sikkink (2001) have noted that a wide range of research and studies has been developed that applies the core assumptions of constructivism. They include: the theories of agency and culture (Lapid 1996; Bukovansky 2001), security communities (Adler and Barnett, 1998; Acharya, 2009), theories about organisational behaviour (Finnemore, 1996), social movement theory (Keck and Sikkink, 1998; Risse-Kappen and Sikkink, 1999), state's identities and regionalism (Checkel, 2001; Acharya, 2000 and 2005), and concepts about norm diffusion and contestation (Finnemore and Sikkink, 1998; Risse-Kappen and Sikkink, 1999; Prantl and Nakano, 2011; Acharya, 2004 and 2011; Wiener, 2009; 2014; 2018).

By applying a sociological approach, constructivists put the role of ideas, cultures and identities in first place when seeking to understand world politics (Onuf, 1989; Katzenstein, 1996; Lapid and Kratochwil (eds.), 1996; Wendt, 1999). Constructivism is not a single, unified school or theory – with notable division between conventional and critical constructivists (Hopf, 1998; Wiener, 2004) – however, they share common ground with regard to two concepts: the social construction of meaning and social reality, and the constitutive role of norms and culture in constituting identities (Wendt, 1999; Finnemore, 1996). These understandings imply the mutual constitution of agents and structures (Wendt, 1987).

World politics, from a constructivist perspective, is socially constructed by actors (primarily states). Wendt emphasises that material factors in world politics, such as economic and military power, matter in the sense that they depend on ideas (1999: Ch. 3). Ideas and knowledge in constructivism strongly correlate to culture. Chris Reus-Smit (2018) argues that culture (and its diversity) is given in human lives and thus it is deeply embedded in international political life. According to Wendt, culture is defined as a 'socially

shared idea whereby the idea, knowledge, and norm are both common and connected between individuals' (Wendt, 1999: 141). The culture of a society can be identified through its sharing of ideas, knowledge, language and practices among the community members. At this point, international politics and its properties, such as sovereignty, conflict, peace, and anarchy, acquire its meaning through the structure of the shared knowledge in which they are embedded (Wendt, 1995; Adler, 2002).

In recognition of the prominent role of ideas and norms in world politics, research on norms has grown intensively and extensively. Most of the research follows the constructivist approach to norm, some applies rational choice and regime theory to help understand norms in international politics (Schimmelfennig, 2000; Zürn, 2000). Scholars, both constructivist and rationalist, attempt to explain: how norms are created, diffused, and internalised in the domestic system of a state, and how they affect a state's preferences (Finnemore and Sikkink, 1998; Risse-Kappen and Sikkink, 1999; Checkel, 1997); why states comply (or do not comply) with international norms (Checkel, 2001); why and how international norms are contested and resisted (Acharya, 2004 and 2011; Bloomfield, 2016; Wiener, 2004 and 2009). In doing so, various international norms have been used for case studies. They include the norms of human rights (Keck and Sikkink, 1999; Risse-Kappen and Sikkink, 1999), gender equality (Krook and True, 2012), whaling bans (Deitelhoff and Zimmerman, 2018; Bloomfield, 2016) and the principle of R2P (Prantl and Nakano, 2011; Acharya, 2013; Wiener, 2014; Ralph and Souter, 2015; Stefan, 2017; Hehir, 2019) to name but a few. Some scholars have studied norms in the context of regional integration (Checkel, 2001; Risse-Kappen, 2009), and the reinterpretation of international norms in a regional context (Acharya, 2004).

2.2 The Construction of Meaning and Social Realities

Constructivism appeared in the study of IR in response to the 'inadequate explanation of rationalism[3] to explain the systemic transformation of global order after the Cold War' (Reus-Smit, 2009: 219-20). The collapse of the Soviet Union and the rise of non-violent revolutions that replaced Eastern European communist governments in 1989 have transformed international system. It argues that sets of ideas and norms were central to that transformation. Koslowski and Kratochwil (1994) argued that ideas such as Perestroika and political reform, rather than simply the great power conflict between the United States and Soviet Union, underpinned the fundamental changes in the international system. Constructivists emphasised that normative change in world politics does not necessarily depend on the distribution of brute material forces such as economic and military resources, but on a system of shared ideas, beliefs and values that have the structural power to influence actors' social and political actions (Reus-Smit, 2009).

Adler explains constructivism as a social theory about 'the role of knowledge (*idea*) and knowledgeable agents in the constitution of social reality' (Adler, 2002: 96). He goes on to say that constructivism could be understood as 'a theoretical and empirical perspective that brings identities and norms to understand the constitution of national interest, institutionalisation and international governance, and the social construction of new territorial and non-territorial transnational regions *including regional integration and regional (politics and economy) organisation*' [emphasis added] (Adler, 2002: 96). Conceptually, constructivism is about the construction of meaning (knowledge) and the construction of social reality (Wendt 1992; Guzzini, 2000).

The structure of international politics, from a constructivist view, is shaped primarily by knowledge and ideas rather than simply by material resources such as economic and military power (Wendt, 1995). It is believed that

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[3] In the field of IR, especially in the American mainstream, rationalism is commonly associated with neorealists and neoliberals, who emphasise individualism, rationality of state and material structure (Snidal, 2002). See Waltz (1979), Keohane (1984 and 1986), and Baldwin (1993) for further reading on neorealism and neoliberalism.

‘institutionalised knowledge and ideas are the source of international practice’ (Adler, 2002: 102). As Wendt tells us while neorealists believe structural changes and interaction of units in international politics are caused by changes in the distribution of material capabilities among great powers, constructivists emphasise that structural changes are in line with the changing of norms, ideas, and rules (Wendt, 1999).

It is important to highlight that although most constructivists emphasise significantly on ideas and norms in their analyses, it does not mean they neglect the existence of material resources in international politics. As Wendt emphasises, the social construction of international politics are related to three aspects: ‘shared knowledge, material resources, and practice’ (Wendt, 1995: 73-74). From the view of neorealists and neoliberals, material forces are the properties of a state and they are an important element of international politics. Yet constructivists argue that material forces only have meaning because of the construction of agents.

Constructivists view the world as ‘social facts’ (Searle, 1996; Wendt, 1995) – that is socially and intersubjectively constructed – and in turn, it has the structural power to shape the identities, interests and behaviour of actors that are embedded in that structure. For constructivists, social facts in international politics, such as anarchy, military power, state sovereignty, political independence, non-interference, human rights and other international concepts, are examples of social constructions. Those social facts contain particular ideas. Constructivists suggest that to understand the meaning of social facts, they must be ‘contextualised in their social environment context’ (Hopf, 1998: 182).

On the one hand, social facts exist and have impact only because actors collectively believe that they do exist, then act accordingly (Finnemore and Sikkink, 2001; Schmitz and Sikkink, 2002). The existence of social facts depends on the meaning that is intersubjectively given to them. It seems that ideas are ‘all the way down’ in international politics (Wendt, 1995: 74). On the other hand, an international actor (primarily a state) is not an entirely autonomous agent. States do not exist independently from their social environments and collective systems of social culture (Risse-Kappen, 2009).

States' interests and actions are constructed by international structures or environments, which are defined as the distribution of institutionalised ideas and norms. Agents and structures are not simply co-determined, but have a connection that goes deeper to the level of a mutual constitution (Wendt, 1999: Ch. 4; Adler 1997; Risse-Kappen, 2009).

The intersubjective construction of meaning and social realities implies that differences in understanding the international realm include the interpretation of actors to international norms such as sovereignty, human rights, and other international concepts are possible since they are claimed as intersubjectively constructed (Hopf, 1998: 180). The interpretation of social facts may differ amongst actors. Actors (with different collective identities and shared knowledges) may regard and define social facts differently. Therefore, social facts in world politics may not have a single meaning because they depend on interpretation and the relation of the state to international realms.

As an illustration, understandings of the idea of state sovereignty is changing over time. In the early modern international era, sovereignty was not the ideal form for all political entities. In this era, European empires ignored local sovereignty because they controlled the land in their colonies. This was reflected in the fact that the three principal congresses were convened in Westphalia in 1648, Utrecht in 1713, and Vienna in 1815. Non-European states were not invited. Even the great congress of Vienna, the climax of the growth of European empires, was attended only by European powers (Watson, 1984). At that time, sovereignty was acceptable only for the European states. The European states considered non-European political systems as 'lacking legitimate or credible claims to sovereignty and they were consequently subjected to unequal treaties and other discriminatory measures' (Jackson, 1999: 442). Bull noted that even for great civilisations such as China, Egypt, and Persia, which existed thousands of years before the concept of nation state came into being in Europe, 'achieved rights to full independence only when they came to pass a test devised by nineteenth century Europeans' (1984: 123). In more recent years, there have been emerging efforts to promote and mainstream the alternative meaning of

sovereignty not necessarily as a right but rather as responsibility (Deng *et al*, 1996; ICISS Report, 2001).

In a similar sense, diversity of understanding with regard to the universal principle of human rights exists in international politics. In the Asia-Africa Conference in 1955, also known as Bandung Conference, the principle of human rights was interpreted not as the protection of individuals basic rights, but mostly as the protection of nations from external interference. Despite that, there was a clear commitment to human rights among the delegates at the conference (most of them were the newly independent states), the principle of human rights was defined through its attachment to the narration of state sovereignty, political independence, anti-colonialism and self-determination (Burke, 2006; Tan and Acharya (eds.), 2008). To some extent, this understanding of human rights remains part of the context of the ASEAN today (there is further discussion of this in Chapter 3). To this point, Hurrel adds that 'diversity in understanding 'the world' is inevitable because of plurality of values' (Hurrel, 2002: 149). With regard to this, Hopf warns that the relativity of interpretation to social facts will be bounded and disciplined by the regular social practice of states in the international environment. Social practice among states is likely to (re)construct the intersubjective meaning of the social facts (Hopf, 1998).

2.3 Norms and the Construction of Identities and Interests

Constructivists regard the international environment as a *social realm* that 'comprises autonomous and ideational elements, most often norms, which exist independently of states' (Hobson, 2000: 148). As mentioned in section 2.2, constructivists believe in the prominent role of ideational factors in directing state interests and actions and in transformating international systems. Norms are seen as having the constitutive power or structural characteristics necessary to influence not only social and political actions, but also shape the social identities of a state (Reus-Smit, 2009). In turn, identities construct the state's interests and can affect the interstate normative structures, such as regimes, security communities, or regional organisation (Jepperson et al, 1996). Katzenstein argues that norms can have dual impacts on a state: *regulative and constitutive*.

> *In some situations norms operate like rules that define the identity of an actor (constitutive effect) that specify what actions will cause relevant others to recognize a particular identity. In other situations, norms operate as standards that specify the proper enactment of an already defined identity (regulative effect). Norms thus either define or constitute identities or prescribe or regulate behaviour, or they do both (1996: 5).*

Consequently, as Finnemore writes, 'norms create new interests, values for actors, and the actions ... not by constraining states with a given set of preferences, but by changing their preferences' (1996: 5-6).

It is important to underline that the argument surrounding the formation of states' interests shows that constructivists do not deny that interest is embedded in every state action. Hopf argues that there is no 'absence of interest' in a state's action because it is inherently constituted by identities. Interests are embedded in a state's actions since the action of states is guided by their identities, rather than formed by instrumental rationality. With regard to this point, constructivists emphasise that a state has potential choices of action than necessarily pursuing self material interests (Hopf, 1998). In other words, a state's interests may include moral and value-based interests, and not simply those which are material, such as economic interests. In her study of the apartheid regime in South Africa, Audie Klotz (1995) argues that the adoption of sanctions against the apartheid regime by a number of states showed how the racial equality norm impacted upon states' interests and actions. The norm led the states to redefine their interests and actions by supporting the sanctions placed upon the apartheid regime, despite the states possibly having strategic and pragmatic interests to the apartheid regime (Checkel, 1998). This study also showed that norm's effect is constitutive to state's interests and actions, and at the same time it shows that state could prioritise (guided by the norm) humanitarian or moral issues, rather than material interests in their actions.

Identities are one of the most central themes in constructivism as they are claimed to play a constitutive role in constructing a state's interests and actions (Wendt, 1994; Jepperson, et al, 1996). Identity strongly relates to the culture of actors. Lapid (1996: 6-9) argued, 'culture and state's identity have a complex linkage that they cannot be collapsed into each other'. Wendt

(1994) identifies identities into two forms: *corporate* and *social*. Simply, the former type of identity is the construction of actors about themselves, while the latter refers to the sets of meaning that an actor attributes to them while taking the perspective of others (Wendt, 1994). If the corporate identity of a state is assumed to be constructed from the historical, cultural, political and social context of the state (Hopf, 1998), social identities are instersubjectively formed through social practices of states in particular structures such as the international environment (Wendt, 1994: Hopf, 1998). Here, a state's identity is regarded as an interlinked and interconnected version of the corporate and social identities, rather than their being strictly divided. As Acharya emphasises, 'social identities of state are not entirely divorced from cultural and historical ties, but […] reinforced by them' (2017: 26). The discussion of identities in this chapter and generally in this research refers to the understanding that states' identities are a social construct that originates from the historical and cultural base of 'the self reflection' and the intersubjective construction of states in international affairs.

Constructivists emphasise that identities matter in world politics because they hold the function of telling international actors 'who they are and who the others are' (Wendt, 1994: 385-386; Hopf, 1998: 175). In a practical sense, identities could help a state comprehend the other state, including their interests. As Wendt argues, 'identities are the basis of interests' (1992: 398). In this sense, it does not mean that all the interests and actions of a state can always be predicted through certain calculations as part of a rigid understanding. Instead, identities inform sets of interests or preferences of state in particular domains or issue-areas (Hopf: 1998). Thus, even though a state may hold a wide range of interests and evolve dynamically during the social interaction of states in international politics, the states may realise the tendency of the interests of one another. To some extent, states in the same social-political environment have more possibility of understanding each other, especially in fulfilling their common expectations, because in a socially structured community, states' interactions are not necessarily strategic and instrumental, but social relationships that are built on the basis of trust, friendship and complementarity (Acharya, 2017).

The function of identities in constructing 'the self' and 'the others' also guides a state in defining what they call 'friend', 'insider' or 'community members' *vis a vis* 'enemy' or 'outsider' (Wendt, 1992). This categorisation may help to explain why state(s) comprehend particular social facts of international politics, such as the anarchy of international structures, the notion of state sovereignty, and non-interference, differently between different actors. Identity-based perceptions influence a state in how they treat or respond to certain issues, cases or actions in international politics, based on the categorisation made by the state, as mentioned above. Wendt writes that a 'state acts differently toward enemies than they do toward friends because enemies are threatening and friends are not' (1992: 397). Onuf points out that; 'as friends, states are partners in friendship while as enemies states are partners in enmity' (2009: 8).

As an example, when Cyclone Nargis struck Myanmar in 2005, the military regime blocked any international relief and foreign aid workers from providing supplies and from gaining access to the impacted regions of the country. In the face of increasing international criticism and pressure from the international community, Myanmar faced a dilemma. As a result of great international pressures and a series of communications and negotiations with the ASEAN, Myanmar's government agreed to open their doors to international aid and relief, mediated and coordinated by the ASEAN in the form of the ASEAN Humanitarian Task Force for the Victims of Cyclone Nargis (ASEAN, 'A Humanitarian Call', 2010). Generally, it showed the preference of Mynamar for an ASEAN-led response and for their assistance rather than fully open and direct assistance from wider international actors, including the UN. The ASEAN emphasised that their collective response to the aftermath of Nargis was a mark of the region's success in building trust and confidence among the member states. Myanmar authorities believed that their ASEAN colleagues would not politicise the assistance to achieve any political objectives in the country (ASEAN, 2010).

2.4 Norm Scholarship: Socialisation and Contestation

The constructivist perspective on IR (Checkel, 1998) has encouraged the extensive and intensive development of norm scholarship. It correlates to the

study of the compliance of states with international norms (Checkel, 2001; Wiener, 2004). In explaining this, some scholars have expressed concern regarding the process of 'socialisation' that relies on the stable quality of norm and its 'logic of appropriateness' (Jepperson et al., 1996; Finnemore and Sikkink, 1998; Keck and Sikkink, 1999) and others focus on 'contestation' that relies on the 'logic of contestedness' (Wiener, 2004 and 2007; Krook and True, 2012; Acharya, 2004).

Socialisation is defined 'as a process of inducting actors into norms and rules of a given community' (Alderson, 2001; Checkel, 2005; Finnemore and Sikkink, 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' (Schimmelfennig, 2000: 111-12). This process implies the (re)construction standard of states' behaviour to international norms. It follows the 'logic of appropriateness' whereby the quality of norm is considered as stable, the validity of norm is unproblematic and the social facticity, once established, is taken as equally stable (Wiener, 2007: 51). Wiener (2004) explains this as a behaviourist approach to norms. It suggests the reshaping of preferences and behavioural change of state as an almost automatic process (Finnemore and Sikkink, 1998). The compliance of states with international norms implies the full recognition and appropriation of states' behaviour in relation to norms. This approach suggests that a contested compliance of states to norms must be solved to enable the socialisation of states with the norms. In other words, contestation is regarded as an obstacle to the socialisation process (See Section 2.4.1).

Meanwhile, the literature of norms that focuses on contestation indicates the use of a reflexive/discursive approach to norms. In this approach, contestation is not necessarily a problem or barrier for norm diffusion and implementation. Instead, contestation, or the dynamic social practices of states in their interaction with norms, could generate normative power for the norms and facilitate their diffusion and the state's compliance. Wiener emphasises that 'contestation is central and constitutive to establishing the social legitimacy of compliance processes' (2004: 218). Within this reflexive

approach, norm scholars offered several concepts and arguments in attempt to theorising how norms work in international relations (as explained further in Sections 2.4.2, 2.4.3, 2.4.4 and 2.4.5).

2.4.1 Transnational Socialisation

The scholarship on norms has emerged and developed especially among constructivists who have the aim of explaining the complex role and effect of norms in international politics. Towards the end of 1990s, the systematic study of norms emerged in the form of conceptual frameworks such as, the 'life cycle' (Finnemore and Sikkink, 1998), the 'boomerang effect' (Keck and Sikkink, 1999), and the 'spiral model' (Risse-Kappen and Sikkink, 1999). These works are often recognised as the early compliance models in norm literature that emphasised transnational socialisation (Zimmermann, 2016; Blommfield, 2016).

Finnemore and Sikkink (1998) were amongst the early generation of norm scholars that attempted to conceptualise and systematise the mechanism of how norms emerge, diffuse and socialise into a state's political system. They argued that norms develop and diffuse in three sequential stages through a life cycle pattern. The processes begin with the emergence of a new norm and end with its internalisation into the domestic political system of a state. Norms appear as a reflection of the so-called 'norm entrepreneurs' about certain events or situation on the ground. Norm entrepreneurs contribute to the building of cognitive frameworks on particular issues in order to resonate the attention and understanding of the international community on the issues (Finnemore and Sikkink, 1998).

A norm's life cycle works through a top-down mechanism that emphasises a transnational socialisation process. The spread of international norms to the wider international community is predominantly advocated by transnational actors such as great power states and international organisations. The adoption of a norm by those actors is crucial as the 'tipping point' for the norm to survive and become widespread across states and regions. It emphasises that if new norms have been adopted by great powers, many states are likely to follow in adopting them. At the end of the process, the

norms will be internalised and thus constitute state's identities, interests and behaviours (Finnemore and Sikkink, 1998: 904). The case of Ukraine's socialisation of the norm of Council of Europe has been argued to be an example of the reconstitution of the state's interest and behaviour in the norm socialisation process (Checkel, 1997).

In the study of human rights, the 'boomerang pattern' also indicates a similar transnational approach to norm socialisation (Keck and Sikkink, 1999). The determinant influence of transnational networks in norm diffusion has also been the main argument in favour of the 'spiral model' (Risse et al., 1999). It emphasises the role of transnational advocacy networks in promoting and advocating international norms into a state's domestic political system by framing certain issues to make them comprehensible for the 'targeted states or audiences' (Keck and Sikkink, 1999). Despite this model recognising the role of domestic civil society networks in raising domestic issues, it tends to downplay the significance of local actors in promoting and socialising international norms. It suggests that domestic civil society must build international networks to make the domestic issue become international agenda. In doing so, international pressure is expected to address the situation. In other words, the escalation of domestic issues to the international level facilitates the process of norm socialisation.

In the process of socialisation, states may refuse new norms and insist on their prior normative beliefs and practices. Sometimes, states may use normative ideas and principles such as state sovereignty and non-interference to obstruct the process of norm socialisation by international networks. It is suggested that transnational networks should persistently promote international norms through persuasive, pressurising and even shaming strategies. International pressure, in combination with domestic civil society networks, creates situations that facilitate the process of international norm socialisation. During this process, a state may agree with the international norms in an instrumental manner. The state will adjust their behaviour without necessarily believing in the validity of the norms. The goal of the state is not to change their identities and interests, but rather to achieve their pragmatic objectives, such as the benefits of international

legitimacy, or to avert international pressure (Schimmelfennig, 2000). Importantly, this model emphasises that at the end of the process, along with persistent international pressure, the state should begin to accept the validity of the norm, ratifying it and building institutional frameworks around it at the domestic level. As a result, it shapes a 'rule-consistent behaviour of state to the norm' (Risse-Kappen and Sikkink, 1999: 29-34).

As has been explained, there is common ground among the earlier studies of norm diffusion and socialisation. First, the literature has overstated the determinant role of transnational actors and networks in the process of norm diffusion and socialisation. While the life cycle pattern emphasises the role of powerful states and international organisations, the boomerang approach and spiral model focus on the role of transnational advocacy networks in creating pressure to socialise states according to international norms. Second, while norm diffusion is regarded as a dynamic process, the norms themselves tend to be understood as static and unchanging (Krook and True, 2012). Liese emphasises that this approach 'derive[s] the meaning of norms neither from public debate and discourse nor from the social practices of the norms, but rather from the legal discourse with reference to the text of a treaty' (Liese, 2009: 36-37). In other words, the scholars have equated the text of law with the meaning of the norms itself. Consequently, contestation of norms in the diffusion and socialisation process has been ignored and under-theorised in this approach. Third, this approach emphasises the replacement of pre-existing norms with new international norms. It implies that new norms are more legitimate or appropriate than previous ones (Finnemore and Sikkink, 1998, Risse-Kappen and Sikkink in Risse et al., 1999).

2.4.2 Norm Contestation and the Reflexive-Discursive Approach

As already mentioned, the early compliance models of norm diffusion were concerned with the convergence of international norms with local principles and practices as part of the internalisation process of a state's political system. One of the crucial gaps in this approach is the way contestation, or the dynamic reaction of state to international norms, is defined. While the behaviourist approach views contestation as a restriction upon norm

diffusion and implementation, this approach emphasises that norms, as sets of complex institutionalised ideas, are dynamic (Sandholtz, 2008; Acharya, 2004) and contested in nature (Wiener, 2004 and 2009), and thus norms are subject to contestation even after their institutionalisation. Therefore, scholars emphasise that norm studies require a more reflexive (Wiener, 2014) or discursive approach (Krook and True, 2012) to be able to understand the flexibility of norms and the complex processes of their diffusion and implementation.

The crucial difference between the behaviourist and reflexive/discursive approach (these terms are used interchangeably) to norms is that while the former approach operates with stable norms, the latter works with the assumption of norms' flexibility (Wiener, 2004). The discursive approach follows the argument 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 (Wiener, 2007). The reflexive approach to norms emphasises that a norm is always contested 'externally' by other existing norms (Acharya, 2004) and 'internally' debated within the norm itself (Krook and True, 2012). This internal and external contestation are central to shaping the origins and subsequent development of the norms (Krook and True, 2012).

Krook and True (2012) write that external contestation of norms is related to the normative international environment that consists of the number of existing norms, whereas, internal contestation refers to the competing meanings of norms. Wiener (2009) explains that the meaning of a norm is not fixed, but it is contextually 'in use' by agents. Krook and True argued that norms are mediated by agents, in the sense that they 'give meaning to the norms and compare them with the broader normative environment' (2012: 108). As a consequence, a difference of understanding regarding the meaning of a norm is expected due to the diversity of contexts and agents, even though it does not suggest that the meaning of a norm is completely relative. Agents' interpretations of norms 'are constrained by their existing fields, by their cognitive frames and meaning systems' (Krook and True,

2012: 109), and by ‘the social practices of states in the international environment’ (Hopf, 1998: 177-179).

The contestation of global norms such as the universal principles of state sovereignty, non-interference and human rights provides a good example of the contested nature of norms and thus the expected diversity of understanding there will be of the norms. For example, in the context of the ASEAN, despite the fact that the norm of human rights has been adopted into the organisation’s framework, it is largely understood and implemented according to the broader understandings of its core regional principles (Petcharamesree, 2013). The ASEAN and its member states insist on the understandings of the cultural relativism of human rights. As stated in the 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). In other words, the concept of sovereignty and human rights are accepted as valid global norms, even though the implementation of them may be diverse among different actors. At this point, despite diverse understanding of states to norms is possible, the norms itself (especially what Christian Reus-Smit called as ‘diversity regime’ such as sovereignty and non-intervention) still indicate structural power that generates governance imperatives to states (Reus-Smit, 2018).

A case study of the US re-interpretation of the Convention Against Torture could also be an example of norm contestation being possible, even over the highly institutionalised and legalised international norms (Liese, 2009; Birdsall, 2016; Schmidt and Sikkink, 2019). It shows that while the convention, according to the *legalization approach* (Abbott, et al 2000), indicates strong sense of obligation and sometimes its precision and delegation, the meaning of the norm remains contested and it is possible to re-interpret it (Liese, 2009).

With regard to the contestation of norms, scholars argue that norm contestation possesses dual effects: strengthening or weakening (Deitelhoff and Zimmerman, 2018; Wiener, 2014). For example, Badescu and Weiss

(2010) explain that R2P has been contested over misuse of the norm in several cases such as: the US and UK war in Iraq; Russia's claim to be protecting South Ossetians, and the proposal of the French Government to invoke R2P to respond to the humanitarian crisis in Burma following Cyclone Nargis. All these cases have contributed to the advancement and clarifification of the norm. The contestation constitutes steps in the direction of norm advancement (Badescu and Weiss, 2010). Welsh (2019) also argue the contestation of R2P has aided the development of intergovernmental consensus to the principle.

In contrast, in the case of whaling ban norm, contestation has weakened it (Bloomfield, 2016; Deitelhoff and Zimmerman, 2018). Panke and Petersohn (2012) have argued that international norms sometimes degenerate and disappear because of the presence of contestation on one side and the absence of sanctions from other states or international communities on the other side. Further, they emphasise that the nexus of norm characteristics and the condition of international environment contributes to the process behind the disappearance of norms and the introduction of substitutes.

With regard to the dual effect of contestation on norms, this highlights the question of which conditions lead to which of the effects. Wiener (2014) emphasises that norm type matters where contestation is concerned. Norms with a broad moral content, such as the fundamental norms of state sovereignty and human rights incur a low degree of contestation. Meanwhile, standardised procedures that contain narrow moral content will be highly contested. Organising principles, such as the emerging norm of R2P*,* that occupy the intermediary level of norms, contain a legitimacy gap whereby the normativity of the norm is negotiated and the procedure for implementing the norm is still highly contested.

To complement the argument of the norm's typology, Deitelhoff and Zimmerman (2018) argue that types of contestation matter when explaining whether they are likely to strengthen or weaken international norms. They argue that if contestation concerns the application issues surrounding norms (applicatory contestation), it – under specific circumstances – can lead to a strengthening of them (indicate the high robustness of the norms).

Meanwhile, contestation that questions the validity of the norms (justificatory contestation) is likely to weaken them (indicate the low robustness of the norms). At this point, type of contestation could influence the robustness of international norms (Sandholtz, 2019). Deitelhoff and Zimmermann (2019) explain that norm's robustness is high when norm addressees express discursive acceptance of norm's validity. Meanwhile, the robustness is low when norm normative claims are discursively rejected by most addressees and do not guide their actions.

2.4.3 Local Actors and Local Filters

Some norm scholars emphasise that norm diffusion is not only about the role of norm entrepreneurs and transnational actors that promote and advocate international norms; the oppositional role of norm anti-preneurs (Bloomfield, 2016) and local actors (Acharya, 2004 and 2011) should be taken into account to understand the dynamic process of norm diffusion and implementation. Norm diffusion is regarded as a process that can result in varied responses and outcomes including: resistance (Bloomfield, 2016), subsidiarity (Acharya, 2011), feedback (Prantl and Nakano, 2011), mimetic adoption (Katsumata, 2011), localisation (Acharya, 2004), and norm translation (Zimmerman, 2016).

Acharya's concept of norm localisation (2004) is one of the important works to address contestation and the role of local actors in norm diffusion. In norm localisation, state(s), as local actors, attempt to reconstruct foreign norms to ensure their compatibility with their prior cognitive identities. It implies that local actors neither totally refuse new foreign norms nor accept the whole package. Instead, localisation is a process of states creating linkage and congruence between the existing beliefs and practices and the new foreign norms through framing, grafting, pruning and cultural selection (Acharya, 2004). In this process, the state will select what is good for them and the aspects of the foreign norms that may be accommodated and connected with the pre-existing norms and institutions.

Some argue that localising foreign norms by framing and grafting is similar to resistance (Capie, 2008). Bloomfield (2016) categorises localisation as the

reaction of creative resisters to international norms. Zimmermann (2016) explains that the process of localising and translating norms into domestic political systems does not necessarily meet with consistent levels of resistance, but does include reinterpretation and reshaping, as well as full adoption of international norms. It explains that a state sits in a position of resistance to international norms if the validity of the norms is contested and there is no adoption into the political and law system of the country. Consequently, there is no practical implementation of the norms. In contrast, the full adoption of international norms in a state is described as occurring when the local understanding of the international norms is in line with the interpretation of the international community and the norms are fully implemented in the state's local or regional environment (Zimmerman, 2016).

In studying the development of R2P and its diffusion in East Asia, especially China and Japan, Prantl and Nakano (2011) attempt to broaden the effect of norm localisation. They argue that contestation and localisation can cause feedback or self-correction for both international norms and states. The case study of R2P in the context of Japan shows that the contestation triggered 'hard feedback' (Negrón-Gonzales and Contarino, 2014) from the state in an attempt to limit its impact. Prantl and Nakano explain that Japan's anti-militarism principle post-1945 shaped the state's understanding of R2P. While Japan declared its support of R2P, the policy focuses on the effort involved in projecting Tokyo's stance on human security at the regional and global levels (Prantl and Nakano, 2011). Meanwhile, in a case study of R2P in China, the contestation and localisation of R2P (in terms of China's response to the concept of R2P in the ICISS Report) in a way that fits Chinese socialised conceptions of state sovereignty and non-intervention, and its core foreign policy principles, have softened R2P (as stated in the WSOD) and the country's position on the principle (Prantl and Nakano, 2011).

Acharya emphasises that the prospect for localisation depends on its positive impact on the legitimacy and authority of key norm-takers, the strength of prior local norms, the credibility and prestige of local agents,

indigenous cultural traits and traditions, and the scope for grafting and pruning presented by foreign norms (2004: 247-48). States adopt certain international norms is not necessarily limited to pragmatic and material interests such as economic exchange or security improvement, but also non-material incentives, such as credibility, autonomy and legitimacy (Schimmelfennig, 2000; Katsumata, 2011). Norm localisation suggests that even though local agents have their own interests in interacting with foreign norms, their preferences are not necessarily fixed but subject to discursive challenges. When the state turns to the process of localisation, they are prepared to change their views and preferences by building congruence between the foreign and local norms.

It is important to remember that norm localisation is a process of norm-congruence building between international and local norms. Acharya indicates that as part of this process, local actors often resist new foreign norms, fearing they may undermine their existing preferneces, beliefs and practices. At the same time, the process creates circumstances where local actors tend enagage more with the foreign norms. It suggests that to preserve local norms and practices, local agents need to understand the ideas, concepts and impacts of the foreign norms for the state. Consequently, contestation provides an opportunity for local actors to either insist on refusing the foreign norms or to begin to consider accommodating them in their national or regional context. If the latter may lead the state to the process of localisation, the former indicates the subsidiary reaction of local actors to international norms.

Through the concept of norm subsidiarity, Acharya (2011) argues that states, especially the third world countries, can be norm makers or norm rejecters rather than necessarily norm takers of international norm. Norm subsidiarity could be understood as the *process whereby local actors develop rules, offer new understanding of global rules or reaffirm global rules in the regional context … with a view to preserve their autonomy from dominance, neglect, violation, or abuse by more powerful central actors* (Acharya, 2011: 96-7). State or collective of states could refuse the foreign norm by developing new norm or utilising their pre-existing norm to maintain

their autonomy and legitimacy. Acharya emphasises that the emergence of subsidiary norms correlates with the perception of great power hypocrisy and dominance (Acharya, 2011: 98-100). States tend to develop subsidiary norms for two main reasons: to challenge their exclusion or marginalisation from global norm-making process and/or to confront great power hypocrisy (2011: 100).

Blommfield (2016) regards subsidiarity as an anti-preneur of the norm role-spectrum, whereby states tend to defend the normative status quo of their local or regional norms and practices. In studying the responses of states to international norms such as R2P, Negrón-Gonzales and Contarino (2014) show that states with a strong normative commitment to anti-imperialism, non-interference and self-determination are very likely to constrain the diffusion and implementation of R2P-like international norms.

Through subsidiary norms, local actors often use normative principles such as state sovereignty, non-interference and self-determination as a shield to offer normative resistance to international norms or institutions. At the same time, local actors attempt to justify their right to formulate and apply their principles to deal with their own problems without intervention by outsiders or any higher authority. Even though the local or regional principles are not always effective in 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 (Acharya, 2011).

2.4.4 Institutionalisation-Implementation Distinction

Some scholars have concerns regarding the ‘distinction’ and ‘decoupling’ between adoption and implementation when seeking to understand the complexity of norm diffusion, contestation and implementation. The argument is that while norms are rhetorically accepted and adopted into law, they are decoupled from implementation and behavioural change (Goodman and Jinks, 2008; Betts and Orchard, 2014; Zimmerman, 2016).

To understand the behavioural gap between state and international norms, by focusing on norm implementation, Betts and Orchard (2014) conceptually

distinguish the phases and processes of the institutionalisation and implementation of norms. It emphasises that norm implementation is a different process where the adoption or ratification of norms at the international level in concerned and thus it is not necessarily the same in practice, where the compliance of a state to norms is concerned. Since implementation involves different processes from institutionalisation, norms that have been agreed and ratified at the international level could be interpreted and implemented differently in a domestic or regional context (Liese, 2009; Acharya, 2004; Birdsall, 2016).

Through the institutionalisation-implementation distinction, Betts and Orchard (2014) have emphasised that the framework is important for several purposes. First, it allows us to understand how new norms actually function and be interpreted and thus it could contribute to clarify the precision (or imprecision) of a norm. Second, implementation could be used as a standard to consider whether a norm has been accepted and internalised in the domestic context of a state. At this point, implementation implies the process of the further action of a state in understanding and interpreting international norms. By doing so, it provides the tools of analysis to reveal and understand the method or mechanism a state uses when accepting (or rejecting) international norms in their local context. Third, focusing on implementation opens up spaces to understand the diversity of interpretations, actors and contestation in the implementation process. At this point, the diversity of states' responses and interpretations of international norms in the implementation stage strongly depends on the ideational, institutional, and material structure of a state's local context (Betts and Orchard, 2014).

Literature has shown that ideational structures (local cultures and values) and institutional structures (bureaucratic identities and constitutional frameworks) matter whether facilitate or constrain the process of norm translation and implementation (Acharya, 2004; Wiener, 2014; Zimmerman, 2016). As cultures shape experiences and the expectations of state, international norms can potentially be understood and interpreted in parallel with the actor's local cultures and values. As Acharya (2004) argues,

international norms tend to be adjusted, framed and culturally selected by states to ensure their compatibility with prior local ideas 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 the important factor in influencing the process of norm translation and implementation (Liese, 2009; Betts and Orchard, 2014; Betts, 2014; Birdsall, 2016). Generally, the interest-based explanation, in the study of IR, is commonly explained within the perspective of rationalism, including in the rational choice and regime theories (Waltz, 1979; Keohane, 1984; Snidal, 2002: Schimmelfennig, 2000). It emphasises the rationality of a state pursuing interests under the constraints of a regime. Snidal explains this situation as the *actor goal-seeking under constraint* (2002: 74-75), and Van Kersbergen and Verbeek have applied international regime theory to explain norms and states' behaviour in international politics regarding them. In line with regime theory, they argued that 'even in a highly institutionalised environment such as the EU, the adoption of and compliance with norms rests with the strategic behaviour of actors' (2007: 219).

Unlike rational choice and regime theorists, norm scholars emphasise that the interests of actors in the process of norm translation and implementation do not necessarily reflect the pure strategic action 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 with reference to the existing international norms and laws. In the case of the US' policy on the torturing terrorist prisoners, Birdsall (2016) shows that while the government emphasises their international commitment to the prohibition of torture, they attempt to redefine the actual meaning of torture and make arguments that their policy is in line with exisiting 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 re-interpret the meaning or practice of the norms, rather than contesting the norms' validity.

2.4.5 Regional Governance and Local Interpretation

The previous section discussed the literature on the diverse concepts of norms in international relations, within two general approaches, namely: behaviourist and discursive. These conceptualisations of norms indicate a variety of standpoints and arguments. The behaviourist approach emphasises transnational socialisation. While it implies a dynamic process of norm socialisation, it operates based on the assumption of stable norms. Meanwhile, the discursive approach focuses on contestation and the role of local actors in norm diffusion and implementation.

The transnational socialisation approach lacks the analytical tools to explain contestation and the diverse reaction of actors to international norms. In the discursive approach, albeit that most of the literature recognises contestation as social practices that could facilitate norm implementation, it mostly focuses on the types of norms and modes of contestation in explaining the dynamics of norms and their diffusion and implementation (Deitelhoff and Zimmerman, 2018; Wiener, 2014). While some literature is concerned with the significance, of agency especially the local actors in norm diffusion and implementation, it primarily emphasises: the (re)enacting meaning of norms (Wiener, 2009 and 2014); the process of modification and translation of international norms into local contexts (Acharya, 2004; Zimmerman, 2016); and the effects of contestation on international norms (Prantl and Nakano, 2011; Acharya, 2013). At this point, only few literature focuses on and recognises the significance of regional governance in norm diffusion and implementation.

By taking a discursive approach, this section highlights the need for critical assessment and understanding of local interpretation of international norms in the context of an actor's local norms and practices. By focusing on local interpretation, it provides insight into at least, two important points.

First, it is important to address the local interpretation of international norms to examine the extent to which state(s) tend to accept and comply with

international norms. It suggests that states' compliance with international norms should not necessarily just be explained through formal indicators such as ratification and adoption, but also by the way states understand and interpret international norms in their local context. 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 an adoption, localisation, translation, or resistance. In other words, the examination of local understanding to international norms could inform the degree of compliance (or not compliance) of state to the norms.

Second, in regard to norm contestation, through examining the local interpretation of international norms this study can view the possibility and flexibility effects of contestation. It assumes that contestation of a norm can have different effects or outcomes rather than being limited to the pattern of norm impact often seen in justificatory and applicatory contestation (Deitelhoff and Zimmerman, 2018; Wiener, 2018; Welsh, 2019). The categorisation of contestation could help to explain and understand why some norms become stronger, while the others do not. It could also contribute to understanding the type of contestation through which a state may engage with particular international norms. Since norms are dynamic and their diffusion is complex, the contestation of norms can have different effects on them. Therefore, this study is potentially contribute to complement the existing literature (see the discussion in Chapter 6).

2.5 Conclusion

This chapter has presented the literature review of the IR theory in regard to the significance of ideational factors such as ideas, cultures and identities in understanding and explaining international politics. It has been explained that international politics is not necessarily about material forces, such as economic and military powers, but the institutionalised ideas and norms significantly shape international politics, including the behaviour and interests of the actors.

As has been emphasised, the structural power of institutionalised norms in constructing states' interests and behaviour does not indicate that constructivists neglect the role of material resources in international politics. From this perspective, brute material forces do exist, but their meaning depends on their construction by actors. It can be argued that international politics and its properties such as the anarchy of international politics, state-sovereignty, non-interference and other international concepts, are not given but socially constructed. Consequently, the meaning of those concepts in international politics may differ between actors. The actors of international politics may interpret the concepts differently in accordance with their cultures and identities. In other words, cultures and identities have the structural power to construct states' perspectives, behaviour and interests in international politics.

By realising the significant role of norms in international politics, this chapter specifically discussed the notable debates on norm literature and its limitations. It presented key debate on the literature of norm that can be understood to take two general approaches, namely: behaviourist and reflexive/discursive. While both approaches are based on the normative power of norms, they suggest different conceptual frameworks and arguments to explain the mechanism of norm diffusion and implementation. One of the key differences is related to the extent to which the two approaches define contestation in the process of norm diffusion and implementation. While the behaviourist approach views contestation as a barrier to the process of norm socialisation, the reflexive/discursive approach considers contestation as central to the process of the subsequent development and diffusion of norms.

Debate within the norm scholarship suggested that there is very little literature that systematically addresses the local understanding and interpretation of international norms. This study has suggested the importance of regional governance and its local actors to understanding the dynamics and complexities of norm diffusion and implementation. It has emphasised that an understanding of local interpretation to international norms is necessary to explain the complexity of norm implementation and

the dynamic reaction of states to international norms. This is important when seeking to answer the question of why and how international norms have been interpreted differently in the local (regional) context. By examining the interpretation at a local level, the actual contestation of norms could be revealed. The local interpretation could also be used to examine whether a particular international norm has been accepted or rejected by states in their local institutional environments.

The point offered by this study is that contestation not only persists after institutionalisation at international level, but becomes more complex in the context of regionalism, such as that of the ASEAN. The complexity of contestation correlates to existing regional norms and institutional arrangements, and the collective interests of states in the region. This study has suggested the need to assess local understanding of international norms in the context of the local environment and the influence of regional governance in order to understand the implementation – and contestation – of international norms in practice and the dynamic responses of local actors to them. Thus, before explaining the local perspective of ASEAN countries on R2P through an examination of the states responses to atrocity crimes in the region (See chapters 4 and 5) and the way the states problematise R2P (See chapter 6), it is necessary to understand the political culture that underpins both international norms (in this case R2P) and the local norms (ASEAN principles), as explained further in the next chapter (See Chapter 3).

Chapter 3 Responsibility to Protect and ASEAN: the Origins and Debates

3.1 Introduction

This chapter presents an explanation of the political values and cultures that underpin R2P and the 'ASEAN Way' (the regional principles and approaches of ASEAN), especially with regard to several themes and issues, including the debates on state sovereignty, interference (and non-interference) and human rights protection. This chapter discusses the existing literature and debates on both R2P and the ASEAN Way, to understand, not compare, the nature of both.This discussion is presented here to provide a setting for this research in a coherent manner, as R2P and ASEAN are the focus of this thesis. The engagement of ASEAN countries with R2P in international context is then explained and the existing literature of R2P diffusion in ASEAN context is discussed, in order to understand the extent to which R2P has been accepted in the region.

This chapter is organised in six sections. After the introduction, Section 3.2 explains the origins and history of the ASEAN. It also explains the concept and development of the ASEAN Way regarding human-related issues according to the vision of the ASEAN Community. The debate and contestation between the ASEAN Way and ASEAN Community is discussed. With regard to the debate, this chapter suggests that the dynamic behaviour of ASEAN countries regarding human rights and human protection issues should be regarded as a continuous process of contestation and implementation of the ASEAN Community doctrine in the context of the centrality of the ASEAN Way. The next section (3.3) explains the origins and development of R2P. Debate and contestation surrounding R2P are also discussed in this section. Section 3.4 explains the engagement of ASEAN countries with R2P at the international level. This engagement suggests that despite most ASEAN states expressing their concern on the remaining issues surrounding R2P, the countries have clearly indicated

favouring it as an international principle to protect people from atrocity crimes. In ASEAN context, there is debate over the diffusion of R2P and therefore Section 3.5 presents a discussion of the existing literature on R2P in the ASEAN context. The last section of this chapter is the conclusion.

The ASEAN was formed during the Cold War to create and maintain regional order and the national resilience of its member countries. Its aim was to support the member countries in building their nations through cooperation and a strong commitment to respecting sovereignty and territorial integrity. To this end, the ASEAN developed and practised their diplomatic cultures and traditional principles, known as the ASEAN Way. The member states consider the ASEAN Way to be the core principle of the region, and it is claimed to be the source of regional stability and intramural peaceful relations among the countries.

Since the creation of ASEAN in 1967, the organisation has evolved and developed. One of the most important developments has been the initiation of the ASEAN Community and the mainstreaming of the idea of human rights in the region. The member states have agreed to accommodate the ideas of human rights and human protection into ASEAN frameworks and mechanisms. The basic idea of the ASEAN Community is to ensure the security of state and the security of the people through a wide range of agenda and programmes such as: conflict prevention and resolution; peace-building; the acceleration of economic growth and the reduction of poverty; climate change adaptation and mitigation; disaster management health; a commitment to good governance, democracy, human rights and fundamental freedoms (ASEAN, 2015).

With regard to this, despite the ASEAN having initiated regional community vision that focuses on people-centred issues, the political values and cultures that underpins the ASEAN Way are different to those that support R2P. R2P has a very clear and specific scope: preventing and responding to four atrocity crimes through three types of responsibility: the national responsibility of each state to protect their people; international responsibility to assist or support; and the international responsibility for timely and decisive action when states manifestly fail to protect their populations.

Meanwhile, the vision of the ASEAN community has been initiated, and is being implemented, in line with the centrality of the ASEAN Way, especially with regard to the state sovereignty and non-interference. With regard to the difference values and cultures that underpins R2P and the ASEAN Way,, there are debates amongst scholars on explaining the extent to which R2P has been accepted or incorporated in ASEAN frameworks. Some have argued that the ASEAN is preparing to localise R2P by adjusting and recalibrating their core regional principles, especially the state sovereignty and non-interference (Bellamy and Drummond, 2011; Kraft, 2012; Morada, 2016). Others believe that the localisation of R2P in the ASEAN is a myth (Capie, 2012) as the available frameworks and instruments lack the authority and capacity to respond to atrocity crimes in the region, including the APSC (Sukma, 2012) and ASEAN human rights instruments in general (Petcharamesree, 2016). The ASEAN is explained as being more like a 'provider rather than protector' of the people's human rights (Tan, 2011).

3.2 The Origins of the ASEAN and ASEAN Way

The emergence of the ASEAN as a regional organisation for Southeast Asian countries has been encouraged by various factors. These were mainly related to the political-security dynamics of the region. Morada (2016) suggests that the formation and development of the ASEAN can be explained in three general stages: the Cold War, post-Cold War, and ASEAN Community-building phase.

During the Cold War, Southeast Asia was a region with many conflicts. The region was an arena for ideological contestation between the liberalism of the United States and the communism of the Soviet Union. The Cold War polarised the region and influenced the stability of domestic politics and security of Southeast Asian countries (Acharya, 2013a). Most of the countries faced various security problems such as separatism and inter-state conflict and violence that were fuelled by ethnicity, religion and ideologies (Leifer, 2005; Robert, 2012). These historical events shaped the politics and security of the region. A key feature of this period was the rise of nationalism and national integration, decolonisation, and prospective for regionalism (Acharya, 2013a). In order to inhibit the spread of communism in the region,

Western countries, led by the United States, initiated the creation of a regional organisation in Southeast Asia. In 1954, eight (8) countries (including two Southeas Asian states: Thailand and the Philippines) signed the Southeast Asia Collective Defense Treaty (the Manila Pact) and created the Southeast Asia Treaty Organisation (SEATO) a year later. The creation of SEATO has divided Southeast Asian countries into two positions between the US and Soviet bloc (Weatherbee, 2005). As a consequence, SEATO was unsuccessful and has been rejected by many Southeast Asian countries, except Thailand and the Philippines. Most countries in the region rejected SEATO because it was considered to be 'an external power-led organisation and the great powers' machination' (Roberts, 2012: 36). Vietnam was one of the Southeast Asian countries that was most greatly affected by the Cold War, because the state was the primary site of the containment by Western countries of communism in the region (Weatherbee, 2005).

In 1967, ASEAN was created by five Southeast Asian countries, namely: Indonesia, Malaysia, Singapore, Thailand, and the Philippines (See Table 3-1). The creation of ASEAN was a reflection of weariness among regional states towards outside interference and also a mechanism for war prevention and conflict management among the countries (Acharya, 2009 and 2013a; Katsumata, 2003). The creation of ASEAN was an effort by the Southeast Asian states to build their nation and economic development through cooperation and a strong commitment to sovereignty and territorial integrity. ASEAN was the Southeast Asian countries regional project with the aimed to consolidate their nation-building agenda and political power and legitimacy. This included encouraging development and economic progress by creating a common understanding to avoid any provocative action that could cause friction and confrontation between the states**.** In relation to this, the ASEAN Way, which emphasises non-interference, non-use of force and consensus-based mechanisms, became important to achieving the primary goal of the ASEAN.

Countries	Year of Membership
Indonesia	1967
Malaysia	1967
Singapore	1967
Thailand	1967
Philippines	1967
Brunei Darussalam	1984
Vietnam	1995
Laos	1997
Myanmar	1997
Cambodia	1999

Table 3-1: ASEAN member states and the year of membership

ASEAN is commonly regarded as a form of regionalism governed by its regional principles and approaches called the ASEAN Way (Sharpe, 2003). It is a doctrine that defines the inter-state relationship among ASEAN member states, based on the principles of non-interference in the internal affairs of sovereign state and non-use of force. In addition, it is a form of the ASEAN's inter-state relations, which emphasises an informal approach to cooperation based on the mechanism of consensus and consultation rather than a rigid institutional mechanism (Acharya, 2009; Katsumata, 2003). The ASEAN Way emphasises the autonomy of Southeast Asian countries and the regional governance. This autonomy implies the enforcement of state sovereignty, self-determination, national consolidation and freedom from interference. This can be understood as a form of subsidiarity for ASEAN countries, as Acharya argued that subsidiary behaviour may involve using locally constructed norms to support or amplify existing global norms in order to preserve the autonomy of the state or region against parochial ideas and the actions of powerful actors (Acharya, 2011: 98).

The fundamental principles of the ASEAN are claimed by the member states to be the central norms and rules of the region. It has been confirmed in the ASEAN's primary institutional frameworks, such as the Bangkok Declaration (the Declaration of ASEAN), Treaty of Amity and Cooperation (TAC), and ASEAN Charter. In the Bangkok Declaration, the member states emphasised that the primary aim of the ASEAN is to promote regional peace

and stability through adherence to the principles of the UN Charter *especially the state sovereignty and non-intervention* [emphasis added]. The principles were clearly re-emphasised in the TAC in 1976. Article 2 of the treaty states: 'The relationship of ASEAN states is guided by several fundamental principles that include mutual respect for independence, sovereignty, territorial integrity, non-interference in the internal affairs of one another, and settlement of disputes by peaceful means'. All the fundamental principles were codified in the ASEAN Charter in 2007' (Caballero-Anthony, 2008: 81-3).

The centrality of ASEAN and the ASEAN Way are not only stated in formal documents but are also frequently mentioned by the member states in many ASEAN forum, primarily the ASEAN Summit meeting. At the opening ceremonies of the 28th and 29th ASEAN Summits in Vientiane 2016, the Prime Minister of the Lao PDR reminded his ASEAN colleagues that the primary goals of the ASEAN were to maintain and promote peace, stability and development. The Prime Minister also emphasised that despite the ASEAN having experienced various challenges, the member states have been able to create and maintain peace and stability within the region. The stable conditions provide favourable circumstances for sustainable regional economic development. In 2017, ASEAN (all ten member countries) was reported to be the sixth largest economy in the world (Yusof, New Straits Times, 8 November 2017). It is predicted that the ASEAN economy could be the world's fourth largest by 2030 (Singapore Bussiness Review, 30 August 2018). ASEAN member countries believe that their regional principles are one of the important basic conditions for their stability and economic progress. Therefore, the states have reaffirmed their commitment to uphold open regionalism by maintaining the centrality of the ASEAN and its principles (Chairman's Statement at the 32nd ASEAN Summit, April 2018).

Specifically, on the issue of human protection and humanitarian assistance, ASEAN countries, at the 33rd Summit meeting in November 2018, stated that the:

> *ASEAN looked forward to the full operationalisation of the ASEAN Militaries Ready Group on Humanitarian Assistance and Disaster Relief (AMRG on*

> *HADR) and the ASEAN Centre for Military Medicine (ACMM), based on the principles of respect for sovereignty and territorial integrity, consensus-based decision-making, participation on the basis of a flexible, voluntary, and non-binding nature, assets remaining under national command and control, and at a pace comfortable to all (Chairman Statement at the 33rd ASEAN Summit, November 2018).*

It shows that despite the ASEAN giving greater attention and commitment to humanitarian problems, the exisiting instruments and mechanisms are applied within the boundaries of their fundamental regional doctrines. It is claimed that the ASEAN Way is the core principle of the ASEAN and thus it is inseparable from the order, peace, and stability that have existed in the region for five decades since the establishment of the ASEAN in 1967 (Interviewee 6).

3.2.1 ASEAN Community: the Concept and Development

Before explaining the origins and the development of ASEAN in the context of the ASEAN Community, it is important to view the position of ASEAN and the member countries on human rights. Generally, most ASEAN states accept (with the status either ratification or accession) most international human rights legal instruments such as the Genocide Convention, Universal Declaration on Human Rights (UDHR), Convention Against Torture, and Convention on the Elimination of All Form of Discrimination Against Women, International Covention on the Elimination of All Forms of Racial Discrimination and other human rights legal instruments (see Table 3-2). A report from the APCR2P (2018) entitled *Implementing the Responsibility to Protect In the Asia Pacific: An Assessment of Progress and Challenges* mentioned those international human rights legal instruments are the basic framework that can be used to examine the compliance of state to international human rights and its related principles.

Legal Instruments	**State's Ratification or Accession/Year**
Convention on the Prevention and Punishment of the Crime of Genocide	Cambodia / 1950 Laos / 1950 Malaysia / 1994 Myanmar /1956 Philippines / 1950 Singapore /1995 Vietnam /1981
International Covenant on Social, Economic and Cultural Rights	Cambodia / 1992 Indonesia / February 2006 Laos / 2007 Myanmar / 2017 Philippines / 1974 Thailand / 1999 Vietnam / 1982
Convention Against Torture and Other cruel, Inhuman or Degrading Treatment or Punishment	Cambodia / 1992 Indonesia / 1998 Laos / 2012 Philippines / 1986 Thailand / 2007 Vietnam / 2015
Convention on the Elimination of All Forms of Discrimination against Women	Brunei Darussalam / 2006 Cambodia / 1992 Indonesia / 1984 Laos / 1981 Malaysia / 1995 Myanmar / 1997 Philippines / 1981 Singapore / 1995 Thailand / 1985 Vietnam / 1982
International Convention on the Elimination of All Forms of Racial Discrimination	Cambodia / 1983 Indonesia / 1999 Laos / 1974 Philippines / 1967 Singapore / 2017 Thailand / 2003 Vietnam / 1982

Convention on the Rights of the Child	Brunei Darussalam / 1995 Cambodia / 1992 Indonesia / 1990 Laos / 1991 Malaysia / 1995 Myanmar / 1991 Philippines / 1990 Singapore / 1995 Thailand / 1992 Vietnam / 1990
Protocol relating to the Status of Refugees	Cambodia / 1992 Philippines / 1981
Rome Statute of the ICC	Cambodia / 2002 Philippines / 2011 (withdraw 17 March 2019).

Table 3-2: ASEAN's state ratification on international human rights legal instruments

In the regional context of ASEAN, the principle of human rights tend to be ignored by ASEAN countries from the early phase of the ASEAN's creation in 1967 until the middle of the 1990s. As mentioned above (Section 3.2), the creation of ASEAN was dominated by discourse over the security and stability of the region rather than human rights, fundamental freedoms and democracy. The terms 'human rights' and 'fundamental freedoms' do not even exist in key ASEAN documents such as the Bangkok Declaration and TAC (Ryu and Ortuoste, 2014).

The ASEAN and its member states refused to apply the UDHR as a whole principle, instead expressing a different understanding of it. The countries tend to separate social-economic rights from civil-political rights. Most ASEAN countries accept social and economic rights, while the civil and political rights of the people tend to be ignored. Authoritarianism political systems have been common in the region, and to a great extent they have persisted in the majority of ASEAN countries (Massola, The Sydney Morning Herald, 5 April 2019).

Most ASEAN countries have argued that 'the service of economic development takes over the implementation of democracy because the primary duty of government is to ensure the prosperity of the people'

(Weatherbee, 2005: 223). As widely quoted from Lee Kwan Yew, Singapore's founding father, '... 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 …' (Allison, The Atlantic, 22 March 2015).

The commitment of ASEAN countries to human rights, in the context of the region, can be traced back to April 1993, when all ASEAN member countries (the ASEAN consisted of six countries at that time) took an active part in the Regional Meeting for Asia at the World Conference on Human Rights in Bangkok, and then to the World Conference on Human Rights in Vienna in June of the same year. Since the adoption of the consensus of the World Conference on Human Rights in Vienna, ASEAN member countries have collectively emphasised their commitment in favour of the consensus. In the Joint Communiqué of the 26th ASEAN Ministerial Meeting (AMM), held in Singapore in July 1993, the ASEAN member nations stated:

> *The Foreign Ministers welcomed the international consensus achieved during the World Conference on Human Rights in Vienna, 14-25 June 1993, and reaffirmed the ASEAN's commitment to and respect for human rights and fundamental freedoms, as set out in the Vienna Declaration of 25 June 1993. They stressed that human rights are interrelated and indivisible, comprising civil, political, economic, social and cultural rights.These rights are of equal importance. They should be addressed in a balanced and integrated manner and protected and promoted with due regard for specific cultural, social, economic and political circumstances. They emphasised that the promotion and protection of human rights should not be politicised. With regard to the Vienna Declaration and Programme of Action, the ASEAN countries agreed to consider the establishment of an appropriate regional mechanism on human rights (Joint Communiqué of the 26th ASEAN Ministerial Meeting (AMM), July 1993).*

Following the collective statement by the ASEAN countries on the Vienna Declaration, there was no significant progress made by the region's countries to seriously apply the principle of human rights in the context of the region. The increased political diversity among ASEAN countries, especially after the arrival of four new members (Vietnam, Laos, Myanmar and Cambodia) has been a factor in the slow down of the ASEAN's progress on human rights (Chalermpalanupap, 1993).

In the absence of progress in the region on the human rights agenda, the collective awareness and commitment of the countries to human rights and fundamental freedoms have been strengthened and re-affirmed, following the initiation of the so-called ASEAN Community[4] at ASEAN Concord II (also known as Bali Concord II) in October 2003. The ASEAN Community is aiming to create a more 'dynamic, cohesive, resilient, and integrated community of ASEAN' (The Declaration of the ASEAN Concord II, 2003). The vision of the ASEAN Community was reconfirmed in the Vientiane Action Programme (VAP) in 2004 and Cebu Declaration in 2007, to accelerate the establishment of the ASEAN Community as 'One Caring and Sharing Community of ASEAN'.

ASEAN Concord II has been considered to be the basic structure of the three pillars of the ASEAN Community and key to the improvement of the region in terms of human rights and 'non-traditional issues' (Ryu and Ortuoste, 2014; Pisanò, 2014). Since ASEAN Concord II, several ASEAN frameworks and instruments have been established to translate the 'people-centred' doctrine of the community vision (see Table 3-3).

Issues	**ASEAN's Frameworks and Instruments**
Human Rights	Declaration on the Promotion and Protection of the Rights of Migrant Workers, 2007. ASEAN Intergovernmental Commission on Human Rights (AICHR), 2009. ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), 2010. ASEAN Human Rights Declaration (AHRD), 2013.
Disaster Management	ASEAN Agreement on Disaster Management and Emergency Response (AADMER), 2005. ASEAN Coordinating Centre for Humanitarian Assistance (AHA Centre), 2011.

[4] The ASEAN Community consists of three pillars: security, economy, and socio-cultural community. The security community will serve to provide peace and stability for the region. The economic community aims to accelerate the economic growth of the member states in integrated regional economic circumstances. Meanwhile, the ASEAN socio-cultural community has been created to promote culture and deal with human protection issues such as poverty, unemployment, environmental degradation, and any other human-related problems (Severino, 2006).

Transnational Crimes and Conflict Management	ASEAN Senior Officials on Drugs Matters (ASOD), 1984. ASEAN Declaration on Transnational Crime, 1997. ASEAN Cooperative Operation in Response to Dangerous of Drugs (ACCORD), 2000. ASEAN Ministerial Meetings on Drugs Matters (AMMDM), 2012. ASEAN Convention Against Trafficking in Persons (ACTIP), 2015. ASEAN Institute for Peace and Reconciliation (AIPR), 2012.
Poverty	ASEAN Framework Action Plan on Rural Development and Poverty, 2017. ASEAN Roadmap for the Implementation of the Millennium Development Goals (MDGs), 2011.

Table 3-3: ASEAN's development on the 'people-centred' issues

Since ASEAN Concord II, the vision of the ASEAN's people-centred and people-oriented organisation has been claimed by the member states as part of the ASEAN's identity, hand in hand with the traditional principles of state sovereignty and non-interference (Interviewees 11 and 15)**.** The ASEAN community is focused on how to fulfil the security of states and their peoples through a wide ranging agenda, which includes: conflict prevention and resolution, peace building, the acceleration of economic growth and the reduction of poverty, climate change adaptation and mitigation, disaster management, health; and the commitment to good governance, democracy, human rights and fundamental freedoms. In the Vientiane Action programme (VAP) in 2004, ASEAN countries were strongly encouraged to establish networks of cooperation amongst existing human rights mechanisms within the ASEAN.

Under the ASEAN Charter, the commitment of the ASEAN and its member states to human rights has become stronger. It is stated in Article 2 of the Charter that the ASEAN and its member states shall act 'to respect fundamental freedoms, promotion and protection of human rights, and the promotion of social justice' and 'to uphold the UN Charter and international law, including international humanitarian law, subscribed to by ASEAN member states' (The ASEAN Charter, 2007). Article 14 of the Charter recommended that the ASEAN should establish a human rights body at the

regional level. As a result, the ASEAN member states have established the ASEAN Intergovernmental Commission on Human Rights (AICHR) with the aim ‘to promote and protect human rights of the people of ASEAN’ and ‘to uphold international human rights standards …’ (ToR of AICHR, 2009).

In 2012, the ASEAN Human Rights Declaration (AHRD) was created as a codification of the states’ commitment to human rights. In the declaration, the member states committed ‘to uphold international human rights standards as prescribed by the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and international human rights instruments to which ASEAN Member States are parties’ (ASEAN Declaration on Human Rights, 2012).

3.2.2 ASEAN Way and ASEAN Community: Various Perspectives

With regard to the development of the ASEAN approach to human rights (Section 3.2.1), one of the ASEAN’s debate is related to the nature of the ASEAN Way and the extent to which the ASEAN principles guide and constitute the identity, interest and behaviour of the countries, especially in relation to the institutionalisation of human rights in ASEAN (Acharya, 2009; Narine, 2002; Katsumata: 2004; Jones: 2010; Munro, 2011; Davies, 2013).

ASEAN is commonly recognised by its traditional principles and characteristics which place emphasise on state sovereignty, non-interference and a soft and incremental approach in response to their common problems. The study of norms and their effect on states’ behaviour in the ASEAN context can be dated back to the middle of 1980s (Davies, 2013). Scholars applied different perspectives, mainly rationalism (including realism) and constructivism, to interpret ASEAN and the regional principles (Leifer, 1989; Davies, 2013; Acharya, 2009; Katsumata, 2003). In addition, ASEAN and its dynamic have also been explained from the English School perspective (Narine, 2006; Quayle, 2013, Morada, 2016).

Some literature on ASEAN, especially that which uses constructivism, has explained the ASEAN Way as the regional fundamental principle that has shaped the identity of the region. The principles are highly respected and adhered to by the member states (Katsumata 2003; Kivimäki, 2001;

Acharya, 1998 and 2009). As Christian Reus-Smit (2018) argues that culture (and thus including norms) generates governance imperatives to state. Wiener (2009) argues, when a norm achieves its formal-institutional validity and social recognition from state, the norm will become constitutive to the behaviour and identity of the state. The ASEAN Way is claimed to be the primary factor in the successful creation of peace and order in the region (Acharya, 1998; Kivimäki, 2001). In practice, the ASEAN Way guides the member states to rather than confront, consult and persuade each other to create order, peace and stability through frequent interactions, discussions and dialogues. Order, peace and stability can exist in the region because the states are likely to talk each other as friends, family and communities (Interviewee 11). As constructivists argue, friends tend to help rather than threaten (Wendt, 1992). As a result, the ASEAN and its principles successfully reduce friction and military conflict between the member countries.

Some argue that the recent development of the ASEAN's human rights frameworks and instruments as part of the narrative of the ASEAN Community should be regarded as confirmation of the ASEAN and its member countries upholding human rights in the region (Ryu and Ortuoste, 2014). Despite the limitations of AICHR, the commission is improving and developing, and thus it can play a greater role in promoting the full implementation of ASEAN instruments on human rights (Ryu and Ortuoste, 2014; Kraft, 2012)**.** One interviewee argued that the creation of the AICHR was an effort of the member states to promote human rights, despite the conservatism seen in the implementation of the non-interference principle (Interviewee 14).

Meanwhile, from a rationalist perspective, ASEAN countries' adherence to the ASEAN Way reflects the states' strategy to maintain order and stability in order to accelerate development and the economic progress of the countries. ASEAN countries need to maintain a stable and conducive regional environment to support the growth of the national and regional economy. This approach indicates that the principles of the ASEAN are more like an instrument the countries can use to achieve their common

goals. From this perspective, the ASEAN Way tends to be adjusted and reinterpreted, especially in order to deal with regional problems and the dynamic of international politics (Davies, 2013; Haacke, 2003). Some argue that to an extent, ASEAN principles have in many cases been violated repeatedly by member countries. These include the ASEAN states' intervention in the domestic conflicts of neighbouring countries during the Cold War (Jones, 2010) and the Asian financial crisis in 1997/98 (Haacke, 2003).

Haacke (2003) noted that, there have been at least four developments in the ASEAN that indicate a changing of interpretation of the ASEAN Way, including: the establishment of the ASEAN Surveillance Process (ASP); the involvement of the ASEAN in the International Force in East Timor (INTERFET); the introduction of the ASEAN Troika and the initiation of the ASEAN Retreat Meeting. The ASP was formed as a mechanism to deal with economic crises; while the Retreat Meeting and ASEAN Troika were created to enable the member states to address any urgent issues that could potentially disturb regional peace and stability (Haacke, 2003).

In the Asian financial crisis of 1997/98, the ASEAN Way, especially the strict application of non-interference, was adjusted and softened to enable the member countries to deal with economic problems. Despite the response of the ASEAN to this crisis being less effective, the member states allowed 'enhanced interaction' amongst the countries, so they could discuss their neighbours' economic activities as part of an attempt to prevent the spread of the crisis in the region (Narine, 2002). Within the framework of the ASP, the ASEAN member states were allowed to monitor each other in terms of the performance of national economic and financial developments, in order to avoid there being potential negative consequences of the economic crisis. In this situation, the application of the non-interference principle was softened because the monitoring of the economic performance of other states was not considered to be interference. This was not only done through the ASP; the ASEAN also applied the so-called Minus X Formula, in which the countries can take decisions without full consensus from the ten (10) member states (Caballero-Anthony, 2008). By using this formula, the

ASEAN has changed its consensus-based mechanism for dealing with the regional economic crisis.

The ASEAN has also promoted an ‘open and frank discussion’ in an attempt to solve the common problem of haze pollution from forest-burning in Indonesia and Malaysia. The states have modified their interpretation of the traditional understanding of their regional principles especially non-interference (Katsumata, 2004). The common interests of the countries encouraged them to adjust the strict application of non-interference to enable them to respond to the pollution collectively. In another example, the ASEAN has also been inclusive by involving external agencies to contain the spread of infectious diseases such as HIV/AIDS in the region (Collins, 2013). The ASEAN does not interpret the involvement of external actors as interference or as a threat to their national and regional autonomy.

From a rationalist perspective, the adjustments made to the ASEAN Way in the localisation of the foreign idea of common security (Acharya, 2004), the creation of the ARF (Acharya, 2004; Narine, 1997), the changing of ASEAN behaviour and its normative principles with regard to their common challenges such as environmental problems, migration, transnational crimes and public health (Katsumata, 2004), are explained as strategic behaviour by the countries in response to a common problem and the dynamics of international politics. A former ASEAN Secretary General has argued that the ASEAN Way is not absolute, since it has been implemented in a pragmatic way (Severino, 2006).

The progress of the ASEAN on human rights is seen as rhetorical behaviour. As Davies (2013) explains, there is still a huge action-identity gap in the countries with regard to human rights issues, including democracy. He argues that the creation of human rights frameworks and the commitment of the countries to democracy at the regional level do not necessarily change the states’ approach to human rights and the fundamental freedom of the people at a national level. All ASEAN countries accept human rights as part of the regional framework, but some of them continuously violate their people’s rights. In terms of civil and political rights, the majority of ASEAN states are still ‘practising authoritarian and semi-authoritarian regimes which

severely restrict their people's political freedom and freedom of expression' (Davies, 2013: 214-15).

Further examples of human rights infractions include the extrajudicial killings carried out by the Philippine government, which target drugs dealers and drug users, under the banner of the 'war on drugs' (See Chapter 5 for further explanation.) Human rights violations in the region can also be seen in the systematic violence carried out by the Myanmar authorities against the Rohingya population. The military 'cleaning operations' have caused a huge number of casualties, IDPs and refugees, and the UNHCR and many international human rights networks see the violence towards the Rohingya as a crime against humanity and ethnic cleansing (See Chapter 4 for further explanation.) The remaining human rights violations highlight the weak enforcement of human rights protection within the ASEAN, especially the absence of sanctions-based mechanisms in the human rights frameworks to ensure member states' compliance (Davies, 2012).

The presence of the AICHR, as the region's human rights body, is still problematic. Not all human rights issues are automatically discussed in the commission, except it has been agreed by the ten representatives of the member states. Particular human rights issue that correlates to political and security aspect must be decided by the central government of the countries rather than their representative in the AICHR (Interviewee 5). Further, the commission does not have the authority to enforce human rights in the domestic context of the member states. As mentioned in the ToR of the AICHR, the commission, in line with their duties, should have 'respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN member states'. The commission must also have 'respect for difference cultures, languages, and religions of the people of ASEAN...' (ToR of AICHR, 2009). In Point 7 of the AHRD, the ASEAN and its member states emphasise that although human rights are universal and indivisible, the realisation of the rights must account for regional and national contexts, such as different political, economic, legal, social, cultural, historical and religious backgrounds (AHRD, 2013). These principles indicate that ASEAN countries attempt to maintain their 'Asian Values' understanding of human rights by

placing emphasis on culturally sensitive issues and national sovereignty (Li, 1998).

This research suggests that despite the implementation of human rights policies in the ASEAN Community still being problematic, it does not simply indicate an instrumental behaviour of ASEAN countries. Rationalist explanations of this issue tend to over-emphasise the action-identity gap of ASEAN countries on human rights, saying they are merely strategic actions and are simply for the sake of national interests. This study, however, suggests looking at the problems of the ASEAN Community and its human rights arrangements as a continous process of implementation and contestation between the ASEAN's traditional principles and its community vision, especially in relation to human rights protection. By explaining the identity-action gap as a process of implementation and contestation, an opportunity is presented to understand the constitutive role of ASEAN principles and the dynamic behaviour of the states with regard to regional principles and human rights in the regional environment (See explanations in Chapters 4 and 5 to understand the constitutive effect of ASEAN principles and the dynamic behaviour of the countries in cases of contestations between the ASEAN Way and ASEAN Community).

3.3 The Responsibility to Protect: Origins and Concept

With the growing internal war and civil conflict across regions, and controversial humanitarian intervention practices, Secretary-General Kofi Annan, in the UN Millennium Report in 2000, suggested that the international community to find ways to deal with those issues, in the light of the dichotomy beween state sovereignty and humanitarian intervention. He stated: "…if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?" (United Nations, 2000: 48).

In 2001, the International Commission on Intervention and State Sovereignty (ICISS), responded to the demands of the Secretary-General through its report T*he Responsibility to Protect*. In the report, the commission pointed

out that humanitarian intervention to save innocent lives in civil wars has been controversial in situations ‘when it happens and when it has failed to happen’ ... such as the external military interventions in Somalia, Bosnia and Kosovo, and inaction on the genocide in Rwanda (ICISS Report, 2001: 1). Against this backdrop, the commission has emphasised that the international community needs a new consensus on how to address those challenges when faced with such a dilemma.

3.3.1 The Concept of Responsibility to Protect

The concept of R2P is claimed to be the middle ground in the conflicting relationship between sovereignty and human rights protection (ICISS, 2001; Badescu, 2011: Ch. 2; Evans, 2009: Ch. 2 and 3). It is argued that the basic idea of R2P relies on an older concept of ‘sovereignty as responsibility’ or ‘popular sovereignty’, whereby the idea of sovereignty derives from ‘the people’ (Deng, *et al*, 1996; Bellamy and Drummond, 2011).. In this context, Tesón explains that the ‘government of a state is an agent of the people and consequently, their international rights derive from the rights and interests of the individuals who inhabit and constitute the state’ (2006: 94).

In 2005, the concept of R2P was included in the conclusion of the World Summit. For some, the World Summit is argued to be the institutionalisation of R2P as an international principle (Welsh, 2013). According to paragraphs 138 and 139 of the summit outcome document, UN Secretary-General Ban Ki-moon, in his report: *Implementing the Responsibility to Protect* (2009), explains that the two paragraphs explain the three non-sequential pillars of the R2P principle. It suggests that R2P is built upon the three pillars: ‘without all three pillars, the concept of R2P would be incomplete’ (UNSG Report, 2012). The three pillars are:

1. Pillar I. This principle first and foremost emphasises the primary responsibility of a state and its officials for the protection of populations from mass atrocity crimes, namely genocide, war crimes, ethnic cleansing and crimes against humanity. These four types of atrocity crimes indicate the scope of R2P (Evans, 2009).
2. Pillar II. This pillar emphasises the responsibility of the international community to provide ‘international assistance’ by using appropriate

diplomatic, humanitarian and other peaceful means - in accordance with Chapters VI and VIII of the UN Charter - to protect states' populations from atrocity crimes. The UNSG report on *Fulfilling Our Collective Responsibility* (2014) outlines the forms Pillar II assistance may take. They include (i) encouragement; (ii) capacity-building; and (iii) assisting states to protect their populations. Jennifer Welsh, at an annual seminar hosted by the ECR2P in the University of Leeds in October 2018, emphasised that international assistance under R2P is not designed to provide basic humanitarian assistance such as food, shelter and so on, but rather to prevent and respond to the spread of systematic atrocity crimes.

3. Pillar III. This pillar suggests that the international community (through the UN Security Council under Chapters VI, VII and VIII of the UN Charter) should be prepared for 'timely and decisive collective action' in cases where national state authorities are manifestly failing to protect their populations and where peaceful means are inadequate to stop the crimes.

Since the endorsement of the R2P in 2005, the principle has become widely deployed in the diplomatic and academic language of humanitarian crises that is used by governments, international organisations, NGOs, and independent commissions to justify behaviour and demand international action (Bellamy, 2010), include: the Darfur crisis (Evans, 2009); the Arab spring, including Libya and the unresolved Syrian crisis (Bellamy, 2014; Hehir and Pattison, 2016); the current crisis and atrocity crimes in South Sudan, the Republic Democratic of the Congo, Central African Republic, and Yemen (Global Centre for the R2P; European Centre for the R2P); Myanmar and North Korea (Asia-Pacific Centre for the R2P); and the extrajudicial killings as part of the war on drugs in the Philippines (Gallagher *et al*, 2019). Since its emergence, more than 80 resolutions with the reference to R2P have bee invoked by the UNSC (Global Centre for the R2P, 2019a).Since 2009, the UN Secretary-General has released an annual report on R2P. Annual dialogues on R2P at the UN General Assembly, attended by the majority of states and various international actors, have also been

conducted. Sixty countries and two regional organisations (the European Union and the Latin America) have appointed a global network of ‘R2P Focal Points’. This network indicates the growing commitment of countries and official governments in supporting atrocity prevention and promoting international cooperation under the banner of the R2P principle. For example, at the Fourth Focal Points Meeting of the Latin American Network for Genocide and Mass Atrocity Prevention, most representatives from Latin America and Carribean recognised that the Focal Point are likely to be the regional tools necessary for to the continued mainstreaming of atrocity prevention in the national agendas of their countries (Declaration at the fourth Focal Point Meeting of the Latin American Network for Genocide and Mass Atrocity Prevention, 2015).Forty-nine countries have now joined the ‘Group of Friends of R2P’. On the tenth anniversary of R2P in 2015, the Permanent Representative of the Kingdom of the Netherlands to the UN (on behalf of the Group of Friends of R2P) made several recommendations to the UN Secretary-General for the advacement of R2P and the prevention of mass atrocities. Widespread support for the R2P principle can also be seen in the emergence of several R2P centres and think-tank organisations such as the Global Centre for R2P, Asia-Pacific Centre for R2P, European Centre for R2P, International Coalition for R2P, and Budapest Centre for Mass Atrocity Prevention. National think tank organisations such as the Cambodian Institute for Cooperation and Peace (CICP) can also be considered as a supporter of R2P in the national context of Cambodia and the ASEAN region.

Along with the development and diffusion of R2P, there are diverse interpretations of the principle and intense debates over it between those who see it as making positive progress for state and world politics. Some are sceptical about the developments and contributions of R2P and those people view R2P as a potentially harmful principle (Gallagher and Ralph, 2015). This is not confined to those who oppose the principle; some key advocates such as Gareth Evans and Jennifer Welsh recognise that R2P faces several challenges, conceptually and practically and remains problematic for many international actors. Accordingly, the next section

discusses the normative underpinnings of the intense debate and contestation surrounding R2P, to understand the nature of the principle and the complexities of its implementation.

3.3.2 The Responsibility to Protect: Debate and Contestation

Since the emergence of the concept of R2P in 2001 and its formal recognition at the 2005 World Summit, its diffusion has been complex. As already mentioned (see section 3.3.2), the proliferation of R2P has been remarkable, but at the same time, the diffusion of the principle in international politics remains problematic and controversial. The principle of R2P continues to be challenged and contested conceptually and practically.

R2P advocates such as Gareth Evans recognise that R2P faces three big challenges that need to be addressed, including: conceptual, institutional and political (Evans, 2009). Former UN Special Adviser on R2P, Jennifer Welsh (2013), argues that despite the source and scope of R2P having been 'institutionalised' in the World Summit 2005, the meaning and practical application of the principle continue to be contested. She has acknowledged that contestation surrounding R2P occurs in both procedural and substantive respects (Welsh, 2013).

Among both its advocates and oppponents, R2P is commonly recognised as an international norm (Welsh, 2013; Bellamy and Luck, 2018; Hehir, 2019). Scholars have agreed that R2P is not (yet) a legal principle, but a reaffirmation of already existing international norms and laws (Wiener, 2014; Welsh, 2019). Bellamy and Luck emphasise, 'R2P is a political commitment to implement existing international law, not a legal principle itself' (2018: 39). As the UNSG report in 2009 mentioned, R2P is 'firmly anchored in well-established principles of international law'. Consequently, Welsh notes that neither can R2P create any new legal obligations nor can it compel states to act. Rather, as a political principle, 'R2P creates political pressure on international actors surrounding the discourse and the occurrence of atrocity crimes' (Welsh, 2016: 3).

According to the nature of the principle, some explain R2P as a 'composite principle' that combines competing international norms such as state

sovereignty and human rights protection (Job and Shesterinina, 2014). The principle of R2P relies on existing international conventions such as the Genocide Convention and Rome Statute. Welsh (2014) defines R2P as a 'complex principle norm' that contains more than one set of prescriptions. On the one hand, the composite characteristics of R2P allow the principle to gain wider support from the international community, as it is already embedded in the established normative structure of human rights, humanitarian law and civilian protection (Welsh, 2019). It opens up more opportunities for diverse actors in the international system to reconstruct the R2P to ensure its compatibility with the pre-existing ideas and norms of local actors (Acharya, 2004). It is argued that the remaining ambiguity surrounding R2P is considered to be beneficial for its development and implementation (Widmaier and Glanville, 2015). In other words, the norm's ambiguity (to a certain degree) could increase its acceptance, consensus and allow for necessary adjustments in the implementation process.

On the other hand, 'the legitimacy gap' related to R2P (due to its characteristics) has encouraged wider controversies and debates (Wiener, 2014; Ralph and Gallagher, 2015). As explained in Chapter 2, norm types matter because they are likely to determine the extent of the contestation surrounding them. At this point, contestation (either applicatory or justificatory) is likely to influence the robustness of international norms. If a contestation concerns the application issues surrounding norms (applicatory contestation), it leads to a strengthening of the norm (high robustness). Meanwhile, contestation that questions the validity of the norms (justificatory contestation) is likely to weaken them (low robustness) (Deitelhoff and Zimmermann, 2019; Sandholtz, 2019).

Some argue that 'the legitimacy fault' in R2P neither significantly challenges the liberal agenda nor the principle itself as its legitimacy deficit occurs due to procedural issues rather substantive disagreement (for example human protection and justice) from the international society (Ralph and Gallagher, 2015). Badescu and Weiss (2010) emphasised that contestation over the misapplication of R2P has contributed to advancing and clarifying the norm.

At this point, normative initiatives such as Brazil's RwP is seen as having the potential to address the legitimacy deficit of the R2P (Stefan, 2017).

Some others have emphasised that despite R2P not being considered to be a 'fully-fledged norm', it has immense potential where the protection of people from mass atrocities and their future prevention are concerned (Ralph and Souter, 2015). R2P advocates such as Jennifer Welsh argued that the R2P principle was designed to serve three functions: to build political consensus among the majority of states and shape the international community's expectations about the need to prevent and respond to mass atrocities; to mobilise a greater will to act and raise the political costs of inaction; and to catalyse the development of and investment in tools for prevention and response (Welsh, 2016 and 2019). In the light of these functions, even though the R2P principle is vulnerable to applicatory contestation, its complex nature has the potential 'to safeguard its robustness because its prescriptions are embedded in a broader normative structure of human rights, humanitarian law and civilian protection' (Welsh, 2019). Therefore, Welsh (2016) suggests that the international community should see the institutionalisation of R2P as a 'glass half full' situation, in the sense that while debate and contestation surrounding R2P remains, important political and practical contributions have been still been made. According to the pillars' categorisation – explained in the 2009 UNSG report - it is fair to say that there is wide consensus and agreement from the international community on Pillar I of R2P that places emphasis on the primary responsibility of states to their populations. Meanwhile, even though Pillar II of R2P suggests some problems and issues (Gallagher, 2015), it has a very wide degree of support. In contrast, Pillar III remains the most problematic and controversial aspect of the principle.

Some of the literature related to R2P debates the complex issues related to Pillar III. Some scholars focus on the moral and conceptual aspects of the principle such as: moral hazards in R2P (Kuperman, 2008; Reed, 2012); grounds for intervention (Nardin 2013); who authorises and conducts the intervention (Pattison 2010); what constitutes a manifest failing, as the requirement to activate the 'timely and decisive collective action' (Gallagher,

2014a). Other scholars focus on the problem of implementation, especially in related to the Pillar Three including the 'inconsistency' of the UNSC in response to mass atrocities, the controversial cases of action and inaction in Libya and Syria (Hehir, 2013; Morris, 2013; Badescu and Weiss, 2010; Thakur, 2013; Nuruzzaman, 2013); the role of non-Western agency in reshaping and clarifying the R2P principle (Stefan, 2017) and the R2P and political tensions in world politics (Kenkel, 2012; Newman, 2013; Stuenkel, 2014; Odeyemi, 2016 and 2016a).

R2P proponents emphasise that R2P is conceptually and practically different from the older practice of humanitarian intervention. It is suggested that R2P could be understood within the context of 'just war', which uses moral internationalism to achieve its goal of saving and protecting people from serious harm (Nardin, 2013; Orford: 2013). In response to Esther Reed's critique (2012) about the legalising of military intervention and its being a moral hazard, Glanville (2013) emphasises that R2P is not simply about military (humanitarian) intervention, but also about the prevention and protection of people from mass atrocities through a wide range of means, including peaceful and military intervention with very tight requirements and restrictions. Similarly, Bellamy (2010) says that in addition to state responsibility and international assistance, what makes R2P different is that the principle situates armed intervention within a broader continuum of measures when it is used in responses to mass atrocities.

The 2012 UNSG Report on 'timely and decisive responses' emphasises that Pillar III of R2P should be understood within the interlinked context of the other two pillars. The objective of the timely and decisive collective action in Pillar III is not to replace the responsibilities of a state to protect people in the UN. Rather, the purpose of action under Pillar III is 'to help states to succeed in meeting their protection responsibilities under the well-established legal obligations expressed under Pillar I'. In other words, international action under Pillar III is not merely about intervention and the use of force, but rather is all about international assistance to meet the state's primary responsibilities to the people. At this point, if R2P Pillar II suggests that international assistance (the use of force is also possible in

this stage) is necessary, with consent from the national authorities of a state, Pillar III of R2P could be activated without approval from the target state (Gallagher, 2015).

Debate and contestation regarding R2P and its implementation, especially where Pillar III is concerned, are related to: the controversial coercive intervention in Libya; the inaction of international community in the continuing mass atrocities in Syria, Rakhine State of Myanmar and many other mass atrocity cases. Some argue that the abuse of Resolution 1973 in Libya and the absence of Security Council action on Syria have killed the R2P doctrine (Nuruzzaman, 2013). Contoversial issues in the implementation of R2P reveals the 'structural problems' of the principle that constrain the R2P to become 'galvanizing norm' (Dunne and Gelber, 2015) to foster international consensus on the principle, as claimed and expected by its proponents (Paris, 2014).

Nuruzzaman points out that the misuse of Resolution 1973 has had two major effects. (i) There has been no consensus on international collective action, according to the Security Council resolution, to respond to mass atrocoties under R2P since 2011. Bellamy and Williams (2011) have predicted that the case of R2P in Libya will potentially be a big challenge in terms of forging consensus on the use of force for human protection purposes. (ii) There are growing suspicions by the majority of Asian, African and Latin American countries with regard to international interventions by great powers (Nuruzzaman, 2013). This issue has also become a concern of ASEAN countries in terms of the implementation of R2P (See Chapter 6 for further explanation.)

Hehir (2013) argues that one of the unresolved issues of R2P failure (when it is implemented and fails) is related to 'the permanent inconsistency' of the P5 in their responses to mass atrocities. He explains that the international response to atrocity crimes will continue to be inconsistent, along with that of the P5 members, who authorise international collective action. The notion of 'the case-by-case basis' in paragraph 139 is often used as a justification for the inconsistency of the international response. This inconsistency has become one of the critical problem in the implementation of R2P and

ultimately, it could undermine the expectations of a people or state where the principle is concerned. With regard to this implementation issues, some argue that R2P should be defined as a standard of acceptable sovereign behaviour, and that the mechanism of coercive military intervention should be applied outside the R2P framework (Morris, 2013). To this situation, Adediran (2017) suggests that regional organisations should be given a legitimate authority to act in response mass atrocities in their local context.

In response to the criticism, some R2P proponents insist that intervention in Libya has been remarkably timely and decisive in the face of the growing numbers of mass atrocity crimes (Dunne and Gifkins, 2011; Glanville, 2016). It is recognised that intervention in Libya has been controversial, but as Gareth Evans (2013) describes: 'R2P may be down but not out' in the sense that huge expectations of human protection under R2P remain. R2P proponents such as Gareth Evans and Ramesh Thakur argue that despite it 'takes time for trust to be restored to the R2P ... but it can be' as the principle continously develop by its wider proponents (Evans, *et al*, 2013). Gifkins (2016) points out that the 2011 intervention in Libya made the language regarding R2P in Security Council resolutions has shifted from contentious to commonplace. Dunne and Gelber (2014) emphasise that the presence of 'arguing' and 'bargaining' in the R2P debate, especially in relation to the case of Libya, matter to facilitate the future traction of the R2P in international negotiations.

Further, Glanville (2016) argued that R2P matters in terms of the principle having a real and observable impact on states' behaviour, including in the cases of Libya and Syria. Different with arguments that see armed intervention in Libya and the failure of international community to stop mass atrocities in Syria as the end or throwback of the R2P (Rieff, 2011; Nuruzzaman, 2013), Glanville claims that the impact of R2P on international politics and states' behaviour, as reflected in the two cases (Libya and Syria), is not only seen in the instances of compliance, but even more so in the examples of violation. He explains, while the international community failed to take necessary collective action to stop mass atrocities in Syria, the case remain implies that R2P matters. On this point, while the international

community failed to apply R2P to the case of Syria, there is common understanding that what is happening in Syria involves mass atrocities and thus the people should be protected. The principle matters for international politics and human rights protection, because states recognise the principle and blame its violation when atrocity crimes occur. A call for the reform of the Security Council probably indicates that the R2P principle has helped raise UN member states' attention and has led to progress in their actions in support of human protection where mass atrocities are concerned (UN General Assembly, 2018a).

Some suggest that to understand the operational practice of R2P, it is important to recognise the limitations imposed by the global context. They emphasise that the problem of norm enforcement and implementation does not necessarily reflect a problem with the norm itself, but that it is influenced by a range of other contextual factors. These include political and practical challenges on the ground (Bellamy and Luck, 2018) as well as political tensions amongst great and emerging powers (Newman, 2013; Stuenkel, 2014).

It can be construed that the different positions taken by scholars and analysts regarding the contestation of R2P is related to the way they understand R2P as a principle or norm and its implementation. To some extent, R2P proponents tend to see the principle of R2P and its implementation as two separate things, but they are strongly interlinked. As Evans (2012) claims, the remaining issues with regard to Pillar III concern the proper scope and limitation of implementation strategies, not the pillar itself. In other words, the problem surrounding Pillar III is not simply a notion of the 'timely and decisive collective action' as one strategy option in protecting people from mass atrocities, but rather the practical issues of implementation. Welsh argues that the facticity of R2P (in terms of the extent to which the principle guide state's action) need to be judged at a variety of levels, in terms of the non-sequential pillars of the R2P. By saying this, she emphasises that R2P Piilar One and Two have had notable success in guiding state's policy and institutional capacity to prevent and respond

atrocity crimes, despite the facticity of R2P with respect to Pillar III is still debatable and contested (Welsh, 2019).

Meanwhile, some others tend to understand the R2P principle and its implementation as inseparable. Newman argues that ‘implementation is everything because it is only through implementation that the effectiveness and viability of political ideas such as R2P can be determined’ (2013: 255). Furthermore, implementation problems may serve as an indicator of the quality or even legitimacy of a principle or norm. In other words, when the implementation of a principle continues to be problematic, it indicates the embedded faulty of the principle or norm (Nuruzzaman, 2015: Hehir, 2019).

By processing the criticism and debates over the principle, R2P advocates believe that R2P currently remains an appropriate and promising principle for the international community to use when dealing with mass atrocity crimes (Glanville, 2013). Dunne and Gelber (2015) claim that R2P is a decisive factor in galvanizing consensus within the Security Council in relation to their intervention of Libya. The Global Centre for R2P illustrates that ‘when human rights and international law appear to be under unprecedented attack, R2P remains the most effective principle around which the international community can coalesce when vulnerable populations face the threat of mass atrocities’. It claims that ‘R2P is a promise to act’ (GCR2P Statement, 7 December 2018).

Meanwhile, for those who are sceptical as to the functions and contributions of R2P, the continuous contestation surrounding R2P indicates the inherent problem and failure of the principle, conceptually and and practically (Nuruzzaman, 2015; Hehir, 2019). Hehir (2013) argues that even in the Security Council intervention in Libya, that is claimed by its proponents as the textbook illustration justifying R2P principle (Thakur, 2013), there was no evidence to show that R2P has influenced the Council’s decision to intervene. Further, since R2P offers nothing new, - as its proponents claim that it is a solution to the controversy humanitarian intervention and supporting political instrument to implement existing international law - the principle fails on its two very basic claims: that it provides a new concept of sovereignty, especially related to responsibility of state to protect their

people; the claim that R2P outlines a novel framework for dealing with atrocity crimes especially when a state government is the perpetrator of the crimes (Hehir, 2010).

3.4 ASEAN States Engagement with R2P

The principle of R2P was supported by the international community, including ASEAN governments, at the 2005 World Summit. Most ASEAN countries have also been involved in a series of dialogues and debates on R2P in the UN since 2009. The countries support R2P at its most basic level, by emphasising the primary responsibility of states to protect their populations and the responsibility of the wider international community to assist individual states to protect people from atrocity crimes. Some ASEAN countries have even engaged further with R2P; Singapore, for example, has joined the 'Group of Friends' of R2P. It suggests that the country not only agrees to the basic principle of R2P, but also has the resposibility to advocate the principle to the wider international community. Another ASEAN country, Cambodia, has appointed a national R2P focal point in order to promote R2P domestically.

Bellamy and Beeson (2010) rightly stated that most ASEAN countries have agreed with the importance and significance of R2P and thus the international community need no longer debate the necessity of the principle and its scope. At the General Assembly Plenary Meeting on R2P in 2009, Vietnam demonstrated their appreciation of the institutionalisation of R2P at the World Summit in 2005. The state mentioned the World Summit as 'the highest level accepted for the first time as a key instrument to address mass atrocities'. The country emphasised:

> *With this adoption, we now do not have to discuss whether R2P is necessary. Also, as the Outcome Document determines in a clear-cut manner the four crimes, i.e. genocide, war crimes, ethnic cleansing and crimes against humanity and nothing else, that are subject to R2P, we do not have to struggle to define the scope of this concept (Viet Nam Statement at the UNGA Plenary Meeting on R2P, 2009).*

The state's commitment to the R2P principle was re-emphasised at the UN General Assembly Dialogue on R2P in 2012. The country not only agrees with the principle of R2P, they also 'strongly condemn atrocity crimes' and

are ‘always ready to cooperate with the international community in the fight against atrocity crimes’ (Vietnam Statement at the UNGA Interactive Dialogue on R2P, 2012). In a similar manner, Malaysia has emphasised that they are ‘ready to work closely with the UN member states, regional organisations, and civil society in addressing, preventing, and responding to the exisiting and emerging threats and challenges that caused atrocity crimes’ (Malaysia Statement at UNGA Interactive Dialogue on R2P, 2015).

Other ASEAN countries such as Indonesia recognised the 2005 World Summit as an international consensus to deal with the question of how to protect people from atrocity crimes. The state emphasised that the international community does not need to ‘reinvent the wheel’. It means that international community should not waste time creating something that already exists. Specifically, the country emphasised that the ‘international community do not need to reinterpret or renegotiate the conclusions of the World Summit, but rather to find ways of implementing its decisions’ (Indonesia Statement at the UN Plenary Meeting on R2P, 2009). The state has shown their stronger support for R2P by saying that ‘R2P is, and must be, a universal principle to protect people from atrocity crimes’ (UNGA Dialogue on the Report of the Secretary General on R2P, 2014). Responding to the UN Secretary-General Report entitled *A Vital and Enduring Commitment: Implementing the R2P* in 2015, Indonesia emphasised its support for R2P by saying that:

> *Violence against the civilian population is still an everyday norm in many parts of the world. Crimes that fall under the principle of responsibility to protect may have been committed, in a number of conflict areas. That facts reiterates not only the importance and relevance the responsibility to protect, but also the future projection of our common efforts to ensure its implementation’ (Indonesia’s Statement at the UNGA Dialogue on R2P, 2015).*

The key message of the statements is that the state acknowledges the legitimacy of R2P as an international principle that could prevent atrocity crimes and protect people from the crimes.

Similar to other ASEAN countries, the Philippines support the very basic premise of the R2P principle, that sovereignty is all about responsibility and

therefore, all states must protect their own people from atrocity crimes. The country has emphasised that:

> *Without a doubt, states have a fundamental duty to protect their own people from atrocity crimes. After all, this is the rule of law, which is the basis not only for the civilised conduct of relations among nations, but also of the very legitimacy of a state (the Philippines's Statement at the UN General Assembly Informal Dialogue on R2P, 2015).*

This statement may reflect a solidarist point of view that the legitimacy of state sovereignty relies not only on control of territory and international recognition, but also upon fulfilling certain human rights standards, including the protection of the people from mass atrocities. In this situation, the state suggests that sovereignty should not be used as a shield to violate people's human rights.

Recently, along with the growing attention of international community to the Philippines with regard to the war on drugs policy, the state is still emphasising its commitment to R2P at the UN level. At the 9th Annual Interactive Dialogue on the Report of the UN Secretary-General on the R2P in 2017, the country was concerned about how to build the resilience and its capacity to prevent atrocity crimes. The country claimed that the human protection agenda has been embedded in the national domestic law of the country. The country also emphasised that the state should 'not prey on its citizens'. In other words, the country agreed that governments have primary responsibility for protecting their people. Moreover, the country stated that they remain committed to a transparent, fair, and effective justice system which allows for the prosecution of crimes under the Rome Statute. This statement is critical in the face of growing international criticism to the government-led war on drugs. Unfortunately, the rhetoric of the state regarding R2P and human protection at the international level has been inconsistently applied at the regional and national level, which is reflected in their war on drugs policy in particular (see Chapter 5 for more details explanation).

Admittedly, along with the endorsement of R2P, criticism of the principle, especially in relation to Pillar Three has also been addressed by ASEAN

governments in UN-level dialogues and debates. Malaysia, for example, stated:

> *My delegation takes note that there have been notable successes in the implementation of R2P, as highlighted in the Secretary-General's report. However, the failure to act in a timely fashion when an action is most needed, such as in preventing atrocities, in many ways has undermined the concept of R2P (Malaysia Statement at the Informal Interactive Dialogue on R2P, September 2015).*

The statement reflects that while the country does not disagree with the principle of R2P, implementation is deemed problematic and to some extent it could reduce the legitimacy of the principle. Another problem regarding R2P relates to the issue of inconsistency and 'double standards' in the implementation of the principle. In the UNGA Dialogue on R2P in 2014, the Government of Malaysia made the point that while the UN Secretary-General's report on R2P focused on cases of human rights and atrocity crimes in several countries, such as Afghanistan, Iraq, Mali and South Sudan, the report has ignored the human rights situation in the Occupied Palestinian Territory (OPT). More specifically, the problem of inconsistency in R2P implementation has also been addressed by some ASEAN countries, such as Indonesia and Singapore, who have called for a restraint on the use of a veto for atrocity crimes (Indonesia Statement on the UNGA Dialogue on R2P, 2015; Singapore Statement at the UNGA Dialogue on R2P, 2015). This problem reflects what has been termed the 'permanent inconsistency of the Security Council' (Hehir, 2013).

Within the context of the ASEAN states' criticism of R2P, Myanmar has argued that the international community are still far from reaching a consensus on how to translate words into deeds. Furthermore, the state has mentioned that 'there remain different understandings and interpretations on R2P, especially on its limits and applications as well as how to pursue the principle in a responsible way'. It also emphasised that when it comes to the Pillar Three, the international community should take a very cautious approach to its application as it could undermine the fundamental principles of the UN Charter and existing international law (Myanmar Statement at the UNGA Informal Dialogue on R2P, 2015).

Thailand is also concerned about Pillar Three of R2P. The country has stated that even though the dialogue on R2P at the international level is timely and critical with regard to the increasing intolerance, insecurity, and violence, the international community has barely touched upon Pillar Three which remains central to the R2P controversy (Thailand Statement at the UNGA Dialogue on R2P, 2015). R2P is still often misinterpreted and misused due to a lack of common understanding, especially regarding Pillar Three. Therefore, the state has suggested that the international community still needs to establish clear criteria for invoking timely and decisive collective action (Thailand Statement at the UNGA Dialogue on R2P, 2017).

With regard to this criticism, it highlighted that contestation surrounding R2P has persisted since the institutionalisation of the principle in 2005 (Welsh, 2014). At this level, ASEAN states' support for R2P is not only reflected by endorsement in their formal statements, but also by the states' criticisms in the UN dialogues on R2P. The criticism of ASEAN countries to the principle of R2P, especially in relation to Pillar Three and its implementation does not necessarily mean rejection because the countries' concerns about strengthening the R2P and focus on the remaining issues surrounding the principle, especially those relating to Pillar Three.

3.5 Debate on the Responsibility to Protect in ASEAN

In relation to the controversies of R2P in the ASEAN context, there have been notable debates over the extent to which R2P has been accepted and internalised at the ASEAN level (Bellamy and Beeson, 2010; Bellamy and Drummond, 2011; Capie, 2012; Petcharamesree, 2016; Morada 2016). Bellamy and Beeson (2010) argued that despite Southeast Asia as a whole being generally lukewarm about R2P – due to the countries' lack of capacity to implement policy effectively – there is significant evidence that several states in the region have begun to embrace it. The arguments have been relied on two cases studies: the experience of the ASEAN in response to the humanitarian crisis in Myanmar in the wake of Cyclone Nargis, and the voiced support of most ASEAN countries to R2P in the UN forum (Bellamy and Beeson, 2010; Bellamy and Drummond, 2011). From these two cases, Bellamy and Beeson (2010) 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.

In relation to Cyclone Nargis, Bellamy and Beeson (2010) argued that despite the ASEAN's response being slow and *ad hoc* to the crisis, it showed the constructive role of ASEAN in helping Myanmar to overcome the humanitarian crisis. It suggested that the ASEAN member states have softened their understanding and application of regional principles, especially non-interference and state sovereignty in response to the catastrophe. Based on this case, Bellamy and Beeson (2010) concluded that the ASEAN's response to the crisis is a nascent sign of the gradual change of the states' attitude toward state sovereignty whereby the region no longer regards sovereignty as a blanket or shield to justify at state's policy or its behaviour toward its people. Instead, there is a growing understanding in the region that sovereign states has certain responsibilities, including the responsibility to provide humanitarian assistance during crises.

In addition to subtle changes in the practice of non-interference in Southeast Asia, Bellamy and his colleagues' works on R2P in the ASEAN context suggested that there is evidence of Southeast Asia embracing and localising the principle of R2P in the region, as most of the countries have voiced strong support for the R2P in the context of the UN. Bellamy and Drummond (2011) found that most Southeast Asian countries, at the 2009 UN General Assembly Dialogue on R2P, stressed five key points about the nature and scope of R2P, including: (i) the primary responsibility of every state to protect the people; (ii) R2P applied only to four specific crimes; (iii) R2P must be implemented and excercised in accordance with international law and the UN Charter and thus R2P does not create any new legal obligations; (iv) R2P is a universal principle that should be applied equally and fairly, though they also recognised that the implementation of the principle should be taken on a case-by-case basis; (v) the countries insisted that the measures related to R2P's third pillar include more than simply coercion or the use of force.

Regarding those points, Bellamy and Drummond argued that the emphasis of the key points by Southeast Asian states at the UN General Assembly provide important insight into how non-interference and R2P might accommodate one another (2011: 194). Therefore, they claimed that ASEAN has made significant progresses in localising R2P in the ASEAN as the core principles of the region, especially non-interference, are being adjusted and recalibrated (Bellamy and Drummond, 2011). In a more assertive expression, Herman Kraft (2012) claimed that ASEAN is being incrementally prepared to adjust their principles in line with R2P. In this process, it has been claimed that 'the global R2P has been revised to ensure that it is consistent with exisiting principles of international law, including non-interference, whilst the principle of non-interference is itself 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 mass atrocity crimes' (2014: 17). As Acharya (2004) explained: in norm localisation, states attempt to reconstruct foreign norms to ensure their compatibility with their prior cognitive identities. Bellamy and Drummond (2011) argue, there is observable evidence that ASEAN countries have already, in their own way, create linkages and congruence between existing beliefs and practices and the R2P principle.

In addition, the involvement of the ASEAN as well as the pressure of the ASEAN governments on Myanmar regime in the case of Cyclone Nargis, the establishment of several human rights-related bodies, have also been explained as a normative shift in terms of the non-interference principle and acceptance of sovereign responsibility amongst ASEAN countries (Bellamy and Beeson, 2010; Bellamy, 2014a; Morada, 2016).

Morada (2016) has concluded that human rights developments within the ASEAN, such as the creation of the ASEAN Charter, AICHR and ASEAN Community Vision are the 'entry points' to the promotion of R2P in the region. ASEAN community projects are considered as the driving force behind the emergence and acceleration of the ASEAN where human rights issues are concerned (Ryu and Ortuoste, 2014).

The ASEAN High Level Advisory Panel's (ASEAN-HLAP) report claims that ASEAN states recognise that R2P is likely to provide a significant pathway for them to realise their vision of being caring and sharing, and protecting their people and community. This panel aims to support the promotion of R2P and its further implementation in the ASEAN region. The report indicates that the ASEAN is prepared to work inclusively with the wider international community and is open to opportunities to re-discuss the meaning of their principles and their application (ASEAN-HLAP Report, 2014). With regard to this, despite the mainstreaming of R2P in the ASEAN region facing challenges, the panel emphasised that ASEAN has significant potential in its institutional arrangements to accommodate R2P.

First, they argued, the ultimate objective of R2P – the protection of populations from mass atrocities – is consistent with and integral to the overall goals of the ASEAN Community Vision. As stated in the Vientiane Action Programme (VAP), ASEAN has several strategies for conflict prevention and post-conflict peace building, including: the strengthening of confidence-building measures between military and civilian personnel to increase common understanding among the parties; strengthening humanitarian assistance; the development of an ASEAN early warning system based on existing mechanisms to prevent occurrence or escalation of conflicts; the utilisisation of existing national peacekeeping centres in some ASEAN member states; and the implementation of human resources development and capacity building programmes in areas undergoing post-conflict resolution and rehabilitation (Vientiane Action Programme, 2004: 7-8).

Second, the norms and objectives of R2P are not alien to ASEAN. By saying this, the ASEAN-HLAP emphasised that ASEAN is already well-endowed with norms relating to the prevention of mass atrocity crimes and the protection of populations from them, as documented in the ASEAN Charter and the blueprints of the three pillars of the ASEAN Community Vision. Unfortunately, the panel's report did not provide further detailed explanation regarding their claim. At this point, it can be assumed that the panel is most likely to refer to their argument on some points in the ASEAN Charter,

especially Principle 2, which states: ‘the ASEAN states shall respect fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice’ (ASEAN, Charter, 2007). Principle 14 of the Charter, also states that ‘in conformity with the purposes and principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms, ASEAN shall establish an ASEAN human rights body’ (ASEAN Charter, 2007).

Third, the ASEAN-HLAP, therefore, argued that ASEAN has already important mechanisms and instruments, including the AICHR and ACWC that are particularly relevant to the implementation of R2P. As also claimed by ASEAN countries, the ASEAN frameworks and mechanisms in relation to human rights contain the core elements of R2P, especially prevention and capacity-building (Interviewees 4 and 18).In contrast to those optimistic view with the diffusion and implementation of R2P in the ASEAN region, some others argue that there is too little evidence to claim that the ASEAN and its member states are preparing to incorporate or localise R2P into the regional arrangements. As Capie (2012) has argued, the promotion of R2P in the ASEAN context is largely advocated by outsiders, especially the APCR2P-led networks. 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 (Tan, 2011). In the existing literature, while ASEAN states such as Thailand (Kraisoraphong, 2012) and Indonesia (Alexandra, 2012) have shown their unanimous support for R2P, the implementation of the principle still needs action rather than simple rhetoric.

From a more practical perspective, some research has examined the relevance of ASEAN human protection norms and instruments in the promotion of R2P in the ASEAN. 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 the ASEAN to address any specific security and humanitarian problems such as

atrocity crimes. Specifically, the APSC was formulated without any direct or implicit reference to the R2P (Sukma, 2012: 138-9).

The institutionalisation and development of ASEAN human protection norms and instruments, such as the ASEAN Human Rights Declaration (AHRD) and ASEAN Intergovernmental Commission on Human Rights (AICHR), are also problematic. Those instruments are applied within the strict boundaries of ASEAN basic principles of state sovereignty and non-interference. As a consequence, not all human rights issues can automatically be discussed in the AICHR, unless the matter has been agreed by the member countries. The commission also has no mandate to respond to any human rights issues in any ASEAN countries. Therefore, Petcharamesree (2016) has argued that the ASEAN needs a 'paradigm shift' in its human protection norms and instruments to enable the ASEAN and its member countries to effectively care for and protect the people.

With regard to the debate, it may be true that the ASEAN states have softened their understanding and application of their regional principles where some regional issues are concerned (See Section 3.2.2). However, 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 based their arguments about the support of ASEAN countries for R2P on the statements of the countries at international level, especially in the UN General Assembly meeting or dialogues on R2P and the ASEAN's response to Cyclone Nargis. At this point, the former argument does not automatically indicate that all ASEAN states have the same understanding and position of R2P in the regional context. As Betts and Orchard (2014) emphasised, states are likely to interpret international norms differently in a domestic or regional context. As explained in Chapter 6, ASEAN countries tend to problematise, rather than favour, the diffusion of R2P in the context of the region. Meanwhile, the latter argument does not imply a relevant case (Cyclone Nargis) for R2P (Evans, 2009; Junk, 2016). Junk (2016) argued that the main impact of the R2P debate on Cyclone Nargis was a return of the principle to its roots on the four core crimes, excluding the consequences of natural disasters and the delivery of

humanitarian aid. Therefore, within the context of the literature and debate, this study provides a more complex analysis through the exploration of the timely two atrocity crime cases in the region: the case of Rohingya and war on drugs. It explains the way ASEAN countries understand and response the two cases in terms of their position toward human rights protection and R2P principle (See Chapters 4 and 5). An analysis of the reaction and interpretation of ASEAN and its member states regarding both cases provides a deeper and more comprehensive understanding of how R2P is actually interpreted and contested at the ASEAN level (See Chapter 6 for a more detailed explanation).

3.6 Conclusion

This chapter has explained the concept of R2P and the ASEAN (including the ASEAN Way) along with the debates and contestation to understand the nature of the concepts. The difference values and cultures that underpins R2P and the ASEAN Way have been explored. While the R2P principle places the protection of individuals at the first place, the ASEAN tends to prioritise the preservation of order and stability by upholding the principles of state sovereignty and non-interference. In the context of the solidarism-pluralism debate, the R2P principle takes a more solidarist approach that assume justice and human rights to be fundamental norms, conceptually and legally, in international politics. Consequently, the protection of people's rights should not be obstructed by arguments over sovereignty, non-interference, local cultures and local political systems.

Meanwhile, the ASEAN and its regional principle and approaches reflect the pluralist focus on centrality of order and stability in international (and regional) politics. As explained, order is important not only because it is a fundamental value of international society, but also because it is regarded as a necessary pre-condition for the protection of people. Indeed, the ASEAN has evolved by expanding their regional agenda to not only the security of state but also the security of the people, as already embedded in the regional vision of the ASEAN Community. This highlights what Buzan has said: that 'pluralist-solidarist debate is not a zero-sum game contestation and opposition, but is rather interlinked one with another.' (2014: 84-5). In the

context of the ASEAN, the pluralist understanding has been dominant in relation to the contestation between the preservation of order and stability, and the enforcement of human rights protection. As explained in more detail in Chapters 4 and 5, the matter of human rights protection has been defined and implemented within the boundaries of the ASEAN principles, especially state sovereignty and non-interference. Therefore, this chapter has suggested that the dynamic behaviour of ASEAN countries in relation to human rights and human protection issues should be regarded as a continous process of contestation and implementation in terms of ASEAN Community doctrine in the context of the centrality of ASEAN Way.

In conjunction with the differing characteristics of R2P and the ASEAN Way, this chapter has also discussed the engagement of most ASEAN counctries with R2P at the UN level, and the debate on the existing literature about R2P in the ASEAN context. Scholars have different understandings and positions regarding the diffusion of R2P in the ASEAN context; there are those who argue that the ASEAN is preparing, albeit slowly, to localise R2P in the ASEAN, and those who are sceptical regarding the diffusion of R2P in the region. What is missing from this debate is a more nuanced analysis of norm contestation and a consideration of the questions that exist about ASEAN and R2P from that perspective, and a more rich empirical analysis of relevant cases. With regard to this, this research provides both of these things. This research suggests that it is important to examine ASEAN understanding and behaviour in the context of the timely empirical R2P relevant cases in the region; the plight of the Rohingya and the extrajudicial killings committed as part of the war on drugs in the Philippines (See Chapters 4 and 5 for detailed explanations). Along with an explanation of the two cases, it is also crucial to understand the extent to which R2P has been accepted, by examining the way ASEAN countries interpret the R2P principle in the context of the region (this discussion is in Chapter 6).

Chapter 4 The Plight of Rohingya: The ASEAN's Limited Response and the Centrality of ASEAN Principles

4.1 Introduction

This chapter addresses the violence against Rohingya in the Rakhine State of Myanmar and the responses of the ASEAN and its member states to the crisis. This is the first case study of this thesis which is intended to assess ASEAN's engagement with principles relevant to R2P, including sovereignty, human protection, interference and non-interference. This chapter has two purposes: examining the perspective and reaction of the ASEAN and its member states to the issue, and explaining the factors that have contributed to shaping the behaviour of the ASEAN and its member countries to the case. In doing so, this chapter focuses on several questions, such as: what is occurring in Rakhine State; what is the role of Myanmar authorities in the abuse of human rights, particularly within the Rohingya community; how does ASEAN and its member states perceive the situation; how they responded to the case; and what factors have contributed to the behaviour of ASEAN countries regarding the crisis?.

This chapter suggests the violation to Rohingya – according to many authoritative observers – constitutes an atrocity crime. With regard to the crime, the ASEAN and its member states tend to see the issue of Rohingya as a complex problem, seeing it as an issue related to poverty, ethnic conflict and extremism, rather than atrocity crimes. Along with this understanding, the ASEAN and its member states have made only a limited response to the situation in Rakhine State. It shows the centrality of ASEAN principles that have shaped the way the countries percieve the issue and accordingly it guides regional responses to the case. Further, the ASEAN's response to this issue has become the empirical case for the analysis of R2P diffusion in ASEAN and norm contestation especially when R2P and the ASEAN Way are considered (See Chapter 6 for further discussion).

This chapter is organised as follows. The first section explains the violence against the Rohingya, which constitutes atrocity crimes. This section also

examines whether the government of Myanmar is manifestly failing to protect its population from mass atrocities. The next section explains the role of the Myanmar government and its attempt to address the issue. Furthermore, the way the ASEAN and its member states comprehend and react to the crime is examined, as well as emphasising the centrality of ASEAN principles and their contestation with the doctrine of the ASEAN Community. The last section is the conclusion of the chapter.

It is widely argued that the violence toward the minority Rohingya group, which has been committed for decades, can be regarded as crimes against humanity and ethnic cleansing (Kingston, 2015; Human Rights Watch, 2013; OHCHR Flash Report, 2016). Scholars argue that the Government of Myanmar has failed to prevent the violent conflict and protect the Rohingya from these crimes (Zarni and Cowley, 2014; Kingston, 2015; Southwick, 2015). Some argue that the international community needs to utilise the toolkit available to help prevent further violence (Kingston, 2015). Others suggest that international assistance is required to promote reconciliation and democracy in Myanmar (Southwick, 2015).

This chapter engaged with the existing literature that argues the Myanmar authorities are committing crimes against humanity toward the Rohingya population. Thus the country's national authority can be seen as failing in its duty to protect the population from atrocity crimes. While most of the literature is focused on the crisis, this chapter goes further, to examine the way the ASEAN interprets and responds to the crimes, in order to understand the ASEAN's position on human rights protection, including toward R2P principle.

In the face of increasing international attention to the plight of the Rohingya, the national authorities of Myanmar and most ASEAN countries have tended to dismiss the reports that mention the problem of Rohingya as atrocity crimes. Although ASEAN countries are aware of the problems the Rohingya face, the states have emphasised that the issue is a complex problem rather than a simply human rights violation. The states are also questioning the criteria to consider whether the situation can be claimed as atrocity crimes. Currently, the states are framing the case as the result of ethnicity-based

conflict, poverty, and counter insurgencies. Moreover, the states not only disagree with the claim of atrocity crimes, but also refuse international interference, especially with reference to the R2P principle. Instead, the states prefer to use their ASEAN approaches to address the issue and it has been claimed that ASEAN principles and approaches are more suited to the characteristics of the region.

4.2 The Plight of Rohingya: Atrocity Crimes and Myanmar's Failure to Protect

In this section, reports from authoritative organisations and institutions, including UN bodies and human rights-related organisations, are used to explain the violence against Rohingya. The reports indicate that the plight of the Rohingya constitutes an atrocity crime and thus the authorities of Myanmar are failing to prevent the spread of violence and to protect the Rohingya from it. Even though the violence against Rohingya has been escalating since the attacks on Police Stations in Rakhine State in October 2016, this section recognise the violence against the Rohingya prior the incident in order to provide context for the crisis.

The minority Rohingya group has often been called the most persecuted refugee on earth (Kingston, 2015; Amnesty International, 2017a). This statement reflects the grave human rights violations against Rohingya committed for decades, especially since the military regime in Mynamar began in 1962. They have been carried out through state-level persecution and destruction, with the intention to erase the Rohingya group's identity and permanently remove the people from Myanmar (Zarni and Cowley, 2014; Kingston, 2015; Pittaway, 2008). Since the enactment of the 1982 Citizenship Law, the Rohingya have suffered due to the extraordinary racism directed against them, including marginalisation, persecution and other forms of human rights violations sanctioned by the Myanmar authorities and the country's other ethnic groups (Ahsan Ullah, 2016; Zarni and Cowley, 2014). The 1982 Citizenship Act facilitates the violence against Rohingya and it has been used by Myanmar's national authorities and other ethnic groups to legitimise the crimes toward the Rohingya (Zarni and Cowley, 2014; Zawacki, 2012). Kingston (2015) identifies that Rohingya suffer both

‘direct violence’ such as rape, torture and murder, and ‘structural violence’, which includes citizenship denial, blockage the humanitarian aid, forcible population transfer and deportation. The structural violence also includes the so-called ‘Four-Cuts’ policy, which denies the people access to land, food, shelter and security (Pittaway, 2008). As the result, the violence against Rohingya is not confined to killings, rape and tortures, but also includes the spread of humanitarian crises such as: starvation, internal displacement of people, human trafficking and people fleeing to become refugees. These people ‘do not have adequate access to food, water, healthcare and other vital humanitarian assistance’ (R2P Monitor, May 2016: 9). Since 9 October 2016, the conflict and violence have been escalating, following attacks on Police Stations in Rakhine, despite the violence toward Rohingya has increased since June 2012 when a sectarian conflict has broken out between Arakanese Buddhists and Rohingya Muslims In Rakhine State. Soon after the Police Stations attacks incident, the Myanmar authorities launched a military operation in the conflict region. Myanmar’s military claims that their operation is fighting Rohingya militants and denies targeting civilians (BBC, 24 April 2018). The 2016 OHCHR Report warns that the widespread and systematic violence against Rohingya, such as: killings; enforced disappearances of persons and their family members; rape and sexual violence; the destruction of property; and deportation and forced transfers, could indicate crimes against humanity (OHCHR Flash Report, 2016).

In his statement to the issue of Rohingya, the UN Special Adviser on the Prevention of Genocide, Adama Dieng, emphasises: ‘if people are being persecuted based on their identity and killed, tortured, raped and forcibly transferred in a widespread or systematic manner, this could amount to crimes against humanity and be a precursor of other egregious international crimes’ (UN Press Release, 6 February 2017). Drawing on the three stages of risk factors for mass violence, as stated in the UNSG report in 2014, the situation in Rakhine State is already in the third stage. This is when the imminent risk of atrocity crimes, especially the crimes against humanity,

such as an increased risk of violation to life and the systematic targeting of a particular group of people, are being committed (UNSG Report 2014: 3-4).

At the 34th session of the Human Rights Council, the OHCHR Special Rapporteur on the Situation of Human Rights in Myanmar, Yanghee Lee described the situation in Rakhine State as 'institutionalised discrimination' and 'long-standing persecution' of the Rohingya population. Lee emphasised that the crime against Rohingya indicates the government of Myanmar may be trying to expel the Rohingya population from the country. Human rights world report in 2018 mentioned that there are around 392 predominantly Rohingya villages were completely or partially destroyed by the military forces between August 2017 and March 2018. The government burned and bulldozed the villages to destroy evidence of crimes and to establish new security force bases (Human Rights Watch, 2019).

International criticism of this situation has been increasing, especially after the government's initiation of the so-called 'clearence operations' on the 25th August 2017, which had the intention of targeting and destroying the Rohingya as a group. This operations were characterised by brutal violence and serious human rights violations on a mass scale, including indiscriminate killings, rape and sexual violence, arbitrary detention, torture, beatings, and forced displacement (GCR2P, 2019b). During the first month of the 'clearance operations' in August 2017 alone, approximately 6,700 Rohingya, including at least 730 children, were killed (Global Centre for the Responsibility to Protect, 2019). In 2018, over 700,000 ethnic Rohingya live in camps and settlements throughout the district of Cox's Bazar, making it one of the largest refugee camps in the world (OHCHR Report, July 2018). World Report 2019 from Human Rights Watch also emphasised that by the end of 2018, there were more than 730,000 Rohingya have fled to Bangladesh (Human Rights Watch 2019). With regard to this situation, the UN High Commisioner for Human Rights, Zeid Ra'ad Al Hussein described the systematic attack on and destruction of Rohingya as 'a textbook example of ethnic cleansing' (OHCHR, 2017). Recently, Amnesty International report (2019) says that Myanmar's military commits war crimes in their 'indiscriminate attacks' in Rakhine State.

Report from the APCR2P in 2019 on the 'Regional Atrocity Risk Assessment' categorised the issue of Rohingya as the very high risk ongoing atrocity crimes. The GCR2P has explained that the crimes during the operations may constitute genocide under international law (Global Centre for Responsibility to Protect, 2019). According to the centre, although there is no single binding resolution from the UN Security Council to respond to the crisis[5], at least 13 resolutions from the General Assembly and Human Rights Council have been adopted regarding the situation of the Rohingya in Myanmar. In Resolution 72/248, passed on 24 December 2017, the General Assembly called upon the authorities of Myanmar to, among other things: end military operations, open the access to humanitarian assistance and ensure a voluntary and sustainable return to safety, security and dignity for all internally displaced persons and refugees to their original places of residence, especially in Rakhine State (UNGA Resolution, 23 January 2018).

Indeed, it is important to acknowledge the domestic political contestation within Myanmar, especially between the military regime and the democratic coalitions led by Aung San Suu Kyi, to understand the state's political condition. Generally, Aung San Suu Kyi failed to speak out against the continous crimes of the Rohingya. The UN fact-finding mission's report mentioned that Suu Kyi 'had failed to use her position as head of government or her moral authority to stem or prevent the unfolding events in Rakhine State' (Ellis-Petersen and Hogan, The Guardian, 28 August 2018). In addition to her silent on the on going atrocity crimes in Rakhine State, Suu Kyi emphasises her shared political perspective with the anti-democracy Hungarian Prime Minister on the issue of anti-immigrants and Muslims (Ellis-Petersen, The Guardian, 6 June 2019). At their meeting in Budapest, the two leaders noted that both countries are facing similar problem due to the continuous growing Muslim populations (Snaith, Independent, 6 June 2019).

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[5] The only formal response of the UN Security Council to the situation in Rakhine since the clearence operations on 25 August 2017 has been the adoption of a Presidential Statement on 6 November 2017. The statement called for the implementation of the recommendations of the Advisory Commission on Rakhine State and stressed the 'primary responsibility of Myanmar government to protect its population (GCR2P on Myanmar, 2019a).

Deputy Asia Director of Human Rights, Phil Robertson, stated that instead of condemning the military violence, ‘Suu Kyi is shamefully helping the military to cover up the genocide against Rohingya’ (Ellis-Petersen, The Guardian, 6 June 2019).

According to the credible international reports, it can be argued that the Rohingya crisis passed the threshold of R2P as it meets criteria to constitute an atrocity crime. The authorities of Myanmar are also failing to prevent the spread of the violence and to protect the people from the atrocities, especially considering the Myanmar’s government perspective and response to the crisis (See Section 4.3.1).

As Gallagher points out that if a government, through deliberately facilitating and/or perpetrating any of the four crimes, causes large numbers of deaths and displacement of people, and targets violence at women, children and elderly people, it could be a clear indicator of the ‘manifest failing’ of the government (2014a: 6-12). Accordingly, those indicators could be useful for international community to decide what kind of international action that should be taken into account. As the Secretary-General report stated that the higher number of people’s death or displacement in the crimes of genocide or crimes against humanity, the more robust of the response that is needed (UNSG Report, 2009: 22).

With regard to the on-going violence and crisis, some parties such as the APCR2P suggests to international community to ‘utilize diplomatic means to demand that the Myanmar government and Tatmadaw fulfil their obligations to prevent atrocity crimes, grant humanitarian access, protect vulnerable populations, cooperate with the United Nations, and hold perpetrators accountable and to employ targeted measures, including sanctions, travel bans and the withdrawal of cooperative arrangements, against institutions and individuals thought responsible for atrocity crimes, until legal accountability is achieved’ (Asia Pacific Centre for the R2P, 2019). The Asia Pacific Partnership for Atrocity Prevention (APPAP) called on the ‘Myanmar government to exercise its full authority in preventing further incitement to violence and hate speech against religious minorities and for the military

(Tatmadaw) to immediately put an end to attacking civilians' (Asia Pacific Partnership for Atrocity Prevention, 2019).

Further, some suggest the use of R2P and invoking the principle to respond the situation. In his report 'If Not Now, When?' (2019), the Executive Director for the GCR2P, Simon Adams mentioned that the Government of Australia suggested to use the principle of R2P, saying the 'Government of Myanmar has a responsibility to protect all citizens within its territory, and where human rights violations have taken place, those responsible must be held to account' (Adams, 2019: 9). The Federal Government of Nigeria has issued a more assertive official statement, condemning the atrocities perpetrated against the Rohingya and calling 'upon the UN to invoke the principle of R2P and intervene in Myanmar to stop the ongoing ethnic cleansing and create the conditions for the safe return and rehabilitation of the fleeing Rohingya people to their motherland' (Adams, 2019; Nigerian Ministry of Foreign Affairs, 2017). Therefore, a joint report from Global Justice Centre and Global Centre for the Responsibility to Protect suggests two pathways to justice and accountability for the crimes committed against the Rohingya: bring the individuals who are involved in the crimes and bring Myanmar, as a state, into justice (GCR2P, 2019b). At this point, even though the the violence against Rohingya could amount to mass atrocities, decision to apply R2P in this case would not be easy. Not only the inherent problem within the P5 (Hehir, 2013, Adediran, 2017), the use of R2P in this case would be rejected by ASEAN and its member states. As Adediran (2017) noted that it is crucial not only to involve regional organisations, but also give them more authority to response mass atrocities in their region. He emphasises that regional organisations may know better about the mass atrocities and the characteristics of the region. In addition, they could be an alternative to implement R2P in the situation of the political will problem among the P5.

4.3 Limited Response: The Centrality of the ASEAN Way

Unlike the silent response of the ASEAN and its member states to the war on drugs in the Philippines (as explained in Chapter 5), several actions have been carried out to address the issue of the Rohingya. In addition to the

responses from Myanmar authorities such as the Rakhine State Action Plan, the creation of several commissions and the signing of several agreements between Myanmar and several parties, ASEAN and its member states have shown their concern regarding the problem by discussing the issue in their annual meetings and by providing assistance to the Myanmar government, as well as the Rohingya and other ethnic groups within the Rakhine State.

In the regional context, the responses in accordance with ASEAN arrangements are limited in terms of the ASEAN and its member states being much more focused on the effort to intensify communications between themselves and Myanmar, and to provide assistance (with the consent of the government). The ASEAN tends to refrain from condemnation and direct interference, including the use of sanctions and coercive measures to stop the crimes. This limited response correlates to the centrality of ASEAN principles and their contestation with the ASEAN Community Vision that shapes the way ASEAN countries percieve and respond to the situation in Rakhine State. Therefore, since the case of Rohingya can be seen as a test case for the ASEAN on human rights protection issues, it is necessary to scrutinise the understanding and reaction of ASEAN and its member states to the atrocity crimes.

As explained above (see section 4.2), the Rohingya crisis is generally explained by UN agencies and international organisations as a series of mass atrocity crimes.. Broadly speaking, the Myanmar government and the ASEAN tend to disagree over the label of atrocity crimes where the situation in Rakhine State is concerned; they refuse international interference in their response to the problem, especially where R2P principles are concerned. Myanmar and ASEAN tend to see the Rohingya crisis as a complex problem that incorporates the issues of poverty, ethnic conflict and extremism. In line with this point of view, the states tend to frame the issue as the national affair and domestic problem of 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. In short, this section examines the

role of Myanmar government in addressing the issue of Rohingya and the reactions of the ASEAN and its member states to the problem.

4.3.1 Responses From Myanmar Authorities and Its Problems

Before explaining the responses of ASEAN and its member states to the situation in Rakhine State (see section 4.3.2), it is important to explain the responses from the Myanmar authorities to the problem. This will aid an understanding of the government's broader role and the response of ASEAN and its member states to the problem.

In general, the Myanmar government has refused to any description of the situation in Rakhine State as atrocity crimes, whether genocide, crimes against humanity or ethnic cleansing. They acknowledge the existence of the Rohingya problem, but suggest that it is vast and complex (UN News, 11 March 2019). As cited in the international media, the State Councellor of Myanmar, Aung San Suu Kyi, has emphasised that atrocity crimes is 'too strong expression to use for what is happening' (Faulconbridge, Reuters, 7 April 2017). The government argues that international community cannot describe the issue of Rohingya as simply being atrocity crimes because it correlates with the problems of poverty and economic gaps that cause communal conflict between groups of society (Brunnstrom, Reuters, 21 September 2016). The government has alleged that many reports on Rohingya are fabricated, saying that the violence in Rakhine State is 'Muslims killing Muslims', instead of crimes against humanity or ethnic cleansing (Jon Sharman, the Independent, 6 April 2017).

As explained above (section 4.2), the main factor in the Rohingya crisis is their being denied citizenship status. The refusal to acknowledge the Rohingya as part of Myanmar society has led to widespread and systematic discrimination and violence against the population. As this problem has grown into an international concern, it should be recognised that there have been several solutions proposed by the Myanmar government; however, their implementation remains problematic and controversial, which is explained further in this section.

In 2013, Myanmar government created the so-called Rakhine State Action Plan with the aim of facilitating the process of relocation and encampment of the Rohingya. The plan also includes citizenship assessments for Rohingya, under the 1982 Citizenship Law (Kingston, 2015). In this assessment, the people of Rohingya can apply and register themselves with the government officer, although many of them are still reluctant because they do not believe the Myanmar government (Interviewee 20).

In the face of increasing international criticism, the government agreed to create an independent commission called the Advisory Commission on Rakhine State, (it was chaired by the former UN Secretary-General Kofi Annan) at the request of the State Councellor, Aung san Suu Kyi, to help the state to comprehend the situation and seek solutions. On the one hand, the creation of this commission is expected to provide solutions to the problem, as the commission gave several important recommendations in its final report in August 2017. On the other, there is also criticism that the commission has no mandate to address human rights violations, other than to initiate dialogue amongst parties in the conflict and provide recommendations (Amnesty International, 24 August 2016).

In June 2015, Myanmar government issued so-called Identity Cards of National Verification (ICNV) to replace the former Temporary Resident Card (TRC) that was firstly introduced in 2014. This is in line with the citizenship assessment in the Rakhine State Plan of Action. The Advisory Commission on Rakhine State (2017) mentioned that approximately 4,000 Rohingya Muslims have been recognised as citizens or naturalised citizens. The former Indonesian Representative to the ASEAN, based on the information from Myanmar government, informed that by December 2016, 5,776 Rohingya had already claimed their citizenship through the verification process and it is claimed that the rest of the Rohingya are going through the verification process (Interviewee 16). To make sense of this process, the interviewee explained that Myanmar government, through this verification, is attempting to ensure that the people are true and original ‘Rohingya’ that have already live in Myanmar for decades, not people from Bangladesh who cross the border into Myanmar. One of the assessment strategies used by

Myanmar authorities is to have a conversation with each applicant. The government claims that they will know from their accent whether they are Rohingya or Bangladeshi (Interviewee 16).

However, the Rakhine State's Plans of Action and the verification process under the ICNV scheme have many problems. Human Rights Watch (2014) warned that instead of solving the problem, the plans of action are likely to extend and intensify discrimination toward Rohingya, as the people will be relocated and resettled into an encampment. As part of this permanent resettlement, Rohingya people would be separated from their original homes, lands and communities, which is likely only to deepen their isolation and marginalisation.

With regard to the ICNV verification, this process is problematic because firstly, Rohingya who have been granted naturalised citizenship do not automatically enjoy all the benefits, rights and freedoms associated with citizenship status (Advisory Commission on Rakhine State, 2017). The verification process is also forcefully conducted by the security forces. OHCHR Report (2018) mentioned that the security forces are routinely conducting inspections in the Rohingya villages to check the cardholders among the population. Rohingya people can only stay within the territory of Myanmar if they accept the ICNV. The problem with this is that in the process of identification under the ICNV, the applicants (Rohingya people) must register themselves as 'Bengali' on the application form (Advisory Commission of Rakhine State Final Report, 2017). The use of this term indicates the social coercion to the Rohingya, since the term 'Bengali' refers to people that socially and historically came from Bangladesh, not Myanmar.

More importantly, the ICNV does not grant citizenship, but the applicants need to apply for citizenship in accordance with the Myanmar 1982 Citizenship Law. However, at the same time, the Myanmar government has denied Rohingya citizenship status by referring to the Citizenship Law. As explained (see section 4.2), the 1982 Citizenship Law has caused the emergence of widespread violence towards the Rohingya. Therefore, as the OHCHR Report (2018) pointed out, although the ICNV is claimed to be the first step towards citizenship, it has not been the case for the Rohingya.

Instead, the verification card has been used to mark the Rohingya as non-citizens, in line with the categorisation used by the government who have labelled them as foreigners or ‘Bengali’.

Consequently, many agreements between parties, including the tripartite Memorandum of Understanding (MoU) between the UNHCR, UNDP and the Government of Myanmar, as well as the bilateral agreement between Myanmar and Bangladesh, do not work properly. This is because they fail to address key concerns, especially the guarantees of protection, security and a clear pathway for citizenship (Human Rights Watch, 2019). As the result, the tripartite MoU to create conducive and safe conditions for the return of Rohingya refugees to Rakhine State has been rejected by the Rohingya themselves. One of the community’s leaders said that ‘they (as the affected community) are still not clear about what agreement was signed’ as they have been ignored in the process of the agreement. As a consequence, they have claimed that ‘there is no clear commitment from the Myanmar government to fulfil their key demands as the precondition for their safe return to their homes in Rakhine State’ (Rahman, The Guardian, 6 July 2018).

As part of the agreement with Bangladesh, Myanmar authorities have claimed that the two parties have agreed to begin the process of the return of ‘verified’ Rohingya at the end of 2018. The UNHCR, however, consider Myanmar ill-prepared for the repatriation process. It explained that ‘none of the requirements, including the guarantee of security, freedom of movement and pathway to citizenship have been made by Myanmar government and to some extent UNHCR has been given restricted access to Rakhine State’ (Ellis-Petersen and Rahman, The Guardian, 31 October 2018). Again, as a consequence, the repatriation process has failed, since the Government of Bangladesh is unable to convince the Rohingya refugees to return to Rakhine State voluntarily. Preconditions for the safe and dignified return of the Rohingya do not currently exist in Rakhine State, according to the Chair of the Fact-Finding Mission, Marzuki Darussman, who has said that ‘atrocities continue to be committed in Myanmar and the remaining Rohingya community continues to suffer an on-going genocide’ (UN News, 24 October

2018). In line with this statement, Yanghee Lee, the Special Rapporteur on the human rights situation in Myanmar emphasised that until March 2019, the conditions of the tripartite MoU have not been met. She explained that there is ‘nothing to indicate that conditions have improved for the Rohingya who remain in Myanmar’ (UN News, 11 March 2019).

Therefore, ‘the safe, voluntary and dignified’ return of Rohingya will depend mostly on whether the Myanmar goverment do what they should: guarantee the Rohingya population security and a pathway to citizenship, and end the discrimination and violence directed at them (Sullivan, Fair Observer, 2 January 2019). The Advisory Commmission on Rakhine State (2017) warned that ‘if the issue of citizenship persists, it will continue to cause significant human suffering and insecurity for the Rohingya, while also holding back the economic and social development of the entire state’.

4.3.2 ASEAN Responses: National Affairs and Complex Issues

Before explaining the responses and actions of ASEAN and the member states to this issue, it is important to explain the way ASEAN countries view the Rohingya situation which puts the response of ASEAN into context. In line with the perspective of the Myanmar government, the ASEAN and its member states tend to define the Rohingya crisis as a complex issue and ultimately it has been seen as a domestic problem and part of Myanmar’s national affairs. The case has been largely defined through the lens of national and regional stability and peace, including the issues of state sovereignty, ethnic conflict, extremism and radicalism. Linking back to R2P and norm theory used in this research, the understanding of ASEAN countries regarding the Rohingya issue implies an ‘applicatory contestation’, in that they are not questioning the substantive principle of R2P but instead, claiming that the R2P principle does not apply in this case because mass atrocities – as the R2P core-concern – do not exist in the region. The way the ASEAN countries have used their regional principles to restrain international interference (especially the use of R2P) indicates the subsidiary behaviour of the countries: they seek to avoid international intervention as well as to preserve their regional principles and political autonomy.

Most ASEAN countries argue that the complexity of the Rohingya problem is related to many issues, including the ethno religious-based conflict; political and economic friction between Rohingya and other ethnic groups in the Rakhine State; and the consequences of a military operation and counter insurgencies (Interviewees 11, 16 and 20). Thailand 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' (Interviewee 11). From a humanitarian point of view, the case of Rohingya has been over-simplified as an issue regarding refugees and illegal trafficking (Maria O. Salvador, Bussines World, 9 June 2015; Interviewee 16). A statement from one of the ASEAN countries' stakeholders even attempts to link the current Rohingya situation to historical events during the 14th century, when there were conflicts among kingdoms in Myanmar and the King of Rakhine (formerly Arakan) (Interviewee 20).

As well as seeing the Rohingya issue as a vast and complex problem, most ASEAN countries (in line with the Myanmar government) are reluctant to respond to the claim that the Rohingya issue can be described as an atrocity crime. Some ASEAN countries have argued that 'it is debatable whether the case is genocide or not, but certainly it is a horizontal conflict between social groups' (Interviewee 8). To some extent, some of the countries also consider there to be no clear criteria to define the situation as atrocity crimes (see also section 6.3). It is argued that it is not easy to claim an event is constituted of atrocity crimes. 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 (Interviewee 20). Up to this point, the issue of Rohingya has not been considered an R2P case; instead the states suggest that the Rohingya case should be seen proportionately and comprehensively (Interviewee 16 and 18). Therefore, the countries emphasise that there is no urgency to apply R2P in this case because there

are no mass atrocities in the region.In considering the Rohingya crisis as not constituting 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 (Interviewee 16).*

This statement indicates that 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 of military operations against the militant movement and insurgencies. A former Indonesia Representative to the ASEAN has states 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 (Interviewee 16). By arguing this, Indonesia and most ASEAN countries tend 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 a military operation against extremism.

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

> *I and other ASEAN countries colleagues came to a village and saw probably around 13 houses had 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 Rohingyas. 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 (Interviewee 16).*

The description suggests that what people and media have said about the issue is not entirely true. Again, ASEAN and its 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 is mentioned that ASEAN is not really interesting to focus on the labelling of the crisis whether as a crime against humanity or ethnic cleansing. It argued that if labelling is identical with blaming and shaming, ASEAN tend to focus on solutions (Interviewee 23). Regardless of the debates and controversy around the situation, the ASEAN states have emphasised that the most important thing is to help Myanmar in dealing with the problems (Interviewees 6 and 15).

Above all argument regarding the complexity of the issue, as Singapore has emphasised, regardless of the controversy over whether the Rohingya case constitutes a crime against humanity, it is Myanmar's domestic problem and therefore the country suggested that 'any solutions to this case should be conducted with fully respect to the sovereignty of the country' (Interviewee 6). The ASEAN has worded their response to Rohingya situation very carefully:

> *We realise that it is the responsibility of ASEAN countries to help each other, based on our vision of the ASEAN Community, to protect our people from any violations to human rights ... without undermining the sovereignty and pride of the state (Interviewee 15).*

The ASEAN and its member states do not want their responses to be considered as interventions in Myanmar domestic affairs (Interviewee 8) as they believe that each member countries has the right to decide what is best for their nation (Interviewee 11). ASEAN states have emphasised that 'if we want to help, we must knock on their doors' (Interviewee 20). Therefore, ASEAN countries believe that despite their having 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 (Interviewee 8). This is representative of a region-wide tendency to resist external interference and resolve peace and security 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 prioritise their regional order and stability, by upholding their regional principles, over human protection. This situation reflects the contestation of norms within ASEAN especially when the ASEAN Way and ASEAN Community Vision are considered. Regarding this contestation, it can be argued that the implementation of the ASEAN Community, including their commitment to human rights is bounded by the ASEAN principles.

4.3.3 ASEAN Responses: 'Let Us Help Them'

As explained earlier, Myanmar and the ASEAN tend to use national affairs and complexity of the issue to frame what is occurring in Rakhine State (See section 4.3.1 and 4.3.2). Along with this perspective, several responses and actions from the ASEAN and its member states have been conducted to address the problem. These responses include collective action by the ASEAN, such as assistance, the provision of trust funds and bringing the issue into ASEAN meetings, but sometimes also criticism from several ASEAN countries. This section examines the responses of the ASEAN and its member states to the Rohingya issue. It argues that solutions to the problem are very limited, and that to some extent trying to give assistance is still problematic. The responses are related to the way in which ASEAN countries understand the issue and highlight the centrality of ASEAN Way and subsidiary behaviour of the countries in using regional principles to refuse international interference and to justify their limited response.

In the face of the worsening crisis and international attention to the situation, especially after the outbreak of conflict on 9 October 2016 and the 'clearance operations' on 25 August 2017, several ASEAN countries such as Indonesia, Malaysia and Thailand actively approached the Myanmar government, asking them to respond to the problem immediately. On 27 November 2016, Malaysia's Foreign Minister suggested to the Myanmar government that there should be an ASEAN Foreign Ministers Meeting to discuss the situation in Rakhine State (Malaysia Minister of Foreign Affairs, December 2017). The suggestion from Malaysia's government was rejected as they were being critical to Myanmar (Interviewee 16).

Compared to Malaysia, the Indonesian government has tended to take a softer approach to the Myanmar authorities when showing their concern regarding the situation. Responding to the open criticism of Malaysia (especially in the era of the PM Najib Razak), it has been argued that the Rohingya issue has been politicised by the Malaysian government for the sake of domestic political interests. The PM Najib Razak desired to be the champion in this issue by violating the principle of consultation and dialogue in ASEAN (Interviewees 13 and 14). The former Indonesia Representative to the ASEAN stated that 'condemnation is not necessarily a good way to show our concern about the problem' (Interviewee 16). 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' (Interviewee 15). One week before the Retreat Meeting, the Indonesian Foreign Minister had an informal discussion with Aung San Suu Kyi regarding to the situation in Rakhine State. It was claimed that the informal meeting between the two Foreign Ministers resulted in a common understanding that Myanmar and their colleagues in the ASEAN should discuss the issue together as 'ASEAN family' (Interviewees 11 and 16).

On 19 December 2016, ASEAN Foreign Ministers were invited by the State Councillor of Myanmar, Aung San Suu Kyi, to discuss the issue of Rohingya in their 'Foreign Ministers Retreat Meeting' in Yangoon, Myanmar. It was the first meeting of all ASEAN countries at which the Rohingya issue was discussed. In that meeting, Myanmar promised that they would update the situation and continuously engage with the ASEAN when responding to the situation. The Retreat Meeting claimed that Myanmar is slowly changing to become more open, especially with their 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. It is 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 (Interviewee 8).*

Indeed, the retreat meeting was important, especially to open up the possibility of the ASEAN to take collective action which will address the situation. Since the first formal discussion at the Retreat Meeting, the Rohingya issue has been discussed intensely by ASEAN countries, including at their Foreign Ministers' Retreats and in Summit Meetings.

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 or 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 is 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 ASEAN and its member states have claimed, despite the term 'irregular movement of persons' not specifically referring to particular societies in the region, that this term has been used to replace the term 'Rohingya' in their formal meetings, because the word is still sensitive and rejected by the Myanmar government (Interviewees 4 and 8). The Deputy Permanent Representative of Singapore to the 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 to respond to the problem' (Interviewee 4). The fund is important for giving the government the financial capacity to address the situation and for supporting the development of the country.

However, the problem is that originally this term was related to the region's concerns regarding transnational crimes. It was institutionalised in the ASEAN within the framework of their Ministerial Meetings on Transnational Crime (AMMTC), in particular at the tenth meeting in Malaysia on 29 September 2015. The framework places emphasis on there being a strong link between the irregular movement of persons and the crimes of trafficking and smuggling, and therefore it does not focus on the crimes of

governments against people. As a consequence, this term is focused on the impact of irregular migration on national and regional security rather than necessarily human rights-related issues. With regard to the Rohingya issue, although the trust fund could benefit the Rohingya and the government of Myanmar, the general framework related to the irregular movement of persons is significantly limited in terms of addressing the root causes and human rights issues of the Rohingya. On one hand, when talking about the Rohingya, the term ‘irregular movement of persons’ (rather than ‘Rohingya’) has been used during the ASEAN’s meeting on the issue. This, in conjuction with the provision of a ‘Trust Fund’, can be understood in the light of the strong influence of ASEAN values and approaches in the context of the region. On the other hand, when considering the origins of the term, ASEAN countries tend to use the argument about the social-political cultures and characteristics of ASEAN to justify their limited response to the crisis.

Generally, the ASEAN does not completely refuse the involvement of the international community, as the member states support the acceptance assistance from the UN through the UNDP and UNHCR in addressing the Rohingya issue, yet it is clear that the ASEAN and its member states have refused the use of coercive measures, especially under the R2P principle, to respond to the issue. It is argued that the use of force, as reflected in R2P, cannot guarantee better outcomes, and to some extent military intervention can be misused to orchestrate a regime change (Interviewees 11 and 20). In another statement, the ASEAN states argued that R2P follows the Western tradition in that it emphasises the use of a ‘stick and carrot approach’, whereby interference and the use of coercive measures are common. ASEAN countries have argued that a more engaging and less coercive or threatening approach can be more helpful. The countries prefer to intensify their communication and access for consultation between the countries. This highlights a clear distinction between the Western and the ASEAN approach especially in dealing with human rights issues.

At the OIC forum (Organisation of Islamic Cooperation), Indonesia (as a member), for example, has been vocal in refusing the proposal to bring the Rohingya case into the UNSC (Interviewee 18). The state has attempted to

convince other OIC member states that the case would be best addressed by Myanmar authorities in cooperation with ASEAN and its member states through their regional approach. In other words, the state would like to say, ‘Let ASEAN help Myanmar’ (Interviewee 15).

ASEAN and its member states claim that the ASEAN has different ways of responding to humanitarian crises in the region. In this context, the ASEAN countries tend to focus on how to help the Rohingya (and also the Rakhine) and the Myanmar government to strengthen their capacity to be able to deal with the problems (Interviewees 6, 18 and 23). At the same time, the member states attempt to avoid punishments, such as economic and financial sanctions, and the use of force to intervene in the domestic affairs of a state. It is argued that although pressure can be used in the context of the ASEAN, most of the countries believe that a soft and persuasive approach can be more effective (Interviewee 15). Within ASEAN, the aim is not to apply pressure through sanctions and punishments, but rather to discuss, argue and look for solutions (ASEAN Protocol on Enhanced Dispute Settlement Mechanism, 2004; Interviewee 20).

In the case of Cyclone Nargis in Maynmar in 2008, for example, ASEAN and its member states (through applying limited pressure) attempted to convince the Myanmar government to accept international assistance for the country to deal with the impact of the cyclone. It is stated that:

> *In the meeting of the ASEAN (Foreign Minister Meeting), there were 3 options for Myanmar. First, they must open and give their consent for the ASEAN to deliver humanitarian assistance. Second, the international assistance will be coordinated by the UN. Third, the ASEAN will do nothing if the international community insists on going into Myanmar to give humanitarian assistance. Honestly, most of the ASEAN states agree to push Myanmar to either accept assistance from the ASEAN or assistance that is coordinated by the UN, because we do not want any humanitarian intervention by the international community. Fortunately, the government of Myanmar has accepted the humanitarian assistance that was coordinated by ASEAN and the UN (Interviewee 8).*

To an extent, the statement may indicate that pressures (to a limited degree) have been used to urge the Myanmar government to accept international humanitarian relief. At the same time, it shows the reluctance of the ASEAN to accept humanitarian interventions by the international community,

including in the case of natural disasters. The concern of ASEAN countries regarding the Cyclone Nargis was related to a statement by the French Government that suggested applying the R2P principle in response to the humanitarian crisis (Cohen 2009; Caballero-Anthony and Chng, 2009; Junk, 2016). As stated: 'ASEAN states realise that once humanitarian intervention by the international community is implemented in this case (Cyclone Nargis), it could be a justification for further intervention in other cases of natural disaster (Interviewee 8). This rejection raises two important points: First, by rejecting the use of R2P in the case of natural disasters, ASEAN countries agree with the common understanding that the R2P principle is only applied to the occurrence of mass atrocities (genocide, war crimes, crimes against humanity and ethnic cleansing). This premise strengthen the argument (See Section 4.3.2) that ASEAN countries' criticism of R2P does not indicate a rejection of its validity, but rather a contestation of the principle's application. Second, the rejection of the use of R2P in the Cyclone Nargis suggests that the feeling of great powers hypocrisy exists among the ASEAN countries. As Acharya (2011) argued that when a state or collective of states are worried about abuse by powerful actors when talking action, they tend to refuse international interference and instead, uphold their local principles.

In reflecting on the case of Cyclone Nargis in Myanmar in 2008, it is clear that:

> *The case of Cyclone Nargis in Myanmar told us that too much pressure from the media and international community on the Myanmar government was not effective in solving the problem. Pressure just makes the country further exclude itself from international assistance. After being approach by ASEAN states, the government agreed to open their doors for humanitarian assistance to come to the country. What I mean is that dialogue and a persuasive approach are more effective in the ASEAN context (Interviewee 14).*

This experience has strengthened the confidence of the ASEAN and its member states in the sense that the more persuasive communication and consultation there is, the more possibility there of overcoming conflict, humanitarian crises, and other problems within the region. Some ASEAN countries attempt to prevent the escalation of the Rohingya issue in many international forum. They emphasise that too much pressure on the

Myanmar government could potentially disturb processes in the country whether they be an effort to stop the conflict or the process of democratisation (Interviewee 16). Regarding this, ASEAN countries claim that the ASEAN has its own provisions and approaches with regard to addressing humanitarian problems in the region (Interviewee 11). Any issues related to human rights protection are already regulated in the AICHR, convention on human trafficking and ASEAN Charter (Interviewee 8). It has been emphasised that ASEAN just needs to activate the frameworks and instruments (even though some of them need to be developed and enhanced) in order to implement the region's commitment to human rights protection (Interviewees 8, 11 and 20).

Currently, ASEAN has normative regulation and frameworks related to human rights protection issues, including the ASEAN Charter, AICHR and AHRD (see section 3.2. and 3.3). In the Charter, for instance, ASEAN states have emphasised their commitment to 'uphold the UN Charter and international law, including international humanitarian law, subscribed to by the ASEAN member states' (Article 2, Point j, ASEAN Charter, 2008). It regulates the methods and mechanisms the ASEAN has to respond humanitarian crises, communal conflicts, and so on. The Charter also implies that the chair of the ASEAN can initiate any necessary action to respond to a situation (Interviewee 15). As stated in Article 32 of the Charter, the Chairman of the ASEAN shall 'ensure an effective and timely response to urgent issues or crisis situations affecting the ASEAN'. Regarding this, the member states argue that the available framework and mechanisms in the ASEAN are adequate for dealing with the problem and more importantly they are considered to be the most appropriate instruments when taking into account the characteristics of the region (Interviewees 11 and 15).

As explained in Section 3.4, the ASEAN's commitment to human rights protection and the implementation of the relevant framework are still problematic, since implementation will remain restricted within the boundaries of the traditional regional principles, especially state sovereignty and non-interference. As Morada (2009) noted, the ASEAN Charter expects the member states and people in the region not to participate in any policy or

activity which threatens the sovereignty, territorial integrity and political-economic stability of the region and the member states. As a result, the AICHR, as the regional human rights body, does not hold any authority to discuss and take independent action on any human rights issues in the region, except where it has been approved by the all member countries.

Admittedly, along with the restriction of ASEAN principles, there has been some criticism of the Myanmar government by ASEAN leaders in relation to this case. Former Malaysia Foreign Minister, Anifah Aman has said that Myanmar's treatment of the minority Rohingya group is likely to undermine the region's security and stability (Jozuka and Maung, CNN, 19 December 2016). She warns that 'Islamic State militants could be taking advantage of the situation in Rakhine State' (Simon Lewis, Reuters, 19 December 2016). One week before the 33rd ASEAN Summit on 13 November 2018, Malaysian Prime Minister Mahathir Mohammad said 'our policy in ASEAN is non-interference in the internal affairs of the countries, but this is [the case of Rohingya] ... grossly unjust' (The Daily Star, 8 November 2018). In a statement regarding the Summit, Singapore's Foreign Ministry Office said that ASEAN leaders are expected to discuss the situation in Rakhine State. Singapore, as the host of the Summit, supports discussions on this matter, even though the country has also emphasised that 'at the end of the discussion, it is the responsibility of Myanmar Government and the relevant stakeholders to reach a comprehensive, viable and durable political solution to this issue' (The Daily Star, 8 November 2018).

Indeed, criticism of Myanmar from some ASEAN countries and stakeholders is important. Yet, the way of the countries criticise the situation in Rakhine State implies a significant influence of ASEAN principles and approaches on their intramural relationship. ASEAN and its member states tend to prioritise their response to the issue of Rohingya by providing assistance to improve the capacity of Myanmar government, rather than by applying strong pressure and sanctions. The criticism has also been shaped by the centrality of ASEAN principles especially non-interference. The criticism has been concerned on the issue of regional security and stability rather than focus on the violation of against the Rohingya.

Along with the criticism, it is emphasised that the ‘ASEAN must help the government and should not add other problems for them with too many pressures and sanctions’ (Interviewee 18). As a consequence, the ASEAN tends to support all actions made by Myanmar’s government, while avoiding criticising it. The ASEAN and its member states believe that Myanmar’s government is still strongly committed to addressing the problem. On behalf of all member states, the Chairman of ASEAN, at the 31st ASEAN Summit, in Manila in November 2017, stated that most ASEAN countries had expressed their support for Myanmar’s humanitarian relief programme and its government-led mechanism, formed in cooperation with the international community to seek solutions and, more broadly, to bring peace, stability, rule of law and to promote harmony and reconciliation amongst communities in Rakhine State.

Similar support was given at the 33rd ASEAN Summit Meeting on 13 November 2018 in Singapore: the ASEAN and its member states fully supported the repatriation process of Rohingya and their right to return safely to Rakhine State under the agreement between Myanmar and Bangladesh, as well as the full implementation of the MoU signed by Myanmar, UNHCR and UNDP (ASEAN Chairman’s Statement in the 33rd ASEAN Summit, 2018). At the 34th ASEAN Summit on 23 June 2019 in Bangkok, ASEAN and its member countries expressed the same support to Myanmar by emphasising the need for humanitarian asistance and the repatriation process of the return of the Rohingya (ASEAN Chairman’s Statement in the 34th ASEAN Summit, 2019). Unfortunately, with regard to this support, there was, critically, no proposal made by the ASEAN on how Myanmar should fulfil the key points of the agreement related to the remaining problems. As explained above (section 4.3.1), the repatriation process is still problematic and cannot be started since the Myanmar government remains unable to guarantee the safety and security of Rohingya and a pathway to citizenship for the people. At this point, the GCR2P (2019) emphasised that all discriminatory laws against the Rohingya remain in place.

Similar to the most of ASEAN governments, the Senior Advisor of the Human Rights Working Group in Indonesia (HRWG) argued that albeit the crisis and conflict is continuous, it does not mean the government of Myanmar is unwilling or unable to deal with the problem. The government has shown their strong commitment and effort to deal with the issue by seeking assistance (such as the appointment of Kofi Annan to lead the Advisory Commission) and cooperating with many parties, including the ASEAN, UN and the Bangladeshi government. The Senior Advisor illustrated that the issue of Rohingya is different from the case of Rwanda. In the case of Rwanda, the state was clearly involved and took sides in the genocide. In the case of Rohingya, however, while the conflict may be continuous, the government is willing to respond to the situation by continuously searching for solutions and assistance. It is therefore argued that Myanmar is not a failed state with regard to this case, and that the use of coercive measures, especially under the R2P principle, should be avoided (Interviewee 5).

4.4 Conclusion

Through analysing the response of ASEAN and its member states to the issue of Rohingya, this chapter has put forward several points. First, it has been explained that the state-led violence against the minority Rohingya group, and the failure of the Myanmar government to prevent and protect the population from the violence, it can be argued that the issue of Rohingya constitutes an atrocity crime . As widely reported by UN agencies and international organisations, the violence toward Rohingya has been committed through state-directed direct and structural violence, with the intention to eliminate the Rohingya's identity and permanently remove the people from Myanmar. The continuing violence has caused a widespread humanitarian crisis involving large numbers of IDPs and refugees. Therefore, the government of Myanmar can be considered as failing to protect the Rohingya by showing a lack of commitment to solving the root causes of the crisis, especially with regard to guaranteeing the safety and security of Rohingya and an accountable process for the granting of citizenship to the population.

Second, as explained in Section 4.3, the way the ASEAN and its member states perceive and respond to the Rohingya issue implies the significant influence of the ASEAN Way, which shapes the perspective and action of the member countries on the issue. Regional security and state sovereignty have been used significantly by the ASEAN countries as lense through which to view the Rohingya crisis. In this case, the issue of Rohingya has been interpreted as a problem caused by ethnic conflict and extremism in Rakhine State. Ultimately, the issue is considered to be a domestic problem and a Myanmar national affair. As a consequence of this understanding, the ASEAN's response to the problem has been limited to the provision of assistance and dialogue between the ASEAN and Myanmar. The ASEAN's limited response has highlighted the prudent action of countries restricted by the centrality of ASEAN principles and approaches. In other words, the implementation of available human rights instruments in the region has been dependent upon the centrality of the ASEAN Way.

Third, the limited response of the ASEAN in addressing the issue reflected the pluralistic understanding of the countries on human rights protection and this case (also the empirical case of war on drugs, as explained in Chapter 5) indicate a general understanding of the ASEAN region toward R2P and their reluctance to implement the principle in the context of the region (see also Chapter 6). In this case, although most ASEAN countries are aware of human rights issues in the case of Rohingya, the states tend to show a subsidiary behaviour whereby the ASEAN countries largely viewed the case from the perspective of political sovereignty and self-determination. They emphasise that a state or regional organisation may have different mechanisms and approaches with regard to addressing their problem. 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. The consequence of this position is that any international response or interference, especially by considering the use of coercive measures, is likely to be rejected. It argued that international

response cannot be the primary and the only way to respond to any issues in a state or region.

Chapter 5 The War on Drugs in the Philippines: The ASEAN's Silent Response, Norm Contestation and Common Interests

5.1 Introduction

This chapter explores the case of the war on drugs in the Philippines. Similar to the previous chapter, this chapter focuses on two objectives: examining the understanding and reaction of the ASEAN and its member states, and exploring the factors that constitute the behaviour of ASEAN and the member countries to the case. On this basis, the analysis considers if ASEAN's response – both in terms of discourse and action – are indicative of a broader political culture in the region, and the implications of this for the region's engagement with principles such as R2P. This chapter focuses on several questions such as: what is the war on drugs in the Philippines and what is its impact on human rights, how does the region (ASEAN and the member states) view the war on drugs policy and how have they responded to the case, why have they taken such a position and what factors have shaped the understanding and reaction of ASEAN countries to the case.

Based upon a range of authoritative sources, the chapter explains that the violent approach of – through systematic extrajudicial killings and enforced disappearance of drugs suspects – the war on drugs constitutes atrocity crimes. With regard to these crimes, the ASEAN and its member states have ignored and tend to be silent on the issue, in the sense that there is no clear reaction and response from ASEAN and its member countries to the war on drugs, especially in relation to the human rights impacts of the policy. The policy has been understood simply as law enforcement and ultimately it has been defined as a domestic issue within the Philippines. It shows the significant influence of ASEAN principles and the common interests of the countries on the problem of the war on drugs in that they have shaped the perspective and behaviour of the states on the issue. The findings and arguments in this chapter are explained under four headings, including; the crimes involved in the war on drugs; the use of the ASEAN perspective in understanding the Philippines' war on drugs; the common interest of the

member states in combating drugs in their countries and the region; and the contestation of norms within the ASEAN, especially between ASEAN arrangements on drugs control, ASEAN principles (state sovereignty and non-interference in particular), and the ASEAN Community Vision.

This chapter begins by describing the violent approach of Duterte's war on drugs in the Philippines. It explains the impact of the war on drugs-based rhetoric and policy on the people's human rights. Next, it explains the regional agenda and arrangements of the ASEAN in combating illegal drug production, use, and trafficking as one of the ASEAN's top priorities. It shows that although ASEAN and its member states fully support international drugs conventions and have adopted the conventions into the regional context, the implementation of the conventions, including the institutionalisation of the ASEAN drugs control, has been adjusted in accordance with ASEAN local principles and diplomatic culture. In this sense, the government's response to illegal drugs in the Philippines, although at an extreme level, is not entirely inconsistent with regional norms. After that, it examines the perspective and responses of ASEAN to the case, including the human rights impact of the policies. It explains the contestation of norms within ASEAN and the common interest of the states with regard to the regional's response to the case. The last section is the conclusion of the chapter.

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. The UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, 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, plans to begin a preliminary examination to establish the facts regarding whether there is a reasonable basis to believe that the crimes, under its jusrisdiction, have been or are being committed (International Criminal Court, 8 February

2018). A recent Amnesty International emphasised that it is imperative for independent and impartial bodies such as the UNHCR and ICC to conduct prompt, thorough and effective investigations, since the national authorities of the country not only failed to launch credible investigations but have also undermined institutions that have attempted to address impunity, including the Senate, the House of Representatives and the Supreme Court. Amnesty International warned that 'the lack of effective investigations into the case has not only contributed to an environment in which police and members of the public have free rein to kill with impunity, but has also amounted to authorities being complicit or acquiescent in extrajudicial executions' (Amnesty International Report, 2019a: 22).

In response, the Philippines' government refute 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 the society and nation' (Human Rights Watch Report, 2017). The government denies the 'humanity' of the drugs suspects (The Straits Time, 2017). The country's claim of sovereignty is also argued by the government to justify the strategy behind the war on drugs. The country's presidential spokesperson, Harry Roque, 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 power in dealing with the problem of drugs' (Buan and Gavilan, The Rappler, 8 February 2018). The government claims for the 'license to kill' to the drugs suspect within the country (Human Rights Watch Report, 2017). For the government, it is justifiable to use any necessary instruments, including extrajudicial killings, in their war on drugs. They consider the international criticism including the preliminary examination plan of the ICC to be 'bullshit', 'hypocritical' and 'useless'. It is argued to be an 'official insult' to the sovereignty of the country (Ellis-Petersen, The Guardian, 8 February 2018).

In the regional context of Southeast Asia, there has been no clear response from the ASEAN and its member countries (such as meetings, joint statements and other forms of response) to the Philippines' war on drugs, other than the few general statements cited in the media. In the absence of adequate evidence from responses to the case by the ASEAN and its

member countries, data from interviews with ASEAN stakeholders and human rights networks in the region are necessary and important to explaining the regional perspective and the absence of the region's response to the case.

5.2 The Crimes of the War on Drugs

Similar to the analysis of the plight of Rohingya in Chapter 4, the case of war on drugs in this chapter lies on the authoritative international institutions, including the UN bodies and international human rights networks to explain the rhetoric and policies of Duterte to combat the drugs problem in the country. It shows that the attacks directed towards drugs suspects, through extrajudicial killings and the enforced disappearance of persons during operations, constitute an atrocity crime. In considering the active role of the government, as the primary perpetrator and driving force of the violence, and also the impact of the violence such as the high number of deaths and the widespread terror and fear among society, it can be argued that the Philippine authorities are failing to protect the people from atrocity crimes.

5.2.1 Extrajudicial Killings and Enforced Disappearance of Persons

When announcing his presidential candidacy in May 2016, Duterte firmly stated, 'When I become president, I will order the police to find those people (drug dealers and users) and kill them'. He warned drug dealers and users that 'if you are still into drugs, I am going to kill you, sons of bitches, I will really kill you' (Human Rights Watch Report, 2017: 7). When Duterte took power as President of the Philippines, he fulfilled his promise to consistently use security perspective and a violent approach to end crime and illegal drug trafficking and abuse in the country.

Under Duterte's administration, the war on drugs policy has topped the state's national agenda. The problem of drugs has been defined as a threat to national security and resilience of society. The government claimed that it is justified in using any necessary instruments, including the extrajudicial killings, as the country's Justice Secretary Vitaliano Aguirre II stated that drug dealers and addicts are not 'part of humanity' (Rauhala, The

washington Post, 1 February 2017). The government has also claimed that the drugs war is part of the country's national affairs.

The government has not only mobilised the security forces, especially the Philippines National Police (PNP) to hunt and kill anybody related to drugs, but they have encouraged society to become involved in the drug war campaign. By saying this to the public, Duterte has encouraged them to 'go ahead and kill' the drug addicts (Kine, Human Rights Watch, 2017). The rhetoric has been widely understood as an endorsement of, and pretext for, vigilante and extrajudicial killings by both security forces and unknown armed persons. A report by the APCR2P in 2018 mentions that the emergence of unidentified gunmen in the war on drugs correlates to the illicit small arms and gun trade problem in the Philippines. The emergence of vigilante groups in the war on drugs has been used by the security forces to support their duty in translating the President's order to kill drugs suspects. Human Rights Watch (2017) found strong evidence of links between state authorities and the involvement of unknown armed persons. Their report mentioned that the unidentified gunmen were paid by security forces to kill drugs suspects.

Amnesty International mentioned that during the drugs war operation, 'the sight of dead bodies on the street has become commonplace' (Amnesty International Report, 2017: 6). 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 were killed during the operations. Human Rights Watch (2018) mentioned that unidentified gunmen have killed thousands more drug suspects, which would bring the total death toll to more than 12,000. 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 (Atrocity Alert, Global Centre for R2P, 14 February 2018).

Even though there has 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, the extrajudicial killings have still been consistently

applied by the government (APCR2P Report, 2018). The opposition Senator in the Philippines claimed that the number of deaths from the war on drugs has surpassed 20,000 (Regencia, Al-Jazeera, February 2018). Since the 'relentless and chilling' war on drugs has not relented (Lema and Morales, Reuters, 23 July 2018), 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 (Ellis-Petersen, The Guardian, 19 December 2018).

The high number of deaths is not the only problem and impact of the government-led war on drugs. It creates social distrust, terror, and fear in the society (Interviewee 21). The government has used the residents in the country to spy on each other and give information to security forces if they find any drugs-related person in their neighbourhood. This tactic creates social surveillance within the society. It puts pressure on the people to report their neighbours and even family members if they are suspected as drug addicts or dealers. As a consequence, it increases social distrust and fear among neighbours. The people live in fear because everyone could being reported by their neighbours as drugs-related people.

The government has installed so-called 'drop boxes' in certain public areas to facilitate people in making a report. According to Human Rights Watch, a drop box was first reportedly found in Quezon City and the practice spread to at least two cities and several towns in two provinces. To some extent, the tactic works effectively to support the government's war on drugs. In Roxas City, for example, there were 36 names reported by the residents in the first two weeks after it launched in late August 2017 (Conde, Human Rights Watch, 25 September 2017). Through the drop box, people do not need to go to police stations or government offices to make a report. They can easily put certain names into drop boxes around the city. Any names inside the box are suspected as drug-users or dealers by the security forces. As a consequence, the drugs suspect can be the next target of unlawful killings (Interviewee 22).

The drop box tactic facilitates the widespread killings and enforced disappearances of persons. Information about the names of people inside

the box cannot be verified. The security forces may have no information regarding the person who has made the report. More importantly, the security forces cannot verify that the name inside the box is really a drug-related person. Moreover, any report made by a resident is likely to be wrong because it will simply be based on their daily observations of their neighbours. The security forces and unknown gunmen can simply target the names inside the box without any clarification or legal processes. The government consider the names within the boxes to be truth. As a result, 'there is a killing, but there is no suspect' because their are no lawful processes (Amnesty International Report, 2017: 48). This tactic is neither morally nor legally justified, but it is definitely a violation of human rights and is a risk factor for the committing of atrocity crimes.

5.2.2 The War on Drugs as Atrocity Crimes

Duterte's deadly war on drugs in the Philippines has received wide international criticism. It has been claimed that it could amount to a crime against humanity and an act of genocide. International human rights networks such as Amnesty International and Human Rights Watch have stated this (Amnesty International, 30 January 2018). A report from the APCR2P (2018) comes to a similar conclusion on the 'Atrocity Crimes: Risk Assessment Series on the Philippines', suggesting that Duterte's war on drugs shows it is at risk of becoming a crime against humanity, due to the signs of widespread and systematic attacks against the civilian population, in this case those involved in the drug use and trafficking.

UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, has emphasised that the extrajudicial killings violate international law, as all people are entitled to the right to life, freedom from violence and force, equal protection before the law, and being innocent until proven guilty (OHCHR, 20 December 2016). At the 37th Session of the Human Rights Council, Zeid re-emphasised that the shoot-to-kill order given by Duterte with regard to drugs suspects has violated the fundamental rules of international law (High Commissioner's Global Update of Human Rights Concerns, 7 March 2018).

The European Parliament ‘urges the Government of the Philippines to put an end to the current wave of extrajudicial executions and to respect human rights and fundamental freedom in accordance with international human rights standards and international instruments ratified by the Philippines (European Parliament Resolution 2016/2880, 15 September 2016). Amnesty International suggests further investigation of the case to collect evidence on whether the crimes against humanity have been committed (Amnesty International Report, 2017). The ICC’s 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 jusrisdiction, 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.

Simangan (2018), drawing on Gregory H Stanton’s stages of genocide (1998), has argued that Duterte’s rhetoric and policies satisfy some of the stages of the genocide such as classification, symbolisation, dehumanisation, polarisation, extermination and denial. Simangan explains that the drugs war policy began with the process of classification, to distinguish between society and the drugs suspects. It is followed by rhetoric and policy used to eliminate the drugs suspect as targeted people. The government demonstrates denial of their actions (as the last stages of genocide) by fabricating evidence, intimidating witnesses, blocking investigations, and sometimes blaming the victims for the occurrence of the crimes (Simangan, 2018).

Simangan’s analysis may be correct in that Duerte’s war on drugs committed the crimes as mentioned in her article. However, Simangan’s analysis draws more heavily upon an academic framework than the existing convention. While she argues that Duterte’s war on drugs satisfies the Stanton’s stages of genocide, ‘according to Genocide Convention Duterte’s war on drugs may not qualify as genocide because the drug suspects are not a national, ethnic, racial or religious group. Therefore, despite Simangan’s analysis being

useful, it does not carry any international responsibilities (Gallagher *et al*, 2019).

Based upon a range of authoritative sources, including the 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. As previously mentioned, the war on drugs has caused a large number of deaths and widespread fear and terror amongthe entire population (Section 5.2.1). As in the case of Rohingya (Chapter 4), when considering the intention and active role of the government as the primary perpetrator and driving force of the violence, and the impact of the violence, such as the high number of deaths and widespread terror and fear insociety, it can be argued that the Philippine authorities are failing in their responsibility to protect the people from heinous crimes. By examining the role of government in mass atrocities, we may be able to define the extent to which the government is actively involved in the crimes. It could be the basis for an argument about whether the government is manifestly failing to protect the people (Gallagher, 2014). If the government is the perpetrator of the crime, the government cannot protect the people, and this can be said to indicate a manifest failure on their part, in this respect. The rhetoric and policies of Duterte's administration have satisfied this indicator.

Despite the specific indicator of death toll still being debatable, the number of deaths is recognised as one factor in considering the scale and seriousness of the crimes (Bellamy, 2011; Gallagher, 2014). Mass atrocities often cause large numbers of civilian deaths, but atrocity crimes can also happen with small numbers of fatalities. Death toll, therefore, is potentially useful for the international community to consider when deciding on the appropriate action and response to address the situation. As the UN Secretary-General implied, the higher the number of people's deaths or displaced of people in the mass atrocities, the more robust the international response needs to be (UNSG Report, 2009).

5.3 Drugs Control: the ASEAN Approaches

Before explaining the position of the ASEAN and its member states to the war on drugs in the Philippines, it is necessary to discuss the ASEAN arrangement on drugs control in the region to understand the countries' reactions to it. The problem of drugs have been one of the international issues for decades. At the international level, combating the illicit trafficking and abuse of drugs has been institutionalised through three main international drug control conventions. They include: the Single Convention on Narcotics Drugs of 1961, as amended by the 1972 Protocol; the 1971 Vienna Convention on Psychotropic Substances; the 1988 UN Convention Against Illicit Traffic in Narcotics Drugs and Psychotropic Substances.

Southeast Asian countries were present at the conventions. All the states have accepted the treaties, with the status of accession. According to the Vienna Convention on the Law of Treaties (article 2), accession has a similar meaning to acceptance, approval and ratification. It indicates an act whereby a state accepts the offer or the opportunity to become party to a treaty. The countries emphasised that they fully support the centrality of the international drugs control conventions as the basis for world drugs policy (The 4th AMMDM, 2015). It implies the strong commitment and political position of the countries with regard to controlling drug abuse alongside the international community. The accession of the countries to international drugs control conventions is followed by the implementation of the conventions at the regional level of the ASEAN. The institutionalisation of drugs control in the context of the ASEAN can be understood as the process of implementation of the international drugs control conventions. The implementation process highlights the characteristics of ASEAN in that it relies on its regional basic principles and approaches.

The regional commitment of ASEAN countries to deal with the drugs problem commenced in 1972, when the member states collectively discussed the issue of drugs for the first time. In 1976, the first ASEAN formal declaration on drugs was created. The declaration was made in parallel with the growing concern regarding ASEAN regional cooperation against transnational crime. One of the consequences was that transnational

crime was primarily defined in terms of combating illegal narcotics and their abuse[6] (Emmers, 2003). The declaration emphasised that each member country of the ASEAN should intensify its vigilance and preventive measures against the illicit traffic in drugs. Moreover, it suggested that ASEAN countries should 'intensify their cooperation and collaboration with international actors, including the UN, Colombo Plan Bureau, Interpol and other international agencies to combat drug abuse' (ASEAN Declaration of Principles to Combat the Abuse of Narcotics Drugs, 1976).

Since 1976, the ASEAN has created regular meetings, joint statements and declarations, and work plans for the realisation of the regional commitment to control drugs in the region. The governments believe that the illicit trafficking and abuse of drugs should be addressed collectively through coordination and cooperation among the countries, whether under the banner of transnational crime or in specific arrangements regarding drug control.

Specifically, ASEAN drug control has been institutionalised in several forms especially the ASEAN Senior Officials on Drugs Matters (ASOD) and ASEAN Ministerial Meetings on Drugs Matters (AMMDM). ASOD was formally formed in 1984, and replaced the Annual Meeting of ASEAN Drugs Experts that was firstly convened in 1976. The primary mandate of the ASOD included enhancing 'the implementation of the 1976 ASEAN declaration on drugs control,' and it aimed to 'consolidate and strengthen collaborative cooperation among relevant actors in the region, eradicate the narcotics plants cultivation, and design, implement, monitor and evaluate all ASEAN programmes of action to prevent and control drugs abuse' (ASOD 24th Meeting, 2003).

The ASOD is one of the most important ASEAN developments with regard to drug-related issues. It is not only a regional body for coordination and cooperation among ASEAN countries, but also a place for ASEAN

[6] Since the ASEAN Declaration on Transnational Crime in December 1997 in Manila, the countries have formally expanded the definition of transnational crime to include terrorism, illicit drug trafficking, arms smuggling, money laundering, traffic in persons, and piracy (ASEAN Declaration on Transnational Crime, 1997).

governments to discuss and formulate their collective statements and positions on drug control at an international level. The ASOD plays its role as a mechanism for the countries to respond to the development of international arrangements on drug control. In most of the international forum on drug control, ASEAN countries have been able to stand together collectively as one, rather than as individual states. For example, the Draft of the International Convention on Illicit Traffic in Narcotics, Drugs and Psychotropic Substances was discussed by ASEAN countries in the 9th ASOD Meeting in 1985 to synchronise the perception and understanding of the member countries regarding the convention. In the following year, at the 10th ASOD Meeting, the countries formulated a joint ASEAN strategy to be presented at the International Conference on Drug Abuse and Illicit Trafficking (ICDAIT) in Vienna, June 1987.

In 2000, the ASEAN established a multilateral framework for cooperation with China to combat the illicit trafficking and abuse of drugs, which was named the ASEAN Cooperative Operation in Response to Dangerous Drugs (ACCORD, 2000). Ralf Emmers (2007) mentioned that ACCORD was the ASEAN's most concrete attempt to create a framework of multilateral cooperation to combat the illicit trafficking and abuse of drugs. The multilateral cooperative operation focused on four major areas of activity: i) to promote public awareness of the dangers of drugs; ii) to address drug abuse and related HIV problems among drug users through improved data collection, preventive and treatment programmes and sharing information; iii) to attack illicit production and trafficking through the strengthening of law enforcement efforts and international cooperation, the development of legislation and control measures; iv) to eliminate illicit drug crops through alternative development programmes and related community participation (ACCORD, 2000).

More than 30 years since the first ASEAN declaration on drugs control and ASOD meeting, ASEAN drugs control at the ministerial level (AMMDM) has been created to enhance support and political legitimacy for the ASOD and the relevant agents to combat drug abuse within the region. Deputy Secretary-General for the APSC, HE Hirubalan V.P, emphasised that the

institutionalisation of the AMMDM in 2012 reflects the consistency of the ASEAN in combating drug abuse, and enhances the legitimacy of the ASOD as the primary ASEAN body handling drug-related matters (The 36th ASOD Meeting, 2015). Recently, the ASOD has launched the ASEAN Work Plan on Securing Communities Against Illicit Drugs 2016-2025, aligned with the vision of a drugs-free ASEAN. This plan was adopted by all ASEAN countries at the 5th AMMDM in October 2016. In other words, the work plan has been politically supported by the all member states as the pathway to achieving their drugs-free ASEAN vision.

On the one hand, the development of the ASEAN's drug control policy indicates a political commitment by the countries to create a drug-free ASEAN. It also highlights the strong support of the countries for international drugs control conventions. However, the regional arrangements on drugs control reflect the strong characteristics of the ASEAN's interstate and multilateral cooperation. As Wiener argued: a norm is always contextually 'in use' in a particular setting (Wiener, 2009). The implementation of international norms in the regional or national context of a state strongly correlates with the local needs (common interests) and its principles (Betts and Orchard, 2014). Ralf Emmers (2007) emphasised that although the arrangements for drugs control in ASEAN had similar characteristics to those of international regimes, such as multilateralism cooperation, it has been dependent on non-binding declarations, loose forums with the focus being more on information exchange, an emphasis on the regional common principles, self-enforcing behaviour rather than compliance mechanisms, and a tendency to tackle drug problems at the national (domestic) rather than regional level. The arrangements, significantly, have been based on the traditional spirit of ASEAN solidarity and cordiality (Chairman Statement on the 1st AMMDM, 2012). In other words, the ASEAN's drugs control is enforced within the boundaries of ASEAN principles and diplomacy cultures. At this point, while states may follow their own interests in understanding and interpreting international norms, they tend to justify their actions and interpretations with reference to their regional norms, including the regional version of the existing international norms such as the principles of state

sovereignty and non-interference.As stated in many ASEAN key documents on drug control since the first ASEAN Declaration of Principles to Combat the Abuse of Narcotics drugs in 1976, the regional drug control is more focused on ‘coordination’ and ‘exchange of information and experience’ among the member countries. This includes law enforcement related to drugs control being largely defined within the context of ‘the exchange of experience and methodologies’ to prevent and control illegal drug abuse and trafficking in the national context of each country.

The strong influence of ASEAN principles and diplomacy cultures in ASEAN drugs control is also reflected in the absence of regional authority in the ASEAN drugs control bodies to be able to initiate collective law enforcement over any drug-related issues in the domestic context of the member countries. Despite the ASEAN having developed its unified approach or strategy as part of their efforts to curb drug abuse and trafficking, the measures are primarily implemented in the national context of each country. As mentioned in the ASEAN Work Plan on Securing Communities Against Illicit Drugs 2016-2025, the ASEAN attempts to increase its multilateral and collective cooperation, but it should be conducted without undermining the individual states’ efforts and actions to address the drug problem. In other words, collective cooperation should be achieved by respecting the self-determination of member states in combating their domestic drug problems. As a consequence, ASEAN drugs control does not indicate a regional authority and mechanism for collective regional enforcement, including responding to what is occurring in the Philippines.

5.4 Silent Response: Common Interest and Contestation of Norms

Despite the number of deaths and international criticism to the war on drugs increasing, at the time of writing (August 2019), there has still been no clear statement, meeting or other response from the ASEAN and its member countries to the issue. The Philippines’ war on drugs is never discussed on any ASEAN forums. One of the ASEAN countries’ Representatives to the ASOD and ASEANAPOL (as the front guard of ASEAN drugs control) stated ‘we never discuss and talk about the case both formally and informally in the

ASEAN level' (Interviewee 26). On this issue, ASEAN governments neither criticise the policy nor support extrajudicial killings.

In the context of AICHR (as the primary ASEAN human rights body), the war on drugs in the Philippines, especially its human rights impact, has been neglected. 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 did discuss the human rights-based approach to the implementation of the ASEAN Convention Against Trafficking in Persons, they did not discuss the similar human rights-based approach to the implementation of measures to combat drug abuse (23rd AICHR Meeting, 15 February 2017). This issue was also neglected in the 2018 AICHR Annual Report. The report made not one mention of drugs, including the issue of the war on drugs in the Philippines.

At the highest level, despite the general problems and challenges of drugs always being mentioned and reinforced at every ASEAN Summit Meeting, the Philippines' war on drugs has been ignored at the last six ASEAN Summits, from 2016 (since Duterte launched his drugs war policy) to 2019 (from 28th to 34th ASEAN Summit). 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 (Chairman's Statement of the 28th-29th ASEAN Summit, September 2016). At the 34th ASEAN Summit in June 2019, the ASEAN countries reaffirmed their commitment to addressing the scourge of drugs through their regional drug control arrangements in order to achieve their goal of freedom from drug abuse and trafficking (ASEAN Chairman Statement at the 34th ASEAN Summit, 2019).

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

the Opening Ceremony of the 30th ASEAN Summit, April 2017). With regard to the absence of a formal statement, meeting, and other forms of response therefore, it is fair to say that the ASEAN and itsmember states tend to be silent regarding the war on drugs in the Philippines.

The silent response highlights the contestation of norms within the ASEAN, especially between ASEAN principles, ASEAN drugs control, and the ASEAN Community Vision. It indicates the centrality of ASEAN principles to the shaping of the perspectives and behaviour of the states regarding the case, in contestation with its regional drugs control and the regional vision of people-centred and people-oriented organisation. In addition to the factor of norm contestation, the silent response to the Pilippines's war on drugs reflects the way ASEAN governments define their common interest in relation to the drugs problem in the region.

5.4.1 The ASEAN's Common Interest in the War on Drugs

Before explaining the contestation of norms in the ASEAN regarding drug control (section 5.4.2), it is necessary to explain the common interests of ASEAN countries in the problems and challenges drugs present in the region. It draws a picture of how significant the drugs problem in the region is, and demonstrates that the ASEAN's silent response to the war on drugs in the Philippines indicates the common interest of the ASEAN states regarding the drugs problem.

As aforementioned (Section 5.3), ASEAN countries have been able to make the issue of drugs one of the ASEAN's regional priorities, whether under the banner of transnational crimes or in a specific arrangement on drug matters. The key to its success is the ability of the member countries to frame the issue as a common problem within the region. It indicates a collective consciousness and understanding of the countries regarding the threat of drugs for their societies and nations. In the context of ASEAN, when an issue or situation is considered by most of the member states to be the problem of the region or to potentially have a regional impact, it is more likely to be addressed collectively (Interviewees 8 and 14). With regard to the war on drugs in the Philippines, the countries assume that the drugs war does

not necessarily have a negative impact on neighbour countries and the region. As a result, the states has developed a lack of reason and political will to react to Duterte's policy, even though they are aware of the human rights impact from the drugs war (Interviewees 24 and 25).

The majority of Southeast Asian countries have a shared problem regarding the threat of illegal trafficking and abuse of drugs. Southeast Asia is one of the busiest drug trafficking (especially opium and heroin) regions in the world, with its centre known as 'Golden Triangle'.[7] The Golden Triangle is largest opium and heroin-producing area in the region and one of largest in the world. The Southeast Asia Opium Survey in 2015, conducted by the UN Office on Drugs and Crime (UNODC) showed the production of opium in this region had increased in the last ten years. Among the Golden Triangle's countries, Myanmar remains the top producer of opium in the region, and the second largest in the world after Afghanistan. There were around 55,500 hectares of cultivated opium inside the territory of Myanmar in 2014 and 2015. Meanwhile, the total area found in Lao PDR was the second largest in the region, at around 5,700 hectares in 2015. The survey mentioned that each hectare of the field could produce around 14-30 kilograms of dry opium (Southeast Asia Opium Survey, 2015: 10). During 2015, drugs trade linked to this area was worth around $16.3 billion (Moodley, The Independent, 11th of March 2015).

The Golden Triangle is not only the centre of opium production, but also central to the networks of drugs trafficking across the region and beyond. The UN World Drug Report 2016 mentioned that there is a growing market for both methamphetamine tablets and crystalline methamphetamine, which became the primary concern of several Southeast Asian countries such as Laos, Thailand, Brunei Darussalam, Cambodia, Indonesia, the Philippines and two other East Asian countries, Japan and the Republic of Korea (UN World Drug Report, 2016).

[7] The Golden Triangle refers to the location surrounding the Mekong River that is located between Laos, Thailand and Myanmar.

The Golden Triangle has been a ‘safe heaven’ for drugs production and smuggling for decades. There are several factors that support the illegal activities. The UN World Drug Report 2016 stated that drugs issues are related to at least four types of crimes, including: corruption, terrorism, organised crime and illicit financial flows (World Drug Report, Booklet 5, 2017). The report also emphasised that conflict and poverty significantly reinforce the illegal drug-based activities and vice versa. In Myanmar for example, around 90 percent of total opium production in the country is cultivated from Shan State, one of the conflict zones in Myanmar (ASEAN Drug Monitoring Report, 2015: 19). Moreover, in regard to the Golden Triangle, most countries in the area, such as Thailand, Myanmar, Laos and several countries surrounding the region, including Vietnam and Cambodia, are experiencing conflict, poverty and corruption. The geographical position of the majority of Southeast Asian countries also contributes to the growth in drug trafficking within and through this region. As the Head of Indonesia’s Anti-Narcotics Agency said, ‘Indonesia (*and also other countries in the region*) became a good spot for drugs dealers because it is easy to infiltrate by the sea. There are so many unofficial landing points and small ports across the islands’ (Davies and Reinard, Reuters, 28th of July 2017).

All of this indicates that every country in the region is actually in a vulnerable position where illegal drug trafficking is concerned. In Lao PDR, there were around 12,600 registered opium addicts during 2015 (Southeast Asia Opium Survey, 2015: 19-20). In Malaysia, 131,841 drug addicts were registered between January 2010 and February 2016 (Syed Nokman, New Straits Times, 19 April 2016). The highest number of drug users in the region is in Indonesia. The Head of Indonesia’s Anti-Narcotics Agency has stated that the number has grown from around 4,2 million in 2015 to almost 6 million in 2016 (Rachmawati, Kompas.com, 11th of January 2016).

In addition, drugs also contribute significantly to the spread of HIV/AIDS in Southeast Asia. Drug abuse (especially that of intravenous drugs) is the second most common cause of HIV transmission in the region. According to the Annual Progress Report on HIV/AIDS in Southeast Asia in 2011, countries like Indonesia, Myamar and Thailand were the highest priority

states in the region with regard to their HIV burden. HIV transmission through injecting drugs has become an epidemic in several cities in those countries (Annual Progress Report on HIV/AIDS in Southeast Asia, 2011). In 2017, there were 450,000 people living with HIV in Thailand, around 9 percent of the total population, meaning the country has one of the highest HIV rates in Asia and the Pacific. Of this number, 12 percent are infected through drug injection (Avert, 2018). In the Philippines, even though the number of people with HIV is still relatively low, compared to other countries in the region, there has been a very significant increase in the number of new infections, at around 4,300 in 2010 to approximately 10,500 at the end of 2016 (ABC News, 2 August 2017). These facts mean that ASEAN countries are in a critical condition and the problem of drugs requires an urgent response. It is reflected in the serious concern of ASEAN countries have related dealing with the trafficking and abuse of drugs in their country. As mentioned, the war against drug abuse and trafficking has been one of the top priorities for ASEAN countries (Section 5.3).

Before the deadly war on drugs in the Philippines, Thailand, under Prime Minister Thaksin Shinawatra, launched similar extrajudicial killings as part of their war on drugs. This resulted in approximately killed around 2,800 deaths during the first three months and thousands more were forced into coercive treatment for drug addiction (Human Rights Watch, 2008). Thailand's war on drugs can therefore be seen as significant antecedent for Duterte in his war on drugs policy (Sombatpoonsiri and Arugay, The Conversation, 2016). In conjuction with Duterte's war on drugs, one article has explained that this deadly approach has migrated to Indonesia (Kine, New Mandala, 23 august 2017). By saying '*shoot them ... we are in a narcotics emergency*', the President of Indonesia, Joko Widodo, has shown his strong position on fighting drug abuse and trafficking (Bevins, The Washington Post, August 4 2017). A study by the University of Melbourne mentioned that Indonesian police killed an estimated 49 narcotics suspects, including Indonesians and foreigners, in seven months in 2017 (Indonesia at Melbourne, 8 August 2017).

In addition, citizens have been increasingly vocal in Malaysia with regard to taking the fight against drug abuse and trafficking seriously. One of the Malaysian Members of Parliament (MP), Datuk Bung Mokhtar Radin, suggests that the country should follow the example of Duterte's deadly war on drugs, asking: 'why can't we do this? Jail addicts without trial and shoot the dealers. What is the problem in doing this?' (New Straits Time, 28 November 2017). The MP argued that Malaysia should use the same method as the Philippines to combat the increase in illegal drug trafficking and abuse within the country.

Regarding this issue, there are growing concerns from human rights networks in the region that the growing trend of shoot-to-kill orders in several ASEAN countries will turn into the same kind of extrajudicial and vigilante-style killings of drugs suspect as are occurring in the Philippines (Interviewees 5, 21 and 22). This growing trend of drug wars in the region shows severity of the drugs problem and contributes to constituting the perspective of the countries over the war on drugs in the Philippines and broadly, the problem of drugs in the region.

5.4.2 Contestation of Norms: Drugs Control, ASEAN Principles and ASEAN Community Vision

The institutionalisation of ASEAN drug controls (section 5.3) reflects the ability of the countries to construct a collective understanding of the threat of illicit drug trafficking and abuse. It facilitates the member countries in their efforts to strengthen cooperation and collaboration in dealing with drugs problems. In addition to the common interest of the countries in controlling drug abuse and illegal trafficking within the region, the institutionalisation of the drug controls in the ASEAN can be seen as the implementation of the states' commitment to international drug control conventions. As has been mentioned, ASEAN countries had their first discussion on drugs issues after their acceptance to the 1961 Single Convention on Narcotics Drugs, as amended by the 1972 Protocol and the 1971 Vienna Convention on Psychotropic Sustances. Their acceptance at the international coventions resulted in the first decalaration of ASEAN drug controls in 1976 and was

followed by the emergence of other declarations, joint statements and mechanisms.

As explained (see section 2.4), the norm implementation process suggests a contestation with other norms; Krook and True (2012) emphasise that the nature of norms is that they always work in process rather than being static, meaning that the implementation of norms requires an iterative process (Betts and Orchard, 2014). This process tends to to be influenced by pre-existing ideational and institutional structures, including the norms and bureaucratic identities and constitutional frameworks of the states. As the local ideational and institutional factors shape the perspectives and expectations of a state, international norms can potentially be interpreted and implemented in parallel with the actor's local cultures and values. The implementation of the ASEAN's drug controls therefore suggests a contestation with other norms, especially ASEAN principles and ASEAN Community Vision. As explained further below that the implementation of international drug controls in ASEAN context has been framed and adjusted with the local context of ASEAN.

ASEAN countries are concerned about the dangers drugs pose to health, well-being, and people's social lives of people. Since the first regional declaration on drugs in 1976, health and social issues have been seen as the countries' primary concern in combating the abuse of drugs. Drug abuse has been considered to be a potential threat that could undermine the freedom and development of societies, especially their younger generation (ASEAN Declaration of principles to Combat the Abuse of Narcotic Drugs, 1976).

Alongside the narrative of the health and social impact of drug abuse, ASEAN countries have framed the drugs problem as an issue that threatens the security of the nations. It considers combating the illegal trafficking and abuse of drug as being as critical as the other primary objectives of the 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

ASEAN Leaders Declaration on Drug-Free ASEAN 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 illegal trafficking, is inextricably linked to other transnational crimes, such as arms-smuggling and money laundering, that can cause serious political and security threats to the region (Joint Declaration for Drug-Free ASEAN, 2012). Therefore, the countries are fully aware and recognise that the drugs problem inherently poses a serious threat to the people, state and region. It reflected in the statement that:

> *Drugs destroy lives and communities, undermine sustainable development and generate crime. Drugs affect all sectors of society in all countries; in particular drug abuse affects the freedom and development of young people, the world’s most valuable asset. Drugs are a grave threat to the health and well-being of all mankind, the independence of states, democracy, the stability of nations, the structure of all societies and the dignity and hope of millions of people and their families (ASEAN Political Declaration in Pursuit of a Drug-Free ASEAN 2015, 2000; adopted from the Resolution of UN General Assembly, June 1998).*

Admittedly, the framing of the drugs problem as health and social, development, and security issues has been critical in the context of the ASEAN constructing a collective understanding and reinforcing its commitment to combating drug abuse and trafficking. It has resulted not only in regional arrangements on drugs control, but the countries being able to stand together as the ASEAN at the international level. It is a sign that the ASEAN has reached its ‘comfort zone’ where this issue is concerned. In 2012, the ASEAN Secretariat signed a Memorandum of Understanding (MoU) with the UN Office on Drugs and Crime to strengthen joint action for cooperation and collaboration. Moreover, in 2016 at the 59th Session of the UN Commission on Narcotics and Drugs and the UN General Assembly Special Session on the World Drug Problem, Southeast Asian countries successfully stood together with one voice to allow the ASEAN to introduce their zero tolerance approach to combating drug abuse as part of its vision

for a Drug-Free ASEAN (Singapore Ministry of Home Affairs, 20 October 2016).

The institutionalisation of the ASEAN norm on drug controls has been achieved by framing drugs as a common problem of the countries and highlights the strong influence of ASEAN principles and diplomatic cultures. Drugs issues need to be framed as something acceptable to the member states. As a consequence, ASEAN drug arrangements have been created and developed according to the ASEAN's basic principles to ensure their full support and acceptance by the all member countries. Among the important ASEAN principles that appear in the ASEAN regional drug controls are respecting the sovereignty of state and adhering to the non-interference principle. In ASEAN, the states are the primary agents and front guards in the war on drugs, having full authority and self-determination (Interviewees 23 and 24). As stated, 'all states have the right to decide what is best for their nation' (Interviewee 11).

ASEAN governments emphasise that every single country in the region should give attention to the problem of drugs and take part in addressing it. ASEAN governments have agreed and encouraged each other to build cooperation and collaboration (within the region and beyond) on the issue. On behalf of the member countries, the Chairman of the 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.

However, along with the encouragement to build cooperation in combating the illegal trafficking and abuse of drugs, ASEAN countries emphasise that each nation should respect the sovereignty of the others, especially in deciding the most appropriate approaches dealing with the problem. They argued:

> *Each country has the sovereign rights and responsibility to decide on the best approach to address the drug problem in their country, taking into*

> *account the historical, political, economic, social and cultural context and norms of its society. The transnational challenges posed by the world drug problem should be addressed with full respect for the sovereignty and teritorial 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 (The 4th AMMDM, 2015).*

This joint statement shows the centrality of ASEAN principles and approaches. Even though ASEAN frameworks and instruments on drugs control encourage cooperation and collaboration, the implementation of the commitment is still understood within the context of ASEAN principles on state soveriegnty and non-interference. Consequently, the case of war on drugs in the Philippines is viewed in line with this understanding.

Most ASEAN countries define the war on drugs in the Philippines as a national effort on the government's part to develop the country and ensure its future is secure. It is therefore defined as a domestic issue of state. Indonesia's Head of the Anti-Narcotics Agency showed his sympathy lay with Duterte's policy by saying that 'he is taking care of his citizens' (Davies and Reinhard, Reuters, 28 July 2017). The statement implies recognition of Duterte's claim that the war on drugs is for the sake of peace and the future of the society and nation. At this point, as in the case of Rohingya, ASEAN countries do not necessarily see the Philippines' drugs war as an atrocity crime.The countries therefore do not see any urgent need for international interference including the use of the R2P principle to respond to the issue. As explained further in Section 6.2, most ASEAN countries refute the claim that the war on drugs is an atrocity crime and refuse to implement R2P because they consider that the criteria and indicators of atrocity crimes still lack clarity. The rejection of the ASEAN countries is also related to the existence of the ASEAN regional norms and arrangements. Along with the use of ASEAN principles especially state sovereignty, non-interference and self-determination, the countries have emphasised that ASEAN has capacity, based on their arrangements, to respond to problems in the region (Interviewee 15). Furthermore, the countries have claimed that even though

the language of R2P does not exist within ASEAN, existing frameworks and instruments contain the core elements of the R2P principle (Interviewees 2, 5 and 10). Accordingly, the silent response of ASEAN countries to this issue is strongly related to the centrality of ASEAN principles and the common interests of the countries in resolving the drug problems in the region (as explained in Section 5.4.1) and the centrality of the ASEAN principles in response problems in the region.

An interviewee for this research stated that:

> *The 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 happen as a consequence of the war on drugs, it is a national domestic problem of the country (Interviewee 23).*

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 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 law against drug smugglers and users is a state sovereignty issue (Interviewee 25).*

The interviewees' statements indicate that ASEAN countries realise that there are human rights issues raised by the war on drugs in the Philippines. The states do not deny that the extrajudicial killings have caused thousands of civilian deaths. However, the war on drugs policy has been claimed as a soveriegn right of the Philippines and thus it is a domestic and national affair of the country. Further, the statement also indicates the way ASEAN countries define the principle of human rights. It is understood to be part of the doctrine of state autonomy and self-determination. Consequently, the human rights issues in the region are interpreted within the boundaries of state sovereignty and non-interference principles.

In the context of ASEAN, human rights and the human protection agenda have grown significantly, especially after the declaration of the ASEAN Community Vision in 2003. The aim of the vision is to expand the concerns of the region to be in the interest of the people rather than that of the states. Under the banner of 'One Vision, One Identity and One Community', the ASEAN attempts to move forward to fulfil the security of the state and the security of its people through its three pillars (political security, economy and social-cultural). Following the declaration of the ASEAN Community Vision, several frameworks and mechanisms were created, such as the Vientiane Action Programme in 2004, which encouraged the promotion of human rights and establishment of networks, the creation of the ASEAN Charter, ASEAN Declaration on Human Rights, AICHR and other related arrangements (see also section 3.2.1 and 3.2.2).

On the one hand, the development and progress of the ASEAN's arrangements for human protection should be appreciated. However, they have been heavily shaped by the centrality of ASEAN principles, especially the respecting of state sovereignty and non-interference. Even though some ASEAN countries have claimed that the understanding and application of ASEAN principles have been slowly recalibrated and softened to respond particular problem (Interviewees 8 and 11), human protection remains a sensitive issue for the countries and so they are still seen in the context of state sovereignty and non-interference. One interviewee stated:

> *The principle of non-interference was recalibrated, which actually means that ASEAN could readjust the principle to respond to a particular issue. This readjustment often appears when the member states think that a case requires an urgent response because it threatens the interests and stability of the region (Interviewee 8).*

The claim that the ASEAN has really readjusted their traditional principle in certain situations may or may not be true. Yet the statement does underline that the ASEAN stands firm on its traditional state-centric interests, especially on maintaining the stability of the region. The statement indicates that the ASEAN will prioritise their stability and the other primary interests of the region by enforcing the strict application of its principles. As a result, it is

unlikely that ASEAN member states will actively advocate human rights issues in neighbouring countries. As reflected in the case of the war on drugs, while the ASEAN has been able to frame drugs as common problem of the region, they define the human rights impact of the war on drugs as a domestic problem to be resolved by individual countries (Interviewee 24).

5.5 Conclusion

This chapter has examined the ASEAN's member states' reactions to the war on drugs in the Philippines and their constituent factors. It started by establishing that, according to a wide range of authoritative sources, serious human rights abuses are being perpetrated in the context of the war on drugs. This has resulted in a caused large number of deaths and widespread terror and fear among the wider population in the country. The significant role of the government and the large number of deaths in the drugs war imply that the government is manifestly failing to protect the people from the crime. Instead of protecting its people, the government is committed to killing drug suspects in a systematic and widespread manner.

The human rights abuses of the war on drugs have been ignored, in terms of the absence of formal statements, meetings, and other forms of response, by the ASEAN and its member states. These countries tend to be silent on the case especially with regard to human rights issues in the drugs war. The ASEAN and its member states neither explicitly support the Philippines' war on drugs nor criticise and condemn the policy. With regard to this, the silent response of ASEAN and the member states has been explained in two different ways.

First, the silent response of ASEAN indicates the common interest of the countries in controlling and eliminating illegal smuggling and abuse of drugs in the region. Combating illegal trafficking and abuse of drugs has been one of the top priorities in the ASEAN. This factor has contributed to shaping the perspective of the countries: that war on drug is necessary and crucial for every nation in the region. The ASEAN countries' interest in the problem of drugs make the states lack reason and political will to react to the Philippines's war on drugs.

Second, the way ASEAN countries understand and respond to the case highlights the centrality of ASEAN principles that constitute the perspective and behaviour of the countries. It reveals the use of ASEAN principles, especially state sovereignty, non-interference and self-determination to define the case. The war on drugs is claimed to be a domestic issue and a national affair of the Philippines. While ASEAN countries realise there are human rights issues which have arisen from the drugs war, the states claim that all countries in the region should respect the sovereign right of the Philippines government in dealing with their domestic problem. Even though the ASEAN has institutionalised regional drugs control and the ASEAN Community Vision, including human rights arrangements, the implementation of the norms is strongly dependent on the strict application of ASEAN principles and the diplomatic culture of the region. By upholding the strict understanding and application of the ASEAN principle regarding the war on drugs, it indicates ASEAN countries' rejection of international interference and the use of R2P for the case. Broadly, it reflects their cultural relativist and pluralist perspective on human rights and R2P debate (see Section 6.2 and 6.3).

Chapter 6 Norm Implementation and Contestation

6.1 Introduction

This chapter analyses ASEAN countries' understanding and interpretation of R2P in the regional context, drawing upon the manner in which ASEAN and its member states have responded to the case of Rohingya and the war on drugs in the Philippines. By doing so, it has two interrelated objectives: to examine the extent to which R2P has been accepted at the ASEAN level and, in a broader sense, to examine what the implications of R2P contestation in ASEAN are for the dynamics of norm diffusion and implentation.

The chapter is divided into three parts. First, the contestation of R2P in the regional context of ASEAN is explained through an examination of ASEAN countries' interpretation of the principle of R2P. The use of an ASEAN perspective to understand and interpret R2P is explained, as well as the extent to which R2P has been accepted at the ASEAN level.

Second, the significance of three sets of structures to both R2P and ASEAN principles, in relation to human protection issues in the region, is then explained. The structures are: ideational, institutional and material, and they help to explain the commonalities and differences between the perspectives and behaviour of ASEAN countries, regarding the cases of Rohingya and the war on drugs. Third section is the conclusion of the chapter.

The chapter attempts to answer several questions, including: why is the diffusion of R2P at the level in ASEAN problematic; how do ASEAN countries problematise R2P in the regional context; and what are the implications of the regional attitude to human protection issues, including R2P, for norm diffusion and contestation?

This chapter argues that the promotion and mainstreaming of R2P in the ASEAN context is still very limited and reflects the resistance to it. ASEAN governments have largely used their ASEAN perspective and frameworks to define the principle of R2P and humanitarian issues within the region. Moreover, within the context of norm literature, it raises several interrelated

points, including: i) the the subsidiary behaviour of ASEAN countries in problematising R2P; ii) the significance of three sets of structures: namely ideational, institutional, and material in the implementation of norms and the construction of behaviour; iii) the type of norm (in this case R2P) matters in the process of norm implementation. These arguments are explained in several sections of this chapter.

The diffusion and promotion of R2P in the ASEAN context are controversial and problematic. There are notable debates on the extent to which R2P has been accepted or internalised at the ASEAN level. As discussed in Section 3.5, some argue that there has been significant progress, with the ASEAN recalibrating the non-interference principle and localising R2P, and the development of ASEAN in related to human rights including the creation of the ASEAN Charter, AICHR and ASEAN Community (Bellamy and Drummond, 2011; Kraft, 2012; Morada, 2016). Others (Capie, 2012; Tan, 2011; Sukma, 2012; and Petcharamesree, 2016) suggest that there is no significant indication that the ASEAN and its member states are preparing to incorporate or localise R2P into the ASEAN, due to the lack of regional local actors to promoting R2P (Capie, 2012) and problem related to the authority of ASEAN mechanisms and instruments to respond to atrocity crimes in the region (Sukma, 2012; Petcharamesree, 2016). The controversies related to the diffusion and promotion of R2P in Southeast Asia suggest that contestation persists in the regional context, even though most of the countries have emphasised their support for the basic ideas and principles of R2P at the UN level.

The controversy surrounding R2P in the ASEAN suggests, according to the discursive approach to norms, that the nature of norm is dynamic and contested (Krook and True, 2012; Wiener, 2014). It indicates the significant role of agencies (ASEAN states), in addition to structures (ASEAN Way[8]), in

[8] Here the terms ASEAN Way and ASEAN principles are used interchangeably. While ASEAN principles specifically refer to the regional principles of state sovereignty and non-interference, the ASEAN Way involves those principles, soft and informal approaches, closed door diplomacy, and consultation and consensus decision-making. See Chapter 3 for a more detailed explanantion.

norm diffusion and contestation. The contestation of R2P in the ASEAN may correlate to what has been explained as ‘feedback’ (Prant and Nakano, 2011), ‘antipreneurs’ (Bloomfield, 2016), ‘localisation’ (Acharya, 2004), ‘subsidiarity’ (Acharya, 2011), and ‘norm implementation’ (Betts and Orchard, 2014). As previously mentioned, within the discursive approach to norms, especially ‘subsidiarity’, ‘norm implementation’, and ‘norm robustness, this chapter explains the extent to which R2P has been accepted and internalised in the ASEAN context and what the contestation implies about the dynamics of norm diffusion and implementation.

6.2 Interpreting and Mainstreaming R2P: An ASEAN Perspective

As has been explained in Section 3.4 that even though some ASEAN countries have criticisms of particular aspects of R2P, most claim to support the basic idea of human protection in the principle of R2P. Meanwhile, the promotion and mainstreaming of R2P in the context of the ASEAN is still problematic and controversial. With regard to the controversies surrounding R2P in the region, there have been notable debates over the extent to which R2P has been accepted and internalised at the ASEAN level, as explained in Chapter 3 (Section 3.5).

With regard to the debate, it argues that promotion and mainstreaming of R2P in the ASEAN context are still very limited and this reflects resistance rather than acceptance or localisation. As reflected in the reaction of the ASEAN and its member states to the case of Rohingya and war on drugs (Chapters 4 and 5), ASEAN governments have largely used their ASEAN perspective and principles to define R2P and the humanitarian crisis in the region. Most ASEAN countries have claimed that they may not need to adopt the R2P principle as ASEAN arrangements on human protection have adequately addressed atrocity crimes and humanitarian issues, including the two cases. It has been claimed that the regional arrangements are more suitable for the characteristics of the region. The countries have also claimed that their regional principles and mechanisms already contain the basic elements of R2P. To address the objectives of this chapter, as mentioned in the introduction, this chapter now focuses on examining the ASEAN perspective in interpreting and problematising R2P that reflected from the

way ASEAN countries have responded to the two humanitarian crises (Rohingya and the war on drugs),

The way ASEAN countries respond to the two cases (as discussed in Chapters 4 and 5) and interpret the R2P principle highlight what Betts and Orchard (2014) argued in the norm implementation framework: institutionalisation and implementation of norms are two distinct processes. Institutionalisation reflects an international process in terms of how norms emerge, institutionalised and signed, ratified or adopted by states at an international level. As discussed in Section 3.3.2, the international community's agreement on paragraphs 138 and 139 of, at the 2005 World Summit, could be considered institutionalisation of the principle at the UN level.

Meanwhile, implementation is a parallel process to institutionalisation, which occurs at lower international levels, including national and regional. This process suggests a dynamic interaction of international norms and state(s), including regional and national norms and the interest of the states. In this process, the divergent interpretation and application of international norms is expected. The institutionalisation of norms at an international level does not mean international norms become absolute and static. As has been emphasised, norms are contested in nature. Therefore, a norm will be subjected to contestation especially when it is going to be implemented. As part of that process of implementation, states may renew and reinterpret the norm. Thus, the implementation process of R2P in Southeast Asia reflects the way the principle is actually interpreted and contested at the ASEAN level. It highlights the contestation of norms between R2P and ASEAN principles and demonstrate a subsidiary behaviour in the sense that the ASEAN 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 (Acharya, 2011). In this situation, despite the ASEAN states recognising the limitations on their capacity and the regional arrangements, they attempt to justify their right to use their own regional principles and mechanisms to respond to the cases.In the context of ASEAN, R2P has been contested and problematised

in several interrelated ways. First, ASEAN countries have argued that the principle of R2P is deemed to be lacking in clarity, including the criteria to be able to define a situation as an atrocity crime. There is no common understanding how to define gross human rights violations or atrocity crimes among the ASEAN countries (Interviewee 5). As explained (see Sections 4.3 and 5.4.2), the ASEAN and its member states do not absolutely reject the involvement of the international community in regional human rights issues. To some extent, the ASEAN has shown its support for the involvement of the UN and its bodies, such as the UNHCR, UNDP and OHCHR. However, at the same time, there is still reluctance, if not resistance, by the ASEAN countries to the international community to become involved or interfere with the cases by bringing the R2P principle into their actions. It is argued that unlike most of the established international laws and conventions, R2P remains ambiguous and thus it causes many controversies. Scholars from the Rajaratnam School of International Studies (RSIS) in Singapore stated that it is unsurprising that the diffusion of R2P in the ASEAN is still problematic since R2P has no consensus at the international level (Interviewee 7). Thailand's Representative to the ASEAN argued that:

> *As a member of the UN, we support the dialogue and consultation on R2P. All the member states will promote it in various ways as well. So as a member, this is our view on R2P. At the national level, of course, it needs more discussion. Indeed, the principle needs to have more clarity (Interviewee 11).*

As a consequence of this argument, the state emphasised:

> *The lack of clarity regarding R2P at the international level makes it hard to gain consensus at the regional level, not only for the ASEAN but also for the other regional organisations. I think the key questions that have not been resolved by the UN member states are: what situation can we call security situations and how do the members of regional group perceive conflict situations. There is also still a lack of clarity regarding Pillar Three. (Interviewee 11).*

In a similar vein, the Indonesian Representative to the ASEAN, with regard to the case of the Rohingya, stated that:

> *We do not see the case of Rohingya as a crime of genocide, ethnic cleansing or as a crime against humanity. If there any arguments mentioned*

> *the case as atrocity crimes, then they must be proven as such. Unfortunately, it is difficult to prove it. (Interviewee 16).*

These statements indicate that the criticism of ASEAN countries to the R2P principle centres on the ambiguity of the criteria and indicators of atrocity crimes and the use of Pillar Three. The statements show that the countries do not dispute the basic idea of human protection according to the R2P principle and the type of R2P crimes, as agreed by countries at the UN level. Their dispute is, rather, related to the extent to which atrocity crimes are occurring and thus can be claimed as a case that requires R2P. While Welsh (2019) argues that the persistent applicatory contestation about the Pillar Three of R2P is revealing deeper concerns about the norm's justification, its contestation in ASEAN context is suggesting a concern from the member countries to the problematic and controversial application of the Pillar Three. As will be explained below in this section that ASEAN countries do not question the validity of the R2P, as they tend to claim that the core element of R2P already exist in the ASEAN arrangements.

As a consequence of these views, the countries lack interest in further discussing the R2P principle at the regional level, because there are still debates and contestations surrounding the R2P at the international level. To support their argument, the states attempt to compare their attitude to R2P with their attitude to the universal principle of human rights. A Former Indonesian Representative to ASEAN has argued that:

> *The promotion of the human rights principle is different with R2P. It is difficult to adopt R2P into the ASEAN. In the case of human rights, the principle has a solid concept and universal declaration at the global level. However, R2P is still controversial, debatable and there is no concensus at the global level. As a result, most ASEAN countries have become confident and comfortable in discussing the principle of human rights at the regional level and therefore the principle of human rights has become an urgent matter for discussion and adoption into the ASEAN (Interviewee 8).*

The Office of the Directorate of ASEAN Socio-Cultural Ministry of Foreign Affairs of Singapore also mentioned:

> *The concept of human rights is relatively different with R2P, especially regarding to Pillar Three. The use of force is something very sensitive in ASEAN. The member states commit to not using military force in the region. Therefore, promoting R2P will probably be different with the ASEAN's*

> *experience in mainstreaming and adopting human rights principle. One of the most important things about why ASEAN member states can accept the principle of human rights is the absence of the possibility of military intervention, especially as stated in ASEAN human rights instruments such as the ASEAN Human Rights Declaration and AICHR (Interviewee 6).*

The message of these statements is that if the R2P principle had more clarity and was less controversial, it would be more likely that ASEAN countries would discuss the principle in the region. In other words, the countries hold the view that the more solid and clear the international norm or principle, the more opportunities there would be for the states to discuss and accommodate the principle into the regional or national context.

The contestation of R2P with regard to the matter of criteria and indicators of atrocity crimes correlates to the typology of norms. Referring to the categorisation of norms, R2P is likely to be explained as the 'organising principle' (Wiener, 2009) or 'principle norm' (Betts and Orchard, 2014). Within this context of norm typology, Welsh (2014) added that R2P should be considered as a 'complex principle norm' that contains more than one set of prescriptions, as suggested in paragraphs 138-139 of the WSOD. Even though the claims by ASEAN countries regarding the clarity and status of R2P may not be a genuine reason for the region's resistance and thus it needs to be examined further, their views on the lack clarity of atrocity crimes criteria show that the typology of norms matters in relation to the extent to which international norms are likely to be adopted and implemented in the regional context. As Wiener (2009) noted, different types of norms suggest different complexities of implementation and contestation.

Along with the criticism of ASEAN countries regarding the ambiguity of the criteria and indicators of atrocity crimes, the types of norm also matter for non-state actors in the region. The non-state actors tend to lack confidence regarding the necessity of R2P for addressing atrocity crimes. According to eleven (11) interviews with non-state actors and several ASEAN stakeholders with human rights backgrounds, a human rights perspective has been used in understanding the case of Rohingya and the war on drugs. They explicitly and implicitly argue that the two cases could be considered to be human rights violations and atrocity crimes. For example, the Former

Executive Director of APCR2P recognised that Southeast Asia has potential risk factors related to atrocities, including what is happening in Mynamar (Interviewee 10). The Cambodian Institute for Peace and Cooperation (CICP) stated that:

> *We cannot let people (the Rohingyas) become stateless. The Myanmar government should take care of those people. Broadly, what is happening in Rakhine State is a warning that we will see much more suffering of people as a consequence of mismanagement and undemocratic behaviour by of state (Interviewee 3).*

In regard to what is happening to the Rohingya population, the Former Indonesian Representative to AICHR (recently the Regional Director of Amnesty International for Southeast Asia and Pacific Region) argued that the situation in Rakhine State could lead to a crime against humanity (Interviewee 14).

Regarding the war on drugs in the Philippines, Human rights activists from the HRWG in Indonesia have argued that the extrajudicial killings are a violation of human rights and thus the human rights networks in Southeast Asia support the process of examination of Duterte under ICC jurisdiction (Interviewee 22). These statements reflect the use of a human rights-based perspective to define both cases. In other words, while the state-based actors have used the centrality of ASEAN principles, primarily state sovereignty and non-interference, to frame both cases, the non-state actors have, significantly, used a human rights perspective to define the issues.

The non-state actors, however, do not necessarily believe that there is a critical need for R2P to address the humanitarian crisis in the region. A Senior Advisor on ASEAN and Human Rights of the Indonesian HRWG stated:

> *Comparing R2P with human rights, when we talk about torture, there is a convention on torture, and many other aspects of human rights have conventions. Meanwhile, there is no specific convention on R2P. Instead, R2P refers to many conventions. R2P is like a collection of conventions and laws collected into one package. R2P is more like a programmatic approach. Sometimes, it makes R2P complex. Sometimes, the states are questioning what makes R2P special, when we already have many conventions on human rights and human protection. For human rights activists, it will be much easier for them to look at an issue based on its specific convention (Interviewee 5).*

The Senior Advisor added that:

> *To be honest, when we talk about extrajudicial killing as happening in the Philippines, it is much easier to address it through the convention than using R2P (Interviewee 5).*

A human rights activist from HRWG in Indonesia also mentioned that:

> *We do not commonly use the R2P principle when we have discussions with our networks in Southeast Asia about the case of the Philippines. We more often use international human rights conventions and the ICC (Interviewee 22).*

It suggests that even though non-state actors apply a human rights perspective to understanding the case of Rohingya and war on drugs, and advocate the necessary response to address the problems, they still lack confidence in the necessity of R2P in addressing atrocity crimes. Currently, the promotion of R2P in Southeast Asia is a big challenge that faces resistance not only from the countries, but also the non-state actors, who still lack confidence regarding the necessity of R2P in addressing atrocity crimes in the region. As Bellamy and Luck (2018) argue that the role of non-state actors in implementing R2P is crucial especially if the state lack of capacity and political will to implement the principle in the prevention and protection of the people from mass atrocities.

Linking back to the typology of norms, as discussed above, the understanding of non-state actors with regard to R2P highlights the 'composite' character of the principle (Job and Shesterinina, 2004: 3-4). It suggests that not only does R2P combine competing norms, such as state sovereignty and human rights, it also contains two or more different existing international norms. As a consequence, the implementation of this kind of norm may overlap with other existing international norms (Betts and Orchard: 2004: 14).

Second, in line with the criticism of ASEAN countries regarding the matter of criteria and indicators of atrocity crimes, the states do not regard atrocity crimes as definitely existing in the region. As a result, the countries emphasise that there is no specific need to adopt and apply R2P in the region. It is implicitly argued that the principle of R2P is not for them, since

there are no mass atrocity crimes in the region (Interviewee 8 and 11). Fifteen (15) interviews with state-based actors of ASEAN stakeholders highlight significant use of the lens of state sovereignty and non-interference, rather than a human rights perspective, in understanding the issue of Rohingya and the war on drugs. As reflected in Chapters 4 and 5, the ASEAN's understanding and responses to the cases have largely relied on the centrality of ASEAN principles. The countries emphasised that regardless of the human rights issues in the case of Rohingya and the war on drugs, both cases are very complex (rather than simply atrocity crimes) and ultimately they are domestic issues and national affairs of the states. For example, the Office of the Singaporean Ministry of Foreign Affairs 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 (Interviewee 6).*

In a similar argument, the Thailand Representative to the ASEAN stated:

> *I am not condoning what is happening in neighbour countries (whether it is the situation in Rakhine State or what is happening in the Philippines), but we must engage with the consultation and let the member states respect the nations' sovereignty. Every state has the right to decide what is best for their nation (Interviewee 11).*

With regard to the war on drugs in the Philippines, the Office of the Indonesian Ministry of Foreign Affairs has suggested that even though the policy has caused a large number of casualties, it is a complex problem. They have also suggested that the ASEAN cannot simply condemn or take action regarding the situation because the war on drugs policy is one of the country's methods of law enforcement against illegal drugs smugglers and users. It relates to the principle of state sovereignty (Interviewee 25). Therefore, the two cases have been defined as internal security affairs of the countries. In other words, the states are reluctant, if not completely unwilling, to accept the claim that the two cases are atrocity crimes and R2P cases.

Consequently, the states have argued that there is no urgency to use R2P to respond the cases and adopt the principle into the ASEAN.

To make sense of the argument, the Former Indonesia Representative to ASEAN uses the analogyof the ASEAN's attitude to the issue of terrorism and the principle of human rights. It argued that:

> *Although there is no single definition and international convention on terrorism at the UN level, this issue requires urgent discussion in the context of Southeast Asia. Terrorism exists and has affected the region. Southeast Asian states have agreed to discuss and have an ASEAN Convention on Terrorism. Therefore, in the context of human rights, the adoption and institutionalisation of human rights came after the convention of the principle at the global level. In the case of terrorism, ASEAN had its regional convention prior to the global convention because of the region's need to deal with the problem (Interviewee 8).*

Related to the debates on the emergence and diffusion of norms, the statement above suggests that the ASEAN convention on terrorism emerged prior to, or at least during, the institutionalisation process of the norm on terrorism at an international level. It shows that the emergence of ASEAN convention on terrorism did not happen sequentially after the institutionalisation of terrorism norm at international level. This means that the implementation of a norm at regional or domestic level does not always happen in a linear fashion or necessarily occur after the institutionalisation of the norm at an international level, as suggested in the 'life cycle pattern'. Currently, the ASEAN has its regional convention on terrorism prior to the global ones as the issue has been understood as a crucial and urgent subject, requiring an immediate discussion and response (Interviewee 8). One interviewee stated that:

> *Debate on terrorism at the UN is very complicated. The ASEAN thinks that the region needs to respond to terrorism immediately, because the crime is already happening and affecting the region. Therefore, the Southeast Asian states have agreed to have an ASEAN convention on Terrorism (Interviewee 8).*

This shows that the way ASEAN governments define their common interest in the issue of terrorism has become the driving force behind the adoption of the regional convention. As Betts and Orchard (2014) emphasised,

imprecise and ambiguous norms or ‘composite norms’ (Job and Shesterinina, 2004) are likely to be interpreted and applied through the lens of sets of interests.

Third, R2P has been interpreted within the broader context of ASEAN principles and instruments. From an ASEAN perspective, the implementation of R2P is conflated with international interference and the use of coercive measures, including punishment, sanctions, and military force (as the last resort) against the ‘manifestly failing’ state. Most ASEAN countries have argued that even though the use of coercive measures, primarily the military forces, should only be activated as a last resort, this element is conceptually inherent in the whole package of the R2P principle. As stated:

> *It is true that intervention is one thing, perhaps the last resort, but this element is inherent in R2P (Interviewee 18).*

Another interviewee stated:

> *With R2P, if a state fails to meet their responsibility to protect their people, the issue can be brought before the Security Council. Interference becomes possible, including the use of force, as a last resort. All of these things cannot be done in ASEAN (Interviewee 20).*

The countries are also concerned about the impact of intervention where the use of force is concerned. As emphasised, the countries would not accept what happened in Iraq, Afghanistan, Libya and many others, where military force and regime change were applied. It has been claimed that the ‘coercive approach fails to stabilise and create order and peace in the countries’ (interviewee 16). In other words, the states consider military force to have the capacity to be misued and does not guarantee better conditions (Interviewee 18). Senior Advisor on ASEAN and Human Rights of the Indonesian HRWG mentioned that even though the issue of Rohingya is potentially considered as an atrocity crime, the use of force is not a good way to respond the situation (Interviewee 5).

In the context of the ASEAN, interference in other states’ domestic affairs and the use of coercive measures are strictly prohibited. With regard to non-interference, ASEAN holds the view that ‘a state has the right to decide what

is best for their nation' (Interviewee 11). As has been mentioned, 'the values and principles of the ASEAN teaching member states not to hurt the feelings of their neighbours' (Interviewee 4). The Permanent representative of Thailand for the ASEAN has stated that the principle of non-interference tells the country 'not to condone what is happening in neighbour countries, other than engaging with persuasion and consultation while respecting the sovereignty of the state' (Interviewee 11).

Along with the resistance of the countries to accommodating R2P into the ASEAN, the states have argued that it does not indicate that they do not care about humanity and human protection issues. Even though R2P does not exist in the ASEAN, it has been claimed that elements of R2P do exist and have a linkage with the ASEAN frameworks and mechanisms. Not only ASEAN governments, but also prominent non-state actors in the region have the same perspective that the ASEAN does not need to use the 'language of R2P' as this term is still highly sensitive for the region (Interviewees, 2, 5 and 10).

One of the most prominent R2P and human rights scholars in the region, Caballero-Anthony, argues that despite ASEAN countries still being reluctant to accept the language of R2P, the region is already practicising the key principle of R2P, namely atrocity prevention. Therefore, non-state actors should be focusing on this to ensure that the region keep practising it (Interviewee 7). In a similar vein, Former Executive Director of the APCR2P, Noel Morada, emphasises that even though the wording of R2P does not exist in the ASEAN, 'R2P in action' does. It is claimed that criticism by several ASEAN countries, such as Indonesia, Malaysia and Thailand, directed at the Myanmar government indeed reflects behaviour related to R2P (Interviewee 10). This may reflects what Dunne and Gelber (2014) explain as the 'implicit signifier' of R2P. Even though scholars and non-state actors in the region realise the limitations of ASEAN, they emphasise that the ASEAN is already on the right way, in relation to R2P and human protection, in strengthening capacity-building and atrocity prevention (Interviewees 7 and 10).

For the ASEAN countries, prevention is key to R2P (Interviewees 4, 8,11, and 15). They have argued that prevention is the primary concern of the region, as regulated by the ASEAN arrangements. The Office of Singapore to the ASEAN stated:

> *The basic idea of R2P already exists in the ASEAN. ASEAN mechanisms and frameworks in relation to human rights and human protection contain the core element of R2P, especially prevention and capacity-building. Therefore, there is no urgency for the ASEAN to refer directly to or adopt R2P formally. Instead, the ASEAN prefers to use its own way to deal with its regional problems (Interviewee 4).*

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

> *The ASEAN already has a mechanism, especially in the political and security pillars of the ASEAN community. It is clearly related to the core element of R2P. Moreover, the ASEAN already has some instruments, such as a human rights declaration, ASEAN Charter, AICHR, ASEAN Humanitarian Centre (AHA Centre), and other instruments and mechanisms, related to human rights and human protection. The current mechanism and approach to problems in the region (including the case of Rohingya) are effective and show progress. Therefore, why should we not continue this approach (Interviewee 18).*

With regard to the statements, the ASEAN and member states could argue about the ‘implicit signifier’ of R2P in the region by emphasising the strong linkage between R2P principle and ASEAN principles and frameworks, and the practices of R2P’s core element especially on the aspects of prevention and capacity-building.

However, indeed the claim should be tested. According to an ICISS report, Coe (2017) explained that the three types of prevention, namely: early warning, root cause prevention and direct prevention, are useful when examining the extent to which a state or collective of states have adequate frameworks and mechanisms to prevent the occurrence of atrocity crimes.

Coe emphasised that human rights monitoring mechanisms are an essential component for enabling the three types prevention. The monitoring mechanism can potentially provide early information and analysis of situations carrying a risk of conflict or mass atrocities. It could also provide assistance to governments to improve their human rights practices and,

ideally, the monitoring mechanism could influence a state or regime through inducements and punishments (2017: 297-299).

In ASEAN, human rights-related mechanisms and instruments such as the AICHR and AHA Centre, as mentioned above, have fundamental limitations in supporting atrocity prevention in the region. The AICHR has no authority to monitor and investigate the condition of human rights in the ASEAN member states. In practice, the commission is unable to collect data relevant to atrocity crimes, or to analyse the situation and enforce a policy with regard to human rights within the member countries. Regarding the case of Rohingya and the war on drugs in the Philippines, the AICHR played a very limited role to prevent the spread of the crimes and to address the situation. The two cases of atrocities in the region were ignored at AICHR meetings since the issues are occurring. In contrast, the AICHR remains focused on issues such as the disabled people's rights, human trafficking, women and children affected by natural disasters, freedom of expression in the information age, and human rights in business activities, rather than addressing the current human rights violations in the two ASEAN countries (AICHR Annual Report, 2018).

In addition to the AICHR, the AHA Centre is still far from playing a role in atrocity prevention. The primary responsibility of the centre is disaster relief rather than human rights or the resolution of atrocity problems. As mentioned, the AHA Centre aims to reduce loss of life and damage to property from natural disasters through the identification of hazards and risks prior to impacts and by increasing warning times. The early warning system provided by the centre is primarily related to natural disasters rather than the occurrence of conflict and other sources of atrocity crimes. Technically, the early warning system of the centre is focused on monitoring hazards and observing the movements in the earth, through working closely with the national disaster management organisations of all ASEAN countries.

Indeed, ASEAN countries could argue that the role of the AHA Centre could be expanded beyond natural disaster problems, but it would require an extension of the mandate or authority of the centre. In the context of ASEAN, the extension of mandate of the bodies, or ensuring the instruments are fit

for purpose, may be very difficult and complex processes. In other words, the current features of the AHA centre do not suggest that it could play a significant role in atrocity prevention.

With regard to this, while most ASEAN countries have claimed that the regional arrangements contain the core element of R2P especially the aspect of prevention, the Association as an institution does not have adequate mechanisms to prevent and respond to atrocity crimes, in addition to the centrality of the ASEAN Way for the region. This has been reflected in the problematic and limited nature of the regional responses to the two cases of atrocities, as explained in Chapters 4 and 5. Therefore, the ASEAN's interpretation of R2P within the context of ASEAN principles can be interpreted as the way the countries contest and resist the diffusion and implementation of R2P principles within the region.

The regional attitude of ASEAN countries toward R2P may linked to several literature sources on norms, especially among those that emphasise resistance and the role of agencies (states) in norm diffusion and implementation, including those explained as: 'feedback' (Prant and Nakano, 2011), 'antipreneur' (Bloomfield, 2016), 'localisation' (Acharya, 2004) and 'norm circulation' (Acharya, 2013). It argues that the contestation of R2P in the regional context of the ASEAN may reflect what Acharya (2011) called subsidiarity, in the sense that the countries are upholding the ASEAN Way to preserve their autonomy and regional identities. The narration of the 'regional solution to regional problems' has been used to refuse the promotion of R2P in the context of the ASEAN and specifically to constrain the use of R2P to respond to the Rohingya crisis and the war on drugs. Even though the ASEAN Way (including the regional principles, instruments and approaches) has not been specifically constructed to challenge R2P, it has been largely used by the member states to constrain and refuse the promotion and incorporation of R2P into the ASEAN. It has been emphasised by the Representative of Thailand to the ASEAN that:

> *I think the ASEAN does not need specific guidelines, frameworks and plans of action to adopt and implement R2P. We have enough provisions and instruments in place already to address a specific humanitarian problem (Interviewee 11).*

An officer in the Singapore of the Ministry of Foreign Affairs stated:

> *ASEAN mechanisms and frameworks in relation to human protection contain the core element of R2P, especially prevention and capacity-building. There is no urgency for the ASEAN to adopt the principle formally into the ASEAN. The ASEAN prefers to use its own methods to deal with its regional problems (Interviewee 4).*

Another statement, from Indonesia, mentioned that:

> *Any issues related to human rights protection are already regulated in the AICHR and ASEAN Charter. Issues related to the political situation and democracy in Myanmar are responded to through a political approach among the member states. In other words, there is already a framework and a mechanism to deal with the issues occurring in the region (Interviewee 8).*

The claim of the countries with regard to the availability and capacity of the regional mechanisms and instruments shows the states' strong belief in the doctrine of a 'regional solution to regional problems'. It suggests that any human protection problems within the region must be addressed according to regional principles, mechanisms and approaches. As Acharya argued: when state(s) use this kind of doctrine or narrative, it means they are more likely to engage in norm subsidiarity (2018: 50).

The attitude of ASEAN countries toward R2P does not necessarily indicate a form of feedback. The way the states refuse R2P in the ASEAN context indicates that they are worried about international interference, the use of coercive measures, the misuse of force by powerful countries, and of course preserving their regional identities, principles and practices, instead of developing ideas, concepts, or frameworks for the development of R2P.

For example, in the concept of norm circulation, Acharya (2013) explains a form of feedback from local actors to global norms. The focus is on the outcome of norm contestation, which involves the so-called 'repatriation effect' of global norms and the universalisation of local norms. Repatriation indicates a process of modification and redefinition of international norms. Meanwhile, universalisation refers to the global diffusion of a locally-constructed norm. Acharya has argued that the repatriation effect of international norms 'occurs when a localised version of the global norm is

fed back at the global level' (2013: 471). This suggests that the repatriation effect of global norms is possible if state(s) have localised a norm at the local level and the localised version of the norm travels back to the global level. In other words, the repatriation of international norms is an effect of feedback from the process of norm localisation in a state or collective of states. Meanwhile, the universalisation of local norms implies that the locally-constructed norm may be exported and spread at the global level.

With regard to this, the contestation of R2P in the ASEAN context neither suggests the repatriation effect of R2P nor the universalisation of the ASEAN Way. As explained, R2P has not been localised in the ASEAN context. ASEAN countries show more resistance and subsidiary behaviour rather than an active attempt at (re)construction of R2P to make the principle consistent with ASEAN principles and identities. Therefore, the repatriation of R2P may not occur following its contestation in the ASEAN context, as Acharya explained; repatriation needs feedback generated from the localised version of the global norm (2013: 471). At the same time, there is little evidence to show the universalisation of the ASEAN Way, especially with regard to human protection. The use of an ASEAN perspective with regard to human protection and human rights issues acquire criticism rather than global recognition (Davies, 2013).

As explained in Section 2.4.2, Deitelhoff and Zimmerman (2018) have distinguished two different forms of contestation: *applicatory contestation*, which focuses on the questions of when and how to apply the norm; and *justificatory contestation*, when local actors question the validity of the norm. They emphasise that the type of contestation is strongly related to the robustness of a norm in the sense that while applicatory contestation can strengthen the global norm, justificatory contestation may weaken it. Welsh (2019) argues, the applicatory contestation surrounding R2P has the potential to safeguard the robustness of the R2P because its contestation have in fact aided the development of intergovernmental consensus, thereby giving support to theoretical claims about how norm contestation can actually have a strengthening effect, rather than serving as a sign of norm weakness (2019: 59). The categorisation of contestation might help to

examine the type of contestation in which ASEAN countries are engaged. On the one hand, the contestation of R2P in Southeast Asia regarding the matter of criteria used to define atrocity crimes and the use of Pillar Three reflect what has been explained as applicatory contestation, because the governments do not dispute the validity of R2P as an international norm that can be used to protect people from atrocity crimes. On the other hand, ASEAN countries have largely used their regional principles and identities to resist the diffusion and promotion of R2P in the region.

It could be argued that even though the contestation of R2P in the ASEAN reflects the applicatory, rather than justificatory, the contestation has inhibited the diffusion and promotion of R2P in the region. It implies that the contestation of norms at the level of application could obstruct implementation of the norm. If the contestation persists, it may weaken the norm and cause failure of its practical implementation. The analyses presented here suggest that not only justificatory contestation indicates a weakening effect on international norms, applicatory contestation can also weaken international norms (including the restriction of its promotion) if local actors engage in the applicatory contestation in the form of resistance rather than critical engagement (see Figure 6-1). It could be also argued that the contestation of R2P in ASEAN context does not necessarily suggests the high robustness of the R2P. As a directive norm (Welsh, 2019), the R2P does not guide the perspective and action of ASEAN and the member countries in relation to atrocity crimes. As explained, the ASEAN and member states resist the use of R2P (especially in relation to Pillar Three) in the context of the region. The resistance of ASEAN countries to the R2P can be a case to test the robustness of the R2P. As Simmons and Jo (2019) argue that to maintain the robustness of internatioal norm, it needs ‘diversity support’, that is support from diverse regional actors, cultures and institutions.

Existing Literature on Norm Contestation	
Justificatory Contestation: Weakening Effect	Applicatory Contestation: Strengthening Effect
R2P Contestation in ASEAN	
Justificatory Contestation: Weakening Effect	Applicatory Contestation: Weakening Effect (Resistance)

Table 6-1: Norm contestation and its effect

The subsidiary reaction of ASEAN countries highlights a reactive contestation, in contrast to the proactive ones. If proactive contestation suggests the critical engagement of actors or stakeholders with norms, reactive contestation indicates activities such as resistance, rejection and negation (Wiener, 2018). The use of ASEAN principles to challenge the promotion of R2P suggests that the states tend to resist and refuse the diffusion of R2P in the region rather than engaging critically to make the principle consistent with ASEAN principles.

The ASEAN and its member states have still largely used their preference for regional principles and approaches to refuse the application of R2P in the region, especially with regard to the two cases of atrocity crimes in Myanmar and the Philippines. In the context of the ASEAN, R2P is defined as something different from the principles and identities of the region. It is argued that R2P follows the Western tradition that typically uses a ‘stick and carrot approach’, whereby the use of coercive measures and interference are very likely (Interviewees 8 and 11).

Meanwhile, ASEAN countries prefer to use their regional approaches such as ‘closed door diplomacy’, an incremental approach that uses intensive communication and consultation, and other informal approaches to deal with their regional problems, including human protection issues. This is justified by the fact that the ASEAN already has its frameworks and mechanisms including the ASEAN Charter, AICHR, and ASEAN Community Vision for addressing humanitarian issues. It has been claimed that the ASEAN does not need to adopt R2P because ‘instruments are already in place to address

humanitarian and R2P issues' (Interviewee 11). To this, the Former Indonesian Representative to the ASEAN has asked, 'Why should we use R2P when we have our own instruments and mechanisms?' (Interviewee 8).

The sceptical view and the feeling of being threatened by the R2P principle remains among ASEAN governments. R2P is still understood as a threat to the sovereignty and political independence of the countries. The former Executive Director of CSIS in Indonesia, Rizal Sukma, has said that it is very unlikely that the ASEAN will incorporate R2P into its regional arrangements as the process implies a need to (re)adjust the traditional principle, especially the (re)interpretation of non-interference and non-use of force (Interviewee 1). The countries tend to create a clear demarcation between ASEAN and R2P principles. This argument may reinforce the sceptical view regarding the diffusion of R2P in the ASEAN context. As Capie (2012) argued, the framing of R2P by ASEAN countries through ASEAN principles reflects a tendency towards rejection rather than acceptance.

In a broader sense, the attitude of ASEAN countries to the crisis of Rohingya and war on drugs indicates the cultural relativism of human rights and the pluralism of humanitarian intervention and the R2P debate. According to Donnelly (1984: 401), 'cultural relativism holds that culture is important and the principal source of the validity of a moral rights or rule'. As a consequence, 'the human rights standard may vary among different cultures and necessarily reflect national idiosyncracies' (Tesón, 1984: 871). As a consequence, implementation of the human rights principle must be subject to the principles of political sovereignty and self-determination.

Southeast Asian countries tend to interpret human rights not necessarily as the rights of every single individual in economic, political, and social terms. Instead, it is also interpreted as the right of a state or government to determine their nation independently. In the Asia-Africa Conference in 1955, for example, the idea of human rights was used as a political instrument to defend their nations from external interference. The language of human rights was repeatedly emphasised, along with the notion of self-determination and political independence. At that conference, the states emphasised that the recognition of human rights was not necessarily similar

to the adoption of the whole package of the UDHR. Instead, the states argued that the 'UDHR should be treated just as a basis for consideration' (Acharya, 2014: 409-10).

This way of interpreting the human rights principle has persisted since the creation of ASEAN in 1967. In this context, the countries agree to encourage the promotion of human rights within the region, but it also considers and appreciates the different political systems, cultures and histories of the member countries (ASEAN Vientiane Action Programme, 2004). Further, the ASEAN Human Rights Declaration (2012) mentioned that even though the value of human rights is universal, the realisation of the principle must consider the regional and national contexts, such as the different political, economic, legal, social, cultural, historical and religious backgrounds of a country. One former Indonesian Representative to the ASEAN argued that 'the aim of the ASEAN declaration on human rights were to show the commitment of the member countries on the universal of human rights, even though the universal declaration needs to be adjusted with ASEAN local principles and values' (Interviewee 8). In relation to the two selected cases, even though the ASEAN's relativism to human rights does not assume that killing and exterminating people is morally right, the states tend to view the cases through the lens of political sovereignty and self-determination.

In conjuction with the ASEAN's cultural relativism where human rights are concerned, the behaviour of ASEAN countries to the case suggests a pluralistic position in the R2P debate, whereby the countries strongly believe in order, stability and the relativity of culture. ASEAN countries believe that states may have different interpretations of the principle that is dependent on cultures and the historical experiences of states. Even though ASEAN countries do not dispute the legitimacy of the R2P principle, the states have emphasised that R2P should not be the only way to respond to atrocity crimes. They argue that they are justified in exercising their own principles and approaches because every country or region has different challenges and characteristics. In ASEAN context, the regional arrangements are more suitable for the culture and characteristic of the region. The regional problems must be approached through communication and consultation,

rather than by applying sanctions and punishment as suggested in the R2P principle. Therefore, the states have argued that ASEAN instruments are already in place to address humanitarian and R2P issues (Interviewees 8 and 11).

6.3 Three Sets of Structures and the Translation[9] of Norms

This section discusses the similarities and differences between the ASEAN's responses to the crises in Myanmar and the Philippines, including the position of the ASEAN states on R2P in the ASEAN context, through an explanation of the significance of the so-called three sets of structures, namely: ideational, institutional and material (Betts and Orchard, 2014). It shows that the similarities in perspective and the variation in the responses of the ASEAN to the two cases highlight the significance of ideational and institutional factors in constructing the perspective of member countries' interpretations of the cases. At the same time, the interests of states also influences the translation of regional norms into practice.

As explained in Sections 2.4.3 and 2.4.4, within the broader framework of the 'contested nature of norms', it has been recognised the significance of agency in the dynamics of norm diffusion and contestation (Wiener, 2014; Bloomfield, 2016; Acharya, 2018) and the interplay of norms and interests in an actor's compliance with and translation of them (Birdsall, 2016).

In line with the assumed contested nature of norms, Acharya (2004) argued that state(s) as local actors may accommodate foreign norms, for their own purposes, such as to strengthen their local existing norms. Alternatively, the local actors tend to challenge and develop new rules, use their local ideas and principles, and offer new understanding of global rules, with a view to

[9] Here the term 'translation' is simply used to describe the activities of state(s) in implementing norms in practice. It is not necessarily referring to what Lisbeth Zimmerman (2016) has explained about the conceptualisation of the different types of norm translation. In her article, the types of norm translation have been explained within the framework of norm localisation, even though norm translation is not necessarily the same as localisation. In this study, the translation of ASEAN principles in the case of Rohingya and war on drugs does not suggest the translation process should be seen in terms of localisation. But, as mentioned, the term 'translation' refers to the way ASEAN countries implement regional principles in practice to respond the two cases.

preserving their autonomy from abuse and violation by more powerful international actors (Acharya, 2011). . It suggests, indirectly, the importance of the interests and motives of local actors in the implementation process of international norms. In his recent book, *Constructing Global Order*, Acharya (2018) re-emphasised his theoretical standing on the diversity and plurality of agencies in the creation of global order.

With regard to the role and interest of agencies in norm implementation, Betts and Orchard (2014) systematically use the interest-based explanation. It recognises the factor of interest as one of the driving forces (in addition to ideational and institutional factors) that could influence states in interpreting and implementing norms. The interest-based approach has been explicitly adopted to explain the process of norm implementation. It explains that the interests of states may shape the process of norm adaptation and translation. In other words, states' interests could affect their understanding and implementation of norms in practice. At this point, the interest factor, together with the ideational and institutional factors of the ASEAN, are used to examine the understanding and behaviour of ASEAN countries in the case of Rohingya and the war on drugs, including their responses to the R2P principle in relation to the two cases.

The key characteristic of the region have significantly shaped the countries' position on R2P in the regional context. From a conceptual perspective, the differences between ASEAN principles and diplomacy culture, and the principle of R2P, have constrained the diffusion of R2P in the region. In practice, the promotion of R2P has been rejected by the countries in several ways, including the use of the ASEAN principles. As mentioned, ASEAN governments tend to refuse the promotion of R2P to avoid international interference and at the same time to preserve their regional autonomy and identities.

With regard to the case of Rohingya and the war on drugs, as shown in Table 6-2, ASEAN countries have a shared understanding with regard to defining both cases as domestic issues and internal affairs. However, the states' responses to both cases are different. In the case of Rohingya (case 1), the ASEAN and its member states have responded to the crises in

several ways, such as providing a trust fund for the Rohingya and Rakhine people, an informal approach to the Myanmar government, and ministerial level meetings of the ASEAN. The responses however, remain limited and slow due to the restrictions of ASEAN principles. Meanwhile, ASEAN countries still keep silent and avoid discussing the humanitarian crisis of the war on drugs in the Philippines (case 2). As explained in Chapter 5, there are no meetings, discussions and actions from ASEAN and the member countries in response to the issue. Instead, according to interviews and statements from several ASEAN countries in the media, the way their governments frame the war on drugs implicitly supports Duterte's policy.

Case 1 (Rohingya)		
Actor	**Perspective**	**Response**
Governments	Complex issue and national affairs	Limited
Non-state actors	Human rights violations	
Case 2 (War on Drugs)		
Actor	**Perspective**	**Response**
Governments	Complex issue and national affairs	Silent
Non-state actors	Human rights violations	

Table 6-2: ASEAN's perspective and response to cases of atrocity crimes

In ASEAN, the regional principles and diplomacy cultures, including the strict application of non-interference and state sovereignty principles, informality, consultation and consensus, and avoidance of punishments, are central to the regional arrangement. Regional issues are likely to be approached and addressed along with those principles and diplomacy cultures. With regard to the case of Rohingya and war on drugs, both cases have been framed within the wide-range of issues rather than necessarily as human rights problems. The countries have suggested that all parties, including the international community, should understand the crisis in a comprehensive way; for example, taking into account the issues of poverty, terrorism and counter-insurgencies, law enforcement, and the security and stability of the region, rather than necessarily focusing on human rights issues. Above all,

ASEAN governments have emphasised that regardless of the controversy over whether those cases are human rights violations, they are domestic problems of the countries and therefore the solutions to the problems should be arrived at with full respect given to the sovereignty of the countries (Interviewees 6 and 11). In other words, human rights issues attached to the two cases should be taken into account along with the doctrine of the states' sovereignty, autonomy, and self-determination.

While ASEAN principles and diplomacy cultures have significantly constructed the understanding of the countries to define and interpret the cases as domestic issues and the internal affairs of Myanmar and the Philippines, the ASEAN and its member states have made different responses to both cases. This reflects the variation in translation of the regional principles. It argues that not only do the ideational and institutional factors of the ASEAN, including the principles and characteristics of the organisation, have constructed the perspective of the states in interpreting the cases, but also that the interests of the countries have contributed to shaping the way the states translate their regional norms into practice.

With regard to the case of Rohingya, the crisis has been defined as a domestic issue and internal affair of Myanmar. Yet the crisis has been discussed and addressed by the ASEAN and its member countries in several ways, including the provision of the 'trust fund', an informal approach and 'closed door diplomacy' to the Myanmar authorities, and the so-called 'ASEAN Retreat Meeting' which specifically discusses the Rohingya crisis (a detailed explanation of which features in Chapter 4).

Most ASEAN governments consider assisting Myanmar to be important and necessary for enabling the government to address the crisis. ASEAN governments consider the Rohingya crisis to have the potential to develop into terrorism and other transnational crimes in the region. It may threaten the stability and security of the region. More specifically, helping Mynamar to deal with the crisis is critical for several ASEAN countries, especially Indonesia, Thailand and Malaysia, who have been actively doing so. They are the most affected countries in the region, especially in terms of their receiving influxes of Rohingya refugees who have fled Myanmar. To

illustrate, around 76 Rohingya refugees landed in the northern part of Indonesia in April 2018 (Reuters, 20 April 2018) and around 56 stopped on an island in Southern Thailand because of a heavy storm at sea (Meixler, Time, 2 April 2018). During 2015, it was estimated that approximately 25,000 Rohingyas fled across the Andaman Sea to three ASEAN countries: Indonesia, Malaysia and Thailand (Reuters, 20 April 2018).

As has been argued that ideational and institutional factors in the ASEAN have constrained the collective response. Most countries have warned that any response and assistance to Myanmar must be made carefully and respect the sovereignty of the country. In this situation, a soft approach through closed door negotiation and diplomatic consultation has been applied to address the crisis. As stated, ‘soft and incremental approaches are the methods necessary for the ASEAN mechanism to respond to regional issues’ (Interviewees 8 and 11). In this context, the regional principles of respecting sovereignty and non-interference have been translated into the the use of closed door diplomacy, a soft approach to the Myanmar authorities and the provision of a fund to assist the government to deal with the crisis.

In contrast, while the countries have made a limited response to the Rohingya crisis, the case of the war on drugs has been neglected. Similar to the case of Rohingya, ASEAN countries have used their regional perspective to understand the war on drugs in the Philippines. Thus, the war on drugs has also been understood as a domestic issue and part of the country’s internal affairs. However, the translation of the regional principles in practice, with regard to the war on drugs, is different with the Rohingya case. The states keep silent on the crisis rather than making a similar effort to the Philippines’ government to bring the issue into ASEAN.

Regional principles and diplomacy cultures have been used to justify the absence of an ASEAN response to the problem. In other words, ideational and institutional factors within the ASEAN have been translated into a silent response. This mode of translation relates to the common interest of the countries regarding the threat of illegal drugs trafficking and abuse, as explained in Chapter 5. It makes the countries lack reason in discussing,

criticising and taking action on the case, even within the bounds of regional principles and mechanisms. Therefore, the similarities and differences of perspective and behaviour between ASEAN countries to the Rohingya crisis and the war on drugs, including the resistance of the states to R2P, suggests that the ideational, institutional and material factors matter and are interlinked in terms of their influence on the understanding and behaviour of states in translating and implementing norms.

6.4 Conclusion

The contestation of R2P in the ASEAN context reflects the growing diversity of agencies in norm diffusion, whereby variations in the interpretation of international norms are possible (Wiener, 2009 and 2014; Acharya, 2018). The contested nature of norms suggests that state(s), as local actors, may have different understandings and interpretations of international norms in the implementation process (Betts and Orchard, 2014). The contestation of R2P in ASEAN has suggested that not only does contestation persist after the institutionalisation of norms at international level, it also becomes more complex in the regional context. While Betts and Orchard (2014) focus more on the national context of state in the implementation process, this study may expand the level of the analysis from national to regional.

Within the ASEAN, R2P has been problematised by the countries through the use of an ASEAN perspective to interpret the principle, constraining the diffusion and promotion of R2P in the region. In this situation, neither has the R2P principle been internalised nor are the countries preparing to adopt or localise the principle into the ASEAN. This has highlighted the subsidiary reaction of ASEAN countries, in the sense that the states attempt to resist external interference and wish to preserve their regional principles and identities. Even though the R2P contestation in the ASEAN suggests a very limited (if any) effect on the development of the principle at global level, if the contestation (in the form of resistance) persists, it may weaken the R2P principle. The contestation has constrained rather than enabled the diffusion of R2P in the region. As explained that *applicatory* contestation can also weaken international norms if local actors engage in contestation as a form of resistance.

The contestation of R2P in the regional context of ASEAN indicates that the type of norm (in this case R2P) matters in the implementation process. Even though the criticism of ASEAN countries with regard to the criteria and indicators of atrocity crimes should be scrutinised further, it highlights that the type of norm matters for the states in the implementation process. Not only the member states, the 'legitimacy gap' of R2P also makes the non-state actors in the region lack of confidence about the necessity of R2P for addressing atrocity crimes. The nature of R2P as a 'composite norm' or 'complex principle norm' may overlap and lead to a complex contestation with other existing norms. It shows that the typology of norms correlates to the extent to which international norms are likely to be adopted and implemented.

The attitude of ASEAN countries to the issue of Rohingya and the war on drugs indicates the cultural relativist and pluralistic understanding of ASEAN countries regarding human rights and R2P. The implementation of human rights protection should, from their perspective, respect local cultures and arrangements and must ultimately be subject to the principles of political sovereignty and self-determination. This understanding can be linked to what Betts and Orchard (2014) explained as the significance of the three sets of structures (ideational, institutional and material) that influence the process of norm translation and the construction of behaviour. The ideational and institutional factors within the ASEAN (including regional principles, diplomacy cultures and the characteristics of the Association) have significantly contributed to shaping the perspective of the countries in understanding and interpreting the cases. They have been framed as problems related to poverty, ethnic conflict, radicalism, and transnational crimes rather than as human rights violations and atrocity crimes. Above all, both cases have been defined as domestic problems and internal affairs of the states.

Even though ASEAN countries have shared a regional perspective in their understanding of the cases, the responses to the cases have been different. The ASEAN's response to the Rohingya case has been defined as 'limited', while the response to the case of the war on drugs has been defined as

‘silent’. While ASEAN principles have been used to justify their responses in the two cases, the translation of the principles has been different. This difference suggests that the states’ interests have influenced their translation of the ASEAN principles into practice, especially non-interference and state sovereignty. The interest-based explanation does not necessarily suggest purely strategic action because the states attempt to legitimise their conduct with reference to their principles, especially state sovereignty and non-interference. Like norms, interests are not absolute and are dynamically constructed. Therefore, varied translations of norms by the same actors are possible within the same insitutional environment.

Chapter 7 Conclusion

7.1 Introduction

Broadly, this thesis has explored the dynamics and complexity of norm diffusion and implementation. This thesis started with an introductory chapter that explained the points and basic questions of the research such as: what the research concerned (background, aim and objectives), why this research was being conducted (rationale of the study and research contributions) and how it would be developed (research questions and research methodology). This thesis has examined the diffusion of R2P in the ASEAN context through an analysis of the ASEAN's understanding and interpretation of the R2P principle. This thesis was developed along with a study of norm literature (Chapter 2), especially the discursive or critical approach of constructivists to norms that focuses on the argument of the 'contested nature of norms' and 'the significant role of agencies' (Wiener 2009 and 2014; Acharya, 2011 and 2018; Betts and Orchard, 2014). This thesis significantly used Betts and Orchard's (2014) framework of norm implementation that distinguishes between the institutionalisation and implementation of norms. With regard to this, they argued the significance of three sets of structures (namely ideational, institutional and material) in norm diffusion at the implementation stage. These structures are likely to influence states in translating and implementing international norms.

In addition, this thesis has applied the norm subsidiarity (Acharya, 2011) in understanding the behaviour of the ASEAN countries to R2P in the context of the region. It revealed the resistance of the ASEAN countries to the diffusion and promotion of R2P in the region by offering different understanding and interpretation to the R2P and justifying their resistance according to their regional norms and arrangements. To provide a broader context for this research, Chapter 3 discussed the historical background and development of both R2P and the ASEAN and its traditional principles and diplomacy cultures. Several concepts such as state sovereignty, human

rights and human protection have also been discussed within the context of ASEAN and R2P.

Specifically, this research has investigated the way the ASEAN and its member states have defined and responded to the two cases of atrocity crimes in the region, namely the Rohingya crisis (Chapter 4) and the extrajudicial killings of the war on drugs in the Philippines (Chapter 5). These two cases show that atrocity crimes can happen outside the context of armed conflict. In writing for *The Stanley Foundation*, Bellamy (2011) emphasised that mass atrocities may happen in 'peacetime' circumstances such as state-directed suppression and communal violence. These two chapters serve as empirical case studies of how ASEAN countries comprehend and interpret R2P in the context of the region and how they use their regional principles in practice. Broadly, it has been developed to understand the dynamics of norm diffusion and contestation (Chapter 6). In this regard, this research has emphasised three interrelated points that answer the proposed questions in this thesis.

This final chapter summarises and concludes the whole thesis. It is organised as follows. After this introductory section, this chapter reflects on several important points (7.2), including the dynamic and contested nature of norms (7.2.1), the role of states as local actors and regionalism in norm diffusion (7.2.2), and an understanding of norm contestation and its effects (7.2.3). The next section (7.3) explains the implications of this thesis for further research and policy development. With regard to the overall aim and objectives of this thesis (See Chapter 1), there have been several findings and arguments.

First, by exploring the concept of norm implementation (Betts and Orchard, 2014), this thesis has emphasised that norms are continously contested and are very likely to be interpreted differently at the implementation level. As reflected in the two selected cases (Chapters 4 and 5) and as has been explained in section 6.2, ASEAN countries have problematised R2P by emphasising three arguments: i) the countries emphasised that R2P lacks clarity in its concept and legal status, ii). They argued that atrocity crimes do not exist in the region, and iii). They argued that ASEAN frameworks and

arrangements are already in place to respond to any humanitarian problems within the region.

Second, with regard to the debate of R2P diffusion in ASEAN (see Section 3.5), this thesis (as explained in Sections 6.2 and 6.3) has argued that the promotion and mainstreaming of R2P in the ASEAN context are still very limited and that this reflects resistance to it, rather than acceptance or localisation. As reflected in the reaction of the ASEAN and its member states to the case of the Rohingya and the war on drugs (Chapters 4 and 5), ASEAN governments have largely used their ASEAN perspective and principles to define R2P and the humanitarian crisis in the region. In other words, ASEAN countries tend to show subsidiary behaviour in terms of the states attempting to refuse external interference (especially the use of R2P principle), and to preserve their regional principles and identities.

Third, this thesis has suggested implications for the literature of norm diffusion. It argued that local actors and regionalism matter in norm diffusion and implementation. Despite the role of local actors and regionalism could facilitate the diffusion and implementation of international norm, the case of R2P in the ASEAN suggests there has been a constraining effect on its diffusion and implementation in the region. At this point, this study has showed that although ASEAN countries (as local actors) agree with the fundamental values of R2P, the diffusion and implementation of the principle tend to be resisted by concerning on the application aspect of it. Further, this study has suggested that analysing the way local actors understand and react to international norms in their local environment is also, necessary for studying state(s)' compliance especially with emerging international norms.

7.2 Reflections on the Empirical Chapters

This section reflects on the thesis' arguments about the perspective of the ASEAN and its member states on the selected cases of atrocity crimes in Southeast Asia and their reactions to them. The arguments are based upon: the dynamic and contested nature of norms, the significant role of local actors and regionalism in norm diffusion and the diverse effects of norm contestation.

7.2.1 The Dynamic and Contested Nature of Norms

Broadly, this thesis has re-emphasised the dynamic and contested nature of norms whereby they are intersubjectively constructed. Specifically, it strengthens the argument that distinguishes the nature and process of the institutionalisation and implementation of norms. Norms are continously contested, including in the post-institutionalisation stage. The following distinctions are useful for this research to understand: the difference reaction of ASEAN states to R2P in international and regional level; how the R2P principle is problematised by the countries in the regional context; and what factors constitute the interpretation and attitude of the state to the principle. As emphasised, varied interpretations to international norms are expected because the meanings of norms are consistenly (re)negotiated and and (re)enacted (Wiener, 2009 and 2014).

This thesis has shown the different attitudes of ASEAN countries to R2P at the international and regional levels. The states tend to support R2P at the UN level, while the countries are hugely reluctant to promote and accept it in the regional context of ASEAN. It does not mean that at the UN level ASEAN countries have fully accepted R2P, in fact the states criticised it in the Annual Dialogue on R2P in the UNGA. Yet the criticism, along with the endorsement, contains more suggestions and recommendations for the international community to strengthen R2P by addressing the remaining issues surrounding the principle.

At the ASEAN level, the countries interpret R2P differently. ASEAN principles and approaches have been largely used to challenge and contest the promotion of R2P in the region (See Chapter 6.) R2P's application within the region has been rejected, as shown in the response to two atrocity crimes (See Chapters 4 and 5). Instead of considering the crises of Rohingya and the war on drugs as atrocity crimes, most of the states have framed the crisis from other perspectives. The Rohingya issue has been defined as a problem related to poverty, counter insurgencies, democracy, and horizontal ethnicity-based conflict. Duterte's deadly war on drugs has been considered an effort to deal with drugs-related problems such as the increase in the number of criminals, HIV-AIDS, and other social problems.

More fundamentally, both crises have been framed as domestic problems and internal affairs of the countries.

Most ASEAN countries have argued that the principles and approaches of the ASEAN are sufficient to respond the crisis and, more importantly, the ASEAN Way is claimed to contain the most suitable and appropriate principles and approaches to deal with the crises. At the same time, the states refuse to refer the cases to the international community, especially under the R2P principle. According to Betts and Orchard (2014), the process of interpretating and translating the norm's meaning is likely to be influenced by three sets of structures, namely: ideational, institutional and material.

In addition to analysing the different reactions of ASEAN states to R2P, the three sets of structure frameworks provide the necessary tools to analyse the factors that constitute the perspectives and attitudes of the ASEAN and its member states in response to the two cases of mass atrocities in the region. As explained that while some actions (in a limited manner) have been taken in response to the Rohingya crisis, the states tend to be silent regarding the humanitarian problem of the war on drugs in the Philippines. ASEAN states insist on using the ASEAN Way to respond to the crises; the use of R2P is rejected. It argued that not only ideational and institutional factors matter, the interests of the countries have also influenced the understanding and reaction of the states to the R2P, ASEAN principles and the crises.

As explained in Chapter 4, some ASEAN countries, such as Indonesia, Malaysia, and Thailand, have more concerns and criticisms about the crises than other countries in the region. From a material interest perspective, the active role of the three ASEAN countries in responding to the crisis correlates to the issue of the Rohingya refugees that flee Rakhine State for their countries. Other ASEAN countries lack motivation to actively respond to the crises, because the crises have had no direct impact on them and the human rights problems are seen as part of the domestic politics of the state.

Meanwhile, the silent response of the ASEAN and its member states to human rights issues in the Philippines' war on drugs, as explained in

Chapter 5, suggests not only have ASEAN principles shaped the understanding and perspective of the states, but the common interest in fighting against drugs has influenced the states to close their eyes to Duterte's policy and its human rights impact. The three sets of structure have enabled this matter of interest to be explained within the broader context of norms. The interest in the implementation of norms goes beyond the assumption of rationalist and regime-based theories about purely interest-driven and strategic behaviour. The use of ASEAN principles and approaches as a reference to legitimise the response of the states to the two cases has shown that regional norms have guided the states' perspective and behaviour and that the states are likely to preserve regional principles for their regional political life.

7.2.2 The Role of Local Actors and Regionalism in Norm Diffusion

This study has highlighted that not only the role of state(s), as local actor(s), in norm diffusion is significant, but also regionalism. Regionalism matters for norm diffusion and implementation because it implies two possibilities: either facilitation or, in contrast, constraint of the diffusion of international norms. Acharya argues that regionalism indicates the idea of decentralisation. It implies that problems in a region should be addressed and approached through the regional arrangements. It suggests that collective action when addressing particular problems within the region 'should be tried first at the regional level by the regional actors, before taking them to external actors and institutions' (Acharya, 2018: 155).

The ASEAN, as a form of regionalism, has a constraining effect on the diffusion of R2P in the region. Indeed, the primary principles of the ASEAN, such as state sovereignty and non-interference, are not absolute (see Chapter 6 for explanation of the different translation of ASEAN principles), yet still enjoy a high level of recognition from the member states in managing their inter-state relationships. The principles are consistently used to respond to problems in the region, especially those related to human rights (See Chapters 4 and 5).

ASEAN regionalism matters for the diffusion of R2P because the political values and cultures that underpins ASEAN are different to that of R2P, especially with regard to several themes and issues, including the debate on state sovereignty, interference (and non-interference) and human rights protection (See Chapter 3). ASEAN was created to serve regional order, peace and stability by upholding state sovereignty, non-interference and self-determination. The states developed regional approaches, including a non-coercive, soft and incremental approach to dealing with regional problems. At the same time, the use of force is prohibited in the region.

Meanwhile, R2P was created with human rights and humanitarian laws in mind. If the primary aim of the ASEAN was regional stability and order, R2P was created for the sake of protecting people from atrocity crimes. While ASEAN countries in general tend to define sovereignty as authority, state sovereignty in R2P concerns the responsibility of state to protect people from mass atrocities. As a consequence, where the ASEAN constrains collective action, especially by using coercive measures such as sanctions and force, R2P encourages for international assistance, by using appropriate peaceful means, and collective action, in a timely and decisive manner, if peaceful means are inadequate and national authorities are manifestly failing to protect their populations from mass atrocities.

Indeed, the ASEAN has expanded their concern on the issue and agenda of human rights and protection since the adoption of ASEAN Community Vision in 2003. It is recognised as the foundation of ASEAN developments on human rights and protection and has produced several human rights-related bodies, instruments and declarations. Unfortunately, the ASEAN Community and its bodies remain largely bound by ASEAN principles (for the implementation of the ASEAN Community in practice, see Chapters 4 and 5).

To some extent, the member countries could have discussed the problems of their neighbour countries (such as the ASEAN’s response to the Rohingya crisis), even criticised what the Prime Minister of Malaysia, Mahatir Mohammad, has said about the Rohingya crisis. It may be argued that there is gradual changing from several ASEAN countries to their principle of non-

interference. However, the ASEAN principles and approaches remain central for the region that restrict the member states from taking timely collective action. The regional principles and approaches guide the states to respond the cases of human rights and atrocity crimes in a softer and more incremental way.

The matter of regionalism is interlinked with states' prior cognition as culture of the state(s) is socially and historically contingent constructed (Reus-Smit, 2018). In the ASEAN context, the experience of the countries with regard to colonialism and great power interests, such as during the Cold War, has contributed to shape the cognitive and socio-political culture of the states. As a result, it has also shaped the perspectives of the states in managing inter-state relationships and in understanding the term 'interference'. With regard to R2P, ASEAN principles and diplomacy culture have constrained the diffusion of R2P and local prior cognition and principles have been used to refuse the promotion of R2P in the region. In this context, states are likely to bring their background and experience to bear on international norms (Wiener, 2014) and preserve their autonomy and identities (Acharya, 2011). More broadly, the role of states as local actors signifies the diversity and plurality of agents in norm diffusion and implementation (Wiener, 2014; Acharya, 2018).

7.2.3 Norm Contestation and Its Effect

In conjuction with two points above, this study expands the understanding of norm contestation and its effect. In complement to Zimmerman (2016), who identifies the resistance of state to international norms as always happening in cases where the state contests the validity of a norm, this study shows that state(s) may resist international norms by contesting their application, rather than their validity. Further, this study argues that not only could justificatory contestation undermine the legitimacy of international norms (Deitelhoff and Zimmerman, 2018), applicatory contestation could also have a weakening effect on an international norm if the state(s), as local actor(s), engage in applicatory contestation in the form of resistance rather than critical engagement. As explained in Chapter 6, ASEAN states engage with R2P in a way which makes it subsidiary, in the sense that the countries

largely use their regional preferences to resist the diffusion and application of R2P in the region.

Broadly, this research suggests that norm contestation is not always related to the distinction between legality/justificatory and application/applicatory questions. It is also related to the extent to which an emerging international norm contributes to filling a gap where existing international norms' capacity to respond to actual problems (such as humanitarian and mass atrocities issues) is concerned. In this case, the 'composite' nature of R2P suggests an overlap and limited, not to say insignificant, contribution to existing international human rights and humanitarian laws, in the sense that R2P is widely claimed by its proponents as primarily being a 'supporting norm' or 'action guiding' to international humanitarian norms and laws (Welsh, 2014; Hehir, 2019). At this point, R2P not only contains competing norms (sovereignty and human rights), but also combines two or more different existing international norms. In related to this, in the context of ASEAN, while most the local actors (state and non-state actors) tend to believe in most existing international human rights and humanitarian legal instruments, they lack of confidence and still reluctance to the use of R2P.

A report from the APCR2P (2018) entitled *Implementing the Responsibility to Protect In the Asia Pacific: An Assessment of Progress and Challenges* concludes that there is strong linkage between the level of acceptance and compliance of a state with R2P and the existing international legal norms and instruments that are relevant to R2P principle. These include: the Convention on the Prevention and Punishment of the Crime of Genocide; the International Covenant on Social, Economic and Cultural Rights; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and other conventions related to the protection of people, with regard to the positive (or negative) reception of the R2P principle by a state. The Asia Pacific Centre report suggests that the higher the level of acceptance of international norms and legal instruments, and compliance with them, the stronger the commitment of a state to R2P.

This study has presented the insight that even though the acceptance of international legal instruments by a state may indicate a correlation with the

extent to which a state accepts and has a strong commitment to the R2P (as stated by the report), there is another factor that should be scrutinised to claim a causal compliance relationship. The factor is how the state comprehends and interprets both the substantive and practical aspects of a norm or principle in their social-political environment. As shown in this study (especially in Chapters 4, 5 and 6), stakeholders of the ASEAN (primarily the governments, but also the civil society organisations) have a positive understanding and recognition of the existing international norms and legal instruments for human protection, but they remain reluctant and to some extent lack of confidence in the necessity of R2P to address atrocity crimes. The remaining question of why R2P should be used, when the international community already has norms, laws, and instruments to address mass atrocities, implies that the way the ASEAN states understand and interpret R2P (as an emerging international norm), in relation to the broader context of the international legal system for human protection and atrocity crimes, is another aspect that should be addressed to study states' compliance with the emerging international norm.

7.3 Implications for Further Research

This thesis has implications for further research. First, this research has focused more on the contestation of R2P in the context of ASEAN regionalism, rather than the domestic context of individual ASEAN states. It would be beneficial for further research to analyse the contestation of R2P in the ASEAN and at the national level among the member countries, so that any more details and divergent contestation may be revealed.

Second, this thesis has centred its analysis on the contestation and complexities of R2P diffusion in the ASEAN context without comparing it to other regional organisations such as the African Union. Indeed the ASEAN can be used as a case to examine the complex contestation of norms, but the diffusion of norms, especially a complex principle norm such as R2P in other regional contexts, would provide distinctions in understanding on norm contestation and implementation. Understanding the contestation of R2P in other regional contexts is also important, as a Report of the UNSG in 2014 suggests, for collaboration and partnership between international and

regional actors in protecting people from mass atrocities. Therefore, further research on R2P which compares ASEAN and other regional organisations could provide more opportunities to understand the broader dimension of norm diffusion and contestation.

The analysis and explanation of this thesis has implications and suggestions for policy and research, especially in relation to R2P and the ASEAN regional agenda on human protection issues and norm literature. First, with regard to the development of R2P studies, the complex implementation process and contestation of R2P in the regional context of the ASEAN, especially in relation to the use of force, may reinforce the concern and research on R2P, including the aspect of prevention, capacity-building, and the role of regional organisations and the use of non-military methods to address mass atrocities. The case of R2P in the ASEAN has suggested that the international community should largely focus on the elements of prevention and capacity-building as the central idea of R2P, in order to protect people from mass atrocities. As Bellamy and Luck (2018) emphasised that to prevent and halt atrocity crimes, international community needs a more flexible approach in terms of in determining what approaches that is likely to be more effective. Therefore, cooperation and coordination between global and regional actors is crucial.

Among the criticism and scepticism directed at R2P and the ‘Responsibility to Prevent’ (Morris, 2013; Nuruzzaman, 2013; Hehir, 2019), there are growing attention and efforts being paid to re-emphasise and operationalise the ’Responsibility to Prevent’ as the central element of R2P (Sharma and Welsh (eds.), 2015). In practice, the case of Kenya has been claimed as a good example of non-coercive application of ‘R2P in practice’. It has highlighted the value of preventive and international mediation and diplomatic initiatives to stop the outbreak of ethnic violence within the country (Junk, 2016; Adams, 2016). Bellamy (2011) emphasised that the notion of a ‘case-by-case basis’ as stated in Paragraph 138 of the World Summit implies that mass atrocities prevention should be achieved by using appropriate instruments and context-sensitive approaches.

In the context of Southeast Asia, the complex challenges to promoting R2P in the region have led to the creation of a new international partnership called the Asia Pacific Partnership for Atrocity Prevention (APPAP) since late 2015. It was primarily initiated by human rights and R2P networks in Southeast Asia, and the APCR2P of the University of Queensland, Australia. The Global Centre for the R2P (GCR2P) was also the founding member of the partnership. The primary aim of the partnership is to strengthen the common agenda of human rights and R2P networks to support atrocity prevention, especially in the Asia Pacific region, including Southeast Asia. The partnership attempts to re-emphasise the central role of prevention and non-coercive measures to protect people from mass atrocities. In the first meeting of the partnership, along with the APCR2P and RSIS Joint Seminar in November 2016 in Singapore, it was agreed that the partnership upheld shared principles, including the commitment to R2P and international humanitarian law, inclusivity, gender sensitivity, recognition of cultural differences and transnational justice (APPAP 1st Meeting, 8 November 2016). Therefore, further research on atrocity prevention (probably the specific prevention mechanism in the context of ASEAN) is crucial to prevent mass atrocities and probably to expand acceptance of R2P by the states.

Second, this study indicates the need to formulate creative ways to promote R2P in the region. This formulation may includes what Wiener (2014) described as provision of access to contestation for all related agents and stakeholders in the ASEAN and its member states in order to generate recognition or a sense of appropriateness regarding R2P. The regular contestation of R2P in the ASEAN context may familiarise the related agents with the norm. The basic assumption of this formula is that the more consistently a norm is discussed, the more opportunities there are for the norm to be accepted or localised. Regular contestation creates opportunities for ASEAN stakeholders to be involved in regular talks, discussions and critiques of R2P.

As has been explained in Chapters 4 and 5, ASEAN governments apply only their regional principles and approaches to respond humanitarian issues and atrocity crimes in the region. The way the countries have responded to the

case of Rohingya and the war on drugs in the Philippines reflects the centrality of the ASEAN Way. The ASEAN and its member states lack the authority and capacity to protect their people from mass atrocities due to the restrictions of their institutional arrangements and diplomacy culture. As shown in the two cases, the ASEAN has failed to prevent the occurrence of the atrocities and failed to respond to the crimes effectively. The promotion and mainstreaming of R2P may encourage any necessary adjustment of ASEAN on human protection issues, such as the use of a mass atrocity lens when assessing and analysing situations that have the hallmarks of potential atrocity crimes.

Third, as emphasised, this study highlights what Betts and Orchard (2014) emphasise: that institutionalisation and implementation of norms are two different processes. State(s) may definitely show different understandings and behaviours with regard to international norms in the implementation process, whether at the regional or national level. This study suggests that even though international norms may contain universal ideas and values, their implementation should consider the pluralism of international politics, and particularly the plurality of the social-political cultures of states and regions. It indicates that further research should address the question of how to implement universal ideas, principles and norms in the pluralism nature of international politics.

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Appendix A

Information Sheet

Research Project Title:

Norm Socialisation and the Behaviour of State: the Case of Responsibility to Protect (R2P) in Southeast Asia

24 August 2016

You are kindly invited to take part in a research project concerning the R2P socialisation and the behaviour of Southeast Asian states. Prior to giving your consent it is important for you to understand why the research is being done and what it will involve. Please take time to read and consider the following information, and do not hesitate to ask for clarification or further information before making your decision.

1. What is the purpose of the project?

This research is part of a PhD project supported by the University of Leeds, United Kingdom. This research will explore how the complexity of R2P socialisation process in Southeast Asia and the dynamics behaviour of the ASEAN countries in the socialisation process. The collection of data will take place in Jakarta Indonesia between November 2016 and January 2017. The expected research completion date is 30 September 2018.

2. Why have I been chosen?

You have been chosen as a participant because your position in the Secretariat of ASEAN or as an expert that having knowledge and experience related on R2P and ASEAN. The interview will help the researcher to improve better understand how the complexity of R2P socialisation in the ASEAN context.

3. Do I have to take part?

Each participant is freely to decide whether or not to take part in this research project. If you do decide to take part, you will be interviewed for approximately one hour. Interview questions will relates to your position, knowledge and experience on R2P, the issue of human protection in Southeast Asia, and also related to the ASEAN principles.

4. What are the possible benefits and risks of taking part?

Whilst there are no immediate benefits for those people participating in this research project, this research is expected in contributing to create a better understanding of how the process of R2P socialisation and its contestation with the ASEAN principles. In addition, the research is likely to provide better understanding to understand the dynamic behaviour of ASEAN countries in

the process of R2P socialisation in the region. I foresee no major disadvantages or risks from taking part in the research.

5. Will my interview session be recorded?

Interview sessions will be recorded using audio devices, unless you object to it. The audio recordings of the interview will be used only for analysis. No other use will be made of them without permission, and no one outside the project will be allowed access to the original recordings.

6. Will my taking part in this project be kept confidential?

All of the information collected about you during the course of the research will be kept strictly confidential. Only the researchers involved in the project may access the interview notes, transcripts and audio recordings. Your personal data will be stored separately and it will not be handed over to anybody. All the information will be kept strictly confidential. You will not be able to be identified in any reports or publications resulting from the research.

7. What type of information will be sought from me and why is the collection of this information relevant for achieving the research project's objectives?

You will be asked to provide your opinion on the problems and complexity of the process of R2P diffusion in Southeast Asia, including the controversies of R2P and the ASEAN principles. In addition, the information regarding the intention of your state (as an ASEAN member state) in the engagement with R2P will be asked. You will also be asked about the issue of Rohingya and war on drugs in the Philippines. The information is necessary to explain whether or not ASEAN is preparing to localise R2P and its possibility.

8. What will happen to the results of the research project?

The anonymised data collected in this project will be used as input for my PhD thesis, to be published in academic journals and conference papers. You will not be identified in any report or publication. The data collected in the interviews will not be used for other purposes.

9. Contact for further information

Zain Maulana

PhD student

School of Politics and International Studies

University of Leeds

Leeds, LS2 9JT

Email: ptzm@leeds.ac.uk

Appendix B

Example of Transcript Interview

This is an example of interview with Ambassador I Gede Ngurah Swajaya as the former representative of Indonesia to ASEAN. I choose this interview due to it was able to describe many aspects of ASEAN's understanding to R2P and its regional principles.

Researcher (R): As you said that the notion of interference is very sensitive term for ASEAN and its member states. Could the member states interpret the principle of non-interference in a more flexible manner.

Participant (P): I think it needs an evolutionary approach particularly when the case affect the majority of the states in the region. For example, in the case of Cyclone nargis in Myanmar, the government announced that all things has been handled. However, the data satellite showed that the death body of the victims were still on the ground. It shows that emergency response was not effective. As a consequence, the international community shows its willingness to response the problem even without consent from the Government of Myanmar. However, the government of Myanmar considered that the intention of the international community is not pure for humanitarian but is also motivated by political purposes that intend to undermine the regime of the Junta.

In the meeting of ASEAN (Foreign Minister Meeting), there were 3 options for Myanmar. First, they must open and give their consent to ASEAN to deliver humanitarian assistance. Second, the international assistance will be coordinated by the UN. The third option is ASEAN will do nothing if the international community insists to go into Myanmar to give the humanitarian assistance. Most of the ASEAN states agree to push Myanmar to whether accept the assistance from ASEAN or the assistance that is coordinated by the UN. In this situation, the ASEAN states realise that once humanitarian intervention by international community is implemented for the case (natural disaster), it could be a justification where the intervention could happen again in other cases of natural disaster. Finally, the government of Myanmar has accepted the humanitarian assistance that was coordinated by ASEAN and the UN. This case shows that sometimes ASEAN and its member states could interpret the principle of non-interference in a more flexible manner.

In other issues like human rights and the creation of the AICHR, for example, it could be considered as interference (in a certain degree) which means that other ASEAN countries could give comments to the situation of human rights of our countries. But, in this case, AICHR is still

intergovernmental rather than superbody. Therefore, the interference of a country to the other countries on the issue of human rights could be reduced because the regional human rights commission is an intergovernmental. In this regard, Indonesia has been tried to propose an idea that AICHR should has authority to review the human rights situation in the ASEAN member states. But unfortunately, the majority of the ASEAN member states disagree.

As an alternative, Indonesia proposed an idea and mechanism to conduct the review through the mechanism of peer-review. Indonesia was voluntarily to be reviewed by its ASEAN colleagues through the AICHR. This voluntarily behaviour has been followed by the Philippines. Unfortunately, there was no other states in the region (after Indonesia and the Philippines) that willing to be reviewed by its ASEAN colleagues. Therefore, ASEAN states realise that the discussion and debate on R2P in the UN will less likely to result a solid conclusion in regard the principle. In the UN level, a conclusion regarding particular principle like R2P, for example, is always a result of political compromise or middle ground between the norm entrepreneur or its prominent supporter and the rest of the member states.

ASEAN states tend to put the dialogue and discussion on R2P in the UN rather than in the regional level. ASEAN states do not interesting to discuss further the principle of R2P at the regional level as long as there is still continuous debate and contestation surrounding the R2P principle. If the R2P principle become clearer and less controversial, probably ASEAN and its member states will begin to think to discuss R2P in the region.

For example, the declaration on human rights at the global level then followed by the declaration on human rights by ASEAN. The aim of the ASEAN declaration on human rights were to confirm its commitment on the universality of human rights even though the UDHR has to be adjusted with the ASEAN local principles and values. This is the reason why there is no formal discussion about R2P in any ASEAN forum. Even the concept of human security is still has very limited attention from ASEAN.

R: The concept and principle of human rights is relatively well recognised and institutionalised in ASEAN, even though the countries in the region were less interested to the principle in the past. Related to this, could the socialisation of R2P be similar with the process of the socialisation of human rights?

P: It is quite different with the principle of human rights. So that, it is difficult to adopt R2P into ASEAN. In the case of human rights, the principle has a solid concept and universal declaration in the global level. Meanwhile, R2P is still controversial and debateable. As a consequence, the principle of human rights become urgent for ASEAN and its member states to discuss and adopt the principle into the regional context.

Other example is the issue of terrorism. Even though there is no single definition about terrorism, but this issue is very urgent to be discussed and respond immediately. In this issue, ASEAN was waiting for a convention on terrorism at the UN level. Unfortunately, debate on terrorism at the UN is very complicated that focus more on definition and its scope. To response this situation, ASEAN think that the region need to response terrorism immediately because the crime is already happen and affect the region. Therefore, Southeast Asian states agreed to have an ASEAN convention on Terrorism. The convention do not clearly defining the definition of the terrorism, but rather emphasises the law enforcement, procedures, and the approach of rehabilitation or deradicalisation of the terrorist. The approach of the deradicalisation is well recognised by many countries and the UN. This approach is important to reveal the network of the terrorist groups.

Therefore, in the context of human rights in ASEAN, the adoption and institutionalisation of human rights came after the convention of the principle at global level. Meanwhile, in the case of terrorism, ASEAN have its regional convention prior the global convention because the urgency of the issue of terrorism for the region.

In the case of human rights socialisation in ASEAN, the important factor that accelerate the process of socialisation of the human rights was the Bali Concord II in 2003 where the universality of human rights was widely discussed, even though the meeting has emphasised more on the promotion of human rights rather than protection. The meeting was a cornerstone for the member states to discuss further on human rights. On one side, human rights is already has a consensus and convention at global level, and on the other hand the ASEAN states become more confident and comfort to discuss human rights at the regional level.

In this case, Indonesia is the most active country to advocate human rights since the early 2000s. In the past, Indonesia was a perpetrator of gross human rights violations. The shifting position and perception of the Indonesia toward human rights has create confidence among other ASEAN states to the principle of human rights. Then, Indonesia encouraged to create a commission on human rights in the region through track 1 and ½ (not exclusively track 1 or government). Even though, there was still debate in interpreting human rights in the commission, ASEAN was able to adopt the principle into the ASEAN Charter. In the Charter, ASEAN does not only emphasised the promotion of human rights, but also protection.

R: What does the urgency means?

P: Urgency could be understood in the sense that the principle has already a convention in the global level. Then, it become urgent for ASEAN to adopt the principle (with redefining and re- contextualisation the human rights with the ASEAN local principles and values). Meanwhile, through the case of

terrorism, the urgency could be understood as the crucial needs for ASEAN to be able to response the actual problems (terrorism) that is faced by the states in the region. In the context of R2P in Southeast Asia, there is no urgency (in terms of the absence of consensus and convention of R2P at the global level and the very limited, if not the absence, of atrocity crimes in the region) for the Southeast Asian states to discuss further the R2P or to adopt the principle into ASEAN. In addition, the ASEAN states consider that any issues related on human rights protection are already regulated in the AICHR and ASEAN Charter. Issue that related on political situation and democracy in Myanmar is response through political approach among the member states. In other words, the issues occurring in the region have already its framework and mechanism.
If there is a genocide in Southeast Asia and international community has taking action to protect the population, probably this case could be understood as the “urgent situation” that needs to be respond by the ASEAN and its member states.

R: How does Indonesia and ASEAN see the case of the Rohingya?

P: The case of Rohingya or irregular migrant is still debatable whether the case is genocide or not. Surely, the case is a horizontal conflict between society groups. It likes the ethnic-based conflict in Maluku, Indonesia.

R: But in the case of Rohingya, the government and the military involve in the conflict.

P: Yes of course, that is the fact. But, we need to be very careful because we do not want our response is considered as intervention to the Myanmar domestic affairs. Each country has its rights to claim whether or not any particular society groups as part of their citizen. The problem of the Rohingya is they have no recognition as citizen neither by Myanmar nor Bangladesh. Therefore, the approach that needs to do is how the Government of Myanmar respond this situation, even though the case has been discussed in the context of ASEAN. The Government of Myanmar have to responsible to solve the problem with their own solution without undermine and violate the basic rights of the Rohingya.

R: What does the ASEAN response to the case?

P: As mentioned that the case has been discussed in ASEAN. ASEAN has called the government of Myanmar to solve the problem peacefully by respecting and ensuring the basic rights of the irregular people (terms that used by Myanmar and ASEAN in discussing the Rohingya’s problem). In addition, through bilateral mechanism, ASEAN countries like Indonesia has

provides humanitarian assistance such as providing public facilities like school and hospital. The facilities have built not only for the Rohingya, but also for other ethnic groups that involve in the conflict. The government of Myanmar was welcome with this assistance gave by its ASEAN colleagues.

R: When the humanitarian assistance is likely to be a problem for Myanmar?

P: As an example, when the case of Cyclone nargis, there was hundreds thousand of people that have no access to medication and other urgent assistance to save the people. ASEAN worried about the outbreak of disease if the victims of the disaster have no adequate assistance. The humanitarian condition at the cyclone nargis was very bad, but the Junta regime of Mynamar ignored the emergency situation. They refused for any assistance from the foreigners.
In the case of Rohingya, if the conflict continues and escalate, the situation will likely to be discussed in ASEAN especially regarding how to response the situation. Fortunately, the situation is getting better even though the conflict remains. The Government of Myanmar has appointed former UN general Assembly Kofi Annan to lead a team to look for a better solution for the conflict. To activate R2P, it depends on the degree and the urgency of the crisis. Therefore, it is possible that R2P can be discussed in the ASEAN. On one hand, if there is a genocide, it means the situation urgent to be respond, and on the other side, when there is a consensus or convention at global level on the R2P.

R: Let say, there is no genocide and other atrocity crimes in Southeast Asia. However, atrocity crimes are not impossible to happen in the region. Regarding this, does it means that ASEAN will start to discuss R2P after the occurrence of atrocity crimes in the region?

P: Southeast Asian states consider that ASEAN already has its principle and mechanism to prevent atrocity crimes. The principle and mechanism are adequate to prevent the crimes. There is no need to going beyond that. There is still a feeling from ASEAN countries that R2P is a western concept. For the states, they can settle their problem without adopting R2P. ASEAN has proved that there is no genocide and other atrocities in the region for the last 50 years. There is no problem when R2P is viewed as a discourse for human protection, but to put it into the ASEAN framework, R2P need to be adjusted with some concepts or principles such as human rights and human security that could be accepted by the countries.

R: what is the dominant challenge to socialise R2P in the region?

P: As mentioned, first, there is no consensus or convention on R2P at global level such as the principle of human rights. Second, there is no urgency to adopt R2P because the absence of genocide and so on in the region.
In the past, ASEAN countries considered the principle of human rights and democracy as western concept and agenda. But now, there is no anymore the feeling that those concepts are a hidden agenda of the western countries. Instead, the ASEAN countries consider that human rights and democracy are important and essential for the countries.
For the R2P, the thing that they are worry the most is how to implement the R2P. It related to how the mechanism and who has the authority to claim a situation as atrocity crimes and then to response the crimes. In addition, what are the criteria that the situation can be defined as atrocity crimes and is justified to be respond. Okay, let say the UN who has those authority especially the UNSC. But, there is no guarantee that the permanent five members will not veto the case such as what happen in Syria, Iraq and Israel-Palestine conflict. For ASEAN, those cases are more urgent than any conflicts in Southeast Asia that needs to be respond by the UNSC. Unfortunately, there is no consensus by the UNSC to respond the cases. R2P is still possible to be socialised in Southeast Asia as long as the principle is in line with the existing ASEAN principles and framework.

R: How significant ASEAN concern on the humanitarian issues in the region? For example, on one side, ASEAN much emphasised on the principle of non-interference and non-use of force, but also focus on human rights and fundamental freedom on the other side.

P: If it is related to interstate conflict in the region, ASEAN already has its framework and mechanism. ASEAN also has the mechanism through the ASEAN Institute for Peace and Reconciliation (AIPR) to deal with the internal conflict of a state that likely to cause instability of the region. This institute could discuss both interstate and intrastate conflict within the region including the case of the Rohingya. Related to this, let say, if the atrocity crimes are really happen in Southeast Asia, then why should R2P if we have our own instrument and mechanism.
The reluctant of ASEAN states to adopt R2P into ASEAN does not means that ASEAN does not care about humanity and humanitarian issues because ASEAN already has its principle and mechanism to deal with those problems.

R: As mentioned that AIPR could discuss conflict and humanitarian problems that happen within a state in the region. Does it violates the ASEAN principles such as non-interference?

P: It is because the principle of non-interference can be (re)calibrated which actually means that ASEAN could readjust the principle to respond particular issue. This re-adjustment often appears when the states think that the case is very urgent to be respond especially in the situation when the case has threaten interest of other states and the stability of the region. The basic idea of the creation of AIPR was the increasing of horizontal conflicts within the ASEAN states that likely to affect other states and stability of the region. So far, AIPR has several duties such as learning and researching any conflicts that have been occurring in the region to learn the characteristic and pattern of the conflicts. So, if there is a conflict within a state in the region, AIPR has a duty to analyse the characteristic of the conflict whether any similarities with the other conflicts in the past or not. In addition, AIPR also has duty to create networking among people that have knowledges and experiences in resolving conflicts. So, if there is a domestic conflict, the government of the state could use the AIPR to assist them to find best solution for their problems.

AIPR is an institute that each ASEAN countries appointed their representative to the institute. However, it is not a commission like AICHR in order to accommodate the sensitivity of the issue among the ASEAN states. The main different is AIPR, as an institute, could involve (such as discussing or providing solutions) to any domestic conflict if invited by state. Instead, a commission like AICHR do not depend on invitation to be able to discuss humanitarian problems within the region, even though AICHR still has limited authority (AICHR has no authority to respond human rights violations independently without reference from their home country).

The proposal to create AIPR was started from 2003. It was proposed at the formulation of ASEAN roadmap 2003-2009, but failed. Then, AIPR was proposed for the second time in the next meeting of the ASEAN roadmap 2009-2014. Through numbers of meeting, discussion, and seminar to get a shared of understanding and perception. When the states reached a “comfort level”, it will be easier to move further. Therefore, ASEAN already has instrument and mechanism to respond humanitarian crisis but not as extreme as R2P.

Appendix C

Recruitment email to potential participant

From: Zain Maulana

To: [A participant's email address]

Subject: Research Participation Invitation: 'Norm Socialisation and the Behaviour of State: the Case of Responsibility to Protect (R2P) in Southeast Asia'.

Dear [a participant's name],

This email is an invitation for participation in a research project I am conducting as part of my PhD degree in the School of Politics and International Studies, University of Leeds. The title of my research project is 'Norm Socialisation and the Behaviour of State: the Case of Responsibility to Protect (R2P) in Southeast Asia'. The purpose of this research is to explain the complexity of R2P socialisation in Southeast Asia and how the ambivalent behaviour of the ASEAN states be explained.

You have been identified as a potential participant because your position, knowledge, and experience will help me to explain the complexity of R2P socialisation and its dynamic process in Southeast Asia. Participation in this study involves one interview that will take approximately one hour to complete. During the interview you will be asked questions about your understandings on R2P and ASEAN, and also your opinions and experiences on the project of mainstreaming R2P in the region. Questions will be open-ended and will allow for discussion.

All of the information collected about you during the course of the interview will be kept confidentially. The anonymised data collected in this project will be used in the researcher's doctoral thesis and a number of academic publications such as journal articles or books that will result from the thesis.

I would like to assure you that the study has been reviewed and received ethical clearance through the University of Leeds research ethics committee.

If you are interested in participating, please contact me at ptzm@leeds.ac.uk and indicate your availability for an interview session. I will then send a confirmation email with the interview date and provide you with a consent form and an information sheet for you to keep. If you have to cancel your appointment, please email me at ptzm@leeds.ac.uk.

Sincerely Yours,

Zain Maulana
PhD Student
School of Politics and International Studies
University of Leeds

Appendix D

Ethical Approval

Performance, Governance and Operations
Research & Innovation Service
Charles Thackrah Building
101 Clarendon Road
Leeds LS2 9LJ Tel: 0113 343 4873
Email: ResearchEthics@leeds.ac.uk

UNIVERSITY OF LEEDS

Zain Maulana

School of Politics & International Studies

University of Leeds

Leeds, LS2 9JT

ESSL, Environment and LUBS (AREA) Faculty Research Ethics Committee

University of Leeds

1 February 2020

Dear Zain

Title of study:	**Norm socialisation and the behaviour of states: the case of the 'Responsibility to protect' Principle (R2P) in Southeast Asia**
Ethics reference:	**AREA 16-009**

Grant reference: 663/E4.4/K/2015

I am pleased to inform you that the above research application has been reviewed by the ESSL, Environment and LUBS (AREA) Faculty Research Ethics Committee and, following receipt of your response to the Committee's initial comments, I can confirm a favourable ethical opinion as of the date of this letter. The following documentation was considered:

Document	Version	Date
AREA 16-009 Ethics Application and Relevant Documents, Zain Maulana.pdf	2	26/08/16
AREA 16-009 Ethics Application and Relevant Documents (Revised) Zain Maulana.pdf	1	07/09/16

Please notify the committee if you intend to make any amendments to the information in your ethics application as submitted at date of this approval as all changes must receive ethical approval prior to implementation. The amendment form is available at http://ris.leeds.ac.uk/EthicsAmendment.

Please note: You are expected to keep a record of all your approved documentation, as well as documents such as sample consent forms, and other documents relating to the study. This should be kept in your study file, which should be readily available for audit purposes. You will be given a two week notice period if your project is to be audited. There is a checklist listing examples of documents to be kept which is available at http://ris.leeds.ac.uk/EthicsAudits.

We welcome feedback on your experience of the ethical review process and suggestions for improvement. Please email any comments to ResearchEthics@leeds.ac.uk.

Yours sincerely

Jennifer Blaikie

Senior Research Ethics Administrator, Research & Innovation Service

On behalf of Dr Kahryn Hughes, Chair, AREA Faculty Research Ethics Committee

CC: Student's supervisor(s)

Appendix E

Participant Consent Form

Informed Consent for For the Research Project Entitled 'Norm Socialisation and the Behaviour of State: the Case of Responsibility to Protect (R2P) in Southeast Asia'

	Add your initial
I confirm that I have read and understood the information sheet dated 24/08/2016 explaining the above research project, and I have had the opportunity to ask questions about the project.	
I agree to take part in the project. Taking part in the project will include being interviewed at a mutually convenient time up until the middle of January 2017.	
I understand that my taking part is voluntary and that I can withdraw from the project by email up to one year from the date of the interview session for any reason.	
I understand my personal details such as email and address will not be revealed to people outside the project.	
I understand that my words may be quoted in publications, reports, web pages, and other research outputs with fully anonymised.	
I understand that my responses will be kept strictly confidentially. I give permission for the researcher to have access to my anonymised responses.	

Name of participant	
Participant's signature	
Date	
Name of researcher	
Signature	
Date	

Appendix F
Interviewees Information

No	Code	Institutions/Identities	Category
1.	Interviewee 1	Former Executive Director of Centre for Strategic and International Studies (CSIS) Indonesia	Non-state actor
2.	Interviewee 2	Researcher at the Department of Politics and International Relations, CSIS Indonesia	Non-state actor
3.	Interviewee 3	Deputy Director of Research and Publication at Cambodia Institute for Cooperation and Peace (CICP), Cambodia	Non-state actor
4.	Interviewee 4	Deputy Permanent Representative of Singapore to ASEAN	State actor
5.	Interviewee 5	Senior Advisor on ASEAN and Human Rights of the Human Rights Working Group (HRWG), Indonesia	Non-state actor
6.	Interviewee 6	Deputy Director ASEAN Directorate at Singapore Ministry of Foreign Affairs	State actor
7.	Interviewee 7	Professor of International Relations and Head of the centre for Non-Traditional Security Studies at the S. Rajaratnam School of International Studies (RSIS), Singapore	Non-state actor
8.	Interviewee 8	Former Permanent Representative of Indonesia to ASEAN	State actor
9.	Interviewee 9	Researcher and Program Manager of ASEAN Human Rights Advocacy at the Human Rights Working Group (HRWG) Indonesia	Non-state actor
10	Interviewee 10	Director of Regional Diplomacy and Capacity Building, the Asia Pacific Centre for the Responsibility to Protect	Non-state actor
11	Interviewee	Permanent Representative of	State actor

	11	Thailand to ASEAN	
12	Interviewee 12	Member of the ASEAN High Level Advisory Panel (ASEAN-HLAP)	Non-state actor
13	Interviewee 13	Second Secretary of Malaysian Embassy in Indonesia	State actor
14	Interviewee 14	Former Indonesia Representative to ASEAN Intergovernmental Commission on Human Rights (AICHR)	State actor
15	Interviewee 15	Director of Political and Security Cooperation in ASEAN, the Indonesian Ministry of Foreign Affairs	State actor
16	Interviewee 16	Indonesia Permanent Representative to ASEAN	State actor
17	Interviewee 17	Indonesia Representative to ASEAN Institute for Peace and Reconciliation (AIPR)	State actor
18	Interviewee 18	Director of Humanitarian and Human Rights, the Indonesian Ministry of Foreign Affairs	State actor
19	Interviewee 19	Former Indonesia Representative to ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC)	State actor
20	Interviewee 20	Director General of ASEAN Cooperation, the Indonesian Minstry of Foreign Affairs	State actor
21	Interviewee 21	Former Indonesia Representative to ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC)	State actor
22	Interviewee 22	Researcher and Program Manager of ASEAN Human Rights Advocacy at the Human Rights Working Group (HRWG) Indonesia	Non-state actor
23	Interviewee 23	Head of the Diretorate of Law and Human Rights, the Indonesian Ministry of Foreign Affairs	State actor

24	Interviewee 24	Former Indonesia Representative to ASEAN Intergovernmental Commission on Human Rights (AICHR)	State Actor
25	Interviewee 25	Director of Humanitarian and Human Rights, the Indonesian Ministry of Foreign Affairs	State actor
26	Interviewee 26	Head of the Diretorate of Regional and International Cooperation, Indonesian National Narcotics Agency and Indonesia Representative to ASEANAPOL	State actor

Appendix G

Dissemination of the Research

During the development of this thesis a number of conferences have been attended and some parts of this research have been published in a peer reviewed journal. There is also a plan for future dissemination plans.

Conferences:

1. Maulana, Z. 2016. *The Responsibility to Protect of the Rohingya: the rational action of ASEAN?*. In: Postgraduate School Seminar, University of Leeds.
2. Maulana, Z. 2017. *The Responsibility to Protect of the Rohingya*. In: White Rose Annual Politics and International Relations Colloquium, University of Sheffield.
3. Maulana, Z. 2017. *The Responsibility to Protect and ASEAN: norm contestation and localisation*. In: British International Studies Association (BISA) Conference, Brighton, United Kingdom.
4. Maulana. Z. 2018. *Organized hypocrisy and strategic action: ASEAN and the case of Rohingya*. In: European Workshops in International Studies (EWIS)-European International Studies Association (EISA), University of Groningen.
5. Maulana, Z. 2019. *Norm Implementation and Contestation: the Case of the R2P in Southeast Asia.* In: European Centre for Responsibility to Protect (ECR2P) Seminar Series, University of Leeds.
6. Maulana. Z. 2019. *Norm Implementation and Contestation: the Case of the R2P in Southeast Asia*. In: British International Studies Association (BISA) Conference, London, United Kingdom.

Article Publication

1. Gallagher, A., Raffle, E. and Maulana, Z., 2019. Failing to fulfil the responsibility to protect: the war on drugs as crimes against humanity in the Philippines. *The Pacific Review*, pp.1-31.

Future Dissemination Plans

Publications	**Target Journal**
Paper 1: Norm Contestation: the Case of R2P in Southeast Asia.	International Studies Perspectives, Global Responsibility to Protect, Review of International Studies, Journal of Global Security Studies.
Paper 2: Understanding the state of R2P norm diffusion in ASEAN: Engaging with the Regional Response to the Rohingya Crisis and the Philippines' War on Drugs.	The Pacific Review, Global Responsibility to Protect, Asian Security, Contemporary Southeast Asia: A Journal of International and Strategic Affairs.
Paper 3: The ASEAN's Shifting: the Expectations and Realities	Contemporary Southeast Asia: A Journal of International and Strategic Affairs, The Pacific Review, Asian Survey, Asian Security