Policy Roundtable On Civilian Protection: Issues And Challenges

Organised By The RSIS Centre For Non-Traditional Security (NTS) Studies

CENTRE FOR
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POLICY ROUNDTABLE ON CIVILIAN PROTECTION: ISSUES AND CHALLENGES

REPORT

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S. RAJARATNAM SCHOOL OF INTERNATIONAL STUDIES (RSIS),
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This report summarises the proceedings of the policy roundtable as interpreted by the assigned rapporteurs and editors of the RSIS Centre for NTS Studies. Participants neither reviewed nor approved this report.

This policy roundtable adhered to Chatham House Rules. Accordingly, no attributions to speakers and attendees have been made.

Executive Summary

Recent developments in Southeast Asia highlight the need for consistent and robust civilian protection mechanisms. In 2009, the establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR) opened up a new avenue for dialogue on civilian protection. Against this backdrop and in the wake of the Maguindanao massacre in the Philippines, the Policy Roundtable Discussion on Civilian Protection: Issues and Challenges organised by the RSIS Centre for Non-Traditional Security (NTS) Studies, was convened on 9 February 2010. Participants came from different backgrounds, including the fields of law, academia and civil society. They aimed to understand the broad and multifaceted concept of civilian protection in the Southeast Asian context, emphasising its evolution over time and examining both existing and proposed mechanisms for its effective implementation.

During the policy roundtable discussion, four significant themes emerged. These included (1) human rights challenges, (2) the effectiveness and accessibility of human rights mechanisms, (3) understandings of the Responsibility to Protect (RtoP), and (4) the way forward.

- **Human rights challenges**

    There are positive examples of Southeast Asia committing itself to RtoP, through human rights treaty bodies, as well as International Humanitarian Law (IHL) and other examples of binding international law. For example, most ASEAN countries have acceded to the 1949 Geneva Conventions. However, some challenges continue to exist in the region. Three of the recommendations for addressing human rights-related challenges in the region included: (1) enhancing compliance with international law, (2) enhancing compliance by non-state armed groups with their obligations under international law, and (3) effective implementation of civilian protection and human rights policies.

- **Effectiveness and accessibility of human rights mechanisms**

    There are 40 different mechanisms an individual or organisation in Southeast Asia can use to file a human rights-related complaint. Some of these mechanisms include: state courts and ombudspersons, national human rights commissions, human rights committees on thematic issues, public hearings and civil society organisations. However, in the Southeast Asian context, the credibility, particularly of national human rights commissions, their differing structures and levels of effectiveness, come into question. That said, these are several avenues through which to address civilian protection; and while focusing on one mechanism may offer limited results, working with strategically important mechanisms together can provide a more effective means to further promote the protection of civilians.

- **Understandings of the Responsibility to Protect**

    Some participants felt that the RtoP agenda has too narrow a definition and needs to be expanded for the Southeast Asian region to include natural disasters for example. Others expressed fear that RtoP is an excuse for powerful nations to intervene in the internal affairs of developing countries. It was agreed that RtoP has been misunderstood in the region and needs to be recognised as an effective prevention mechanism. To operationalise civilian protection in the region, there is a need to further develop early warning systems and the capacity of institutions to protect populations from mass atrocities.

- **The way forward**

    The roundtable identified that AICHR is well placed to approach issues of civilian protection. It can engage in civilian protection in a thematic way across the region rather than focus on specific cases. Three civilian protection priority areas for AICHR emerged: (1) migration-related issues in Southeast Asia; (2) business and human rights; and (3) women's and children's issues. Even though AICHR has no formal mechanism to receive and process complaints, Articles 4.8 and 4.9 of its terms of reference give the body some flexibility to do so. Article 4.8 states that AICHR can hold consultations with organisations, such as civil society and victims organisations. Article 4.9 states that AICHR should work together with human rights institutions to lay the groundwork for fruitful partnerships in the region. This flexibility allows for AICHR to respond to issues of concern raised through its consultations and partnerships.

Opening Remarks

Associate Professor Mely Caballero-Anthony
Head
Centre for Non-Traditional Security (NTS) Studies and
Secretary-General
Consortium of Non-Traditional Security Studies in
Asia (NTS-Asia)
S. Rajaratnam School of International Studies (RSIS)
Nanyang Technological University (NTU)
Singapore

Assoc. Prof. Mely Caballero-Anthony welcomed all participants to the workshop on behalf of the Centre for NTS Studies. She observed that Southeast Asia is ripe for discussion on the issue of civilian protection as there are a number of security problems that threaten the well-being of civilians. Such threats are perpetuated by internal conflicts, communal and political violence, human rights abuses and natural disasters, leaving no states in Southeast Asia unaffected. Ongoing conflicts in Myanmar and Mindanao in southern Philippines, continue to be a source of insecurity for civilian populations, producing large-scale displacement and refugee flows. Natural disasters not only lead to the loss of life and property, but also affect livelihood security and, consequently, the overall well-being of civilians.

In the last five years, there have been significant developments in the field of human rights and civilian protection. At the regional level, ASEAN announced in October 2003, its intention to create an ASEAN Community based on the three pillars of political and security cooperation, economic cooperation and socio-cultural cooperation. The ASEAN community-building effort is also an exercise in norm-building, through the promotion of human rights, prevention of conflict and peacebuilding. The official launch of AICHR in October 2009 proves that the norm-building effort has met with some progress. The aim of AICHR is to promote and protect human rights and fundamental freedoms, well-being, livelihoods and the welfare of people in ASEAN member states. It also aims to promote stability, harmony, friendship and cooperation among ASEAN member states. All of these reflect the growing awareness within ASEAN to promote human rights and protect civilians. At the global level, RtoP was universally endorsed at the 2005 World Summit and was subsequently re-affirmed by the UN Security Council, thereby reinforcing the growing interest in and promotion of norms in Southeast Asia.

Assoc. Prof. Caballero-Anthony noted that the framework for addressing civilian protection and human rights issues is now in place and the next logical step is implementing these measures. The aim of the policy roundtable was to facilitate an informal yet frank discussion on the issue of civilian protection, human rights and related norms.

The policy roundtable comprised four sessions that explored the following issues related to civilian protection: (1) an overview of civilian protection, its legal frameworks, issues and challenges; (2) the mandate and function of AICHR, and ways in which civilian protection could feed into its first work plan; 3) the implementation of effective human rights mechanisms for effective and multi-sectoral civilian protection in the region; and (4) the links between civilian protection and RtoP.

Overview of Civilian Protection: Legal Frameworks, Issues and Challenges

This session identified the salient issues and challenges in promoting civilian protection in Southeast Asia. The first part examined legal frameworks and how they impact ASEAN member states; offering a way forward to enhance civilian protection. The second part looked at how humanitarian organisations view civilian protection and the challenges they face.

Legal Frameworks of Civilian Protection and its Impact on ASEAN

The discussion began by qualifying the use of the term 'civilians.' Under IHL, 'civilians' include all persons that are not part of the fighting forces (military personnel, combatants and insurgents). Particular attention is to be given to the most vulnerable and marginalised civilians, such as women, children, refugees and displaced persons. There are two approaches to civilian protection. Firstly, protection can mean protection of persons. This involves physical protection against harm and is materialistic in its approach. The second approach is more normative, involving the protection of an individual's rights. Generally, protection of rights is the preferred approach in IHL. There are four legal frameworks for civilian protection.

- **International Humanitarian Law**
  The body of IHL is a set of rules that seeks to limit the human consequences of armed conflict. It protects persons who are not, or are no longer, participating in the hostilities, and it restricts the means and methods of warfare. A major part of IHL is contained in the four Geneva Conventions of 1949. These Conventions were developed, and supplemented by three additional protocols (two in 1977 and one in 2005) relating to the protection of victims of armed conflicts. ASEAN member states are party to the Conventions and have national laws upholding civilian protection.

- **Human Rights**
  Human rights are concerned with the promotion of peace, non-discrimination and non-violence. There are eight human rights treaty bodies. Human rights treaty bodies are committees of independent experts that monitor the implementation of the core international

human rights treaties. They are created in accordance with the provisions of the treaty they monitor. These include: the International Covenant on Civil and Political Rights (ICCPR); the Committee on Economic, Social and Cultural Rights (CESCR); the Committee on the Elimination of Racial Discrimination (CERD); the Committee on the Elimination of Discrimination Against Women (CEDAW); the Committee Against Torture (CAT), and the Optional Protocol to the Convention against Torture (OPCAT); the Committee on the Rights of the Child (CRC); the Committee on Migrant Workers (CMW); and the Committee on the Rights of Persons with Disabilities (CRPD). ASEAN member states are parties to CEDAW and CRC.

- **Responsibility to Protect**
  RtoP is a norm or set of principles based on the idea that sovereignty is not a privilege, but a responsibility. It focuses on preventing and halting four crimes: genocide, war crimes, crimes against humanity, and ethnic cleansing. If a state fails to protect its civilians on these counts, the UN can act on this in accordance with Chapters VI, VII and VIII of the UN Charter. The principle is accepted internationally. Although a non-binding agreement, it is persuasive and provides a point of reference to an agreement all Southeast Asian states endorsed at the 2005 World Summit. ASEAN states are generally agreeable to the principles of RtoP, but some are uneasy about its potential impact on ASEAN's non-interference principle.

- **General international law**
  Several United Nations Security Council (UNSC) Resolutions on the protection of civilians in armed conflict have already been adopted. Examples include Security Council Resolution 1265 (September 1999), Resolution 1296 (April 2000), Resolution 1674 (April 2006) and Resolution 1738 (December 2006). More recently, the United Nations Security Council Resolution 1894 on the protection of civilians in armed conflict was adopted unanimously on 11 November 2009. ASEAN countries are bound by international law and UNSC resolutions.

There are several normative implications of these legal frameworks for ASEAN. Overall, ASEAN member states are receptive to the promotion of human rights, IHL and RtoP, and have instituted national laws to that effect. Most ASEAN countries have acceded to the 1949 Geneva Convention. Thailand, the Philippines and Indonesia, for example, have even instituted it in their constitutions. In the Philippines, the Moro Islamic Liberation Front (MILF) and the government agreed in 2009 to refrain from targeting civilians during conflict. Indonesia has also instituted a military code to punish military personnel targeting civilians. In Cambodia, the Khmer Rouge tribunal is underway in an effort to bring justice to perpetrators of war crimes.

However, despite these positive examples, challenges remain. The concern over national sovereignty continues to hinder the application of civilian protection and human rights in the ASEAN region. Application is also hindered by the principle of non-interference in the internal affairs of member states; a guiding principle of the regional grouping ever since its inception. This principle could limit international jurisdiction in the context of international law. There are also differences between international and national standards in the institutionalisation and implementation of human rights and civilian protection. However, these challenges are not insurmountable. The following suggestions should be considered to further civilian protection in Southeast Asia:

- Increase compliance with international law through capacity-building
- Encourage compliance by non-state armed groups through negotiation, and establishing their legal obligations under international law
- Enhance protection through more effective UN peacekeeping and other relevant missions
- Expand humanitarian access to vulnerable groups by identifying those most at risk
- Improve accountability for the violation of human rights through thematic reports
- Ensure effective implementation of current policies relevant to civilian protection and human rights

Protection of Civilians: Perspectives from Humanitarian Organisations

Humanitarian organisations assist and protect the lives and dignity of victims of armed conflict, natural disasters and situations of violence. They also aspire to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles.

There are various types of humanitarian organisations and mandates. Humanitarian organisations working in areas of conflict focus on the protection of civilians and try to ensure their safety. Some engage in reuniting family members separated by armed conflict; help locate missing persons; and offer or facilitate access to basic healthcare services and provide urgently needed food, safe drinking water, sanitation and shelter. Organisations such as the International Committee of the Red Cross (ICRC) focus on minimising the dangers to which civilians are exposed. They also work towards preventing and stopping civilian abuse. The ICRC was granted the mandate to protect and assist victims of armed conflict by states through the four Geneva Conventions of 1949 and their Additional Protocols of 1977 and 2005, worthy successors to the First Geneva Convention of 1864.

Other organisations like Medicins Sans Frontières (MSF) provide emergency medical assistance in crisis situations such as conflicts and natural disasters. In countries where health structures are insufficient or even non-existent, MSF collaborates with local authorities and health ministries to provide assistance. MSF works in the rehabilitation of hospitals and dispensaries, vaccination programmes, and water and sanitation projects. It also works in remote healthcare centres and slum areas, and provides training to local personnel. All this is done with the objective of rebuilding health facilities and systems to acceptable levels.

Humanitarian organisations face many challenges in carrying out their operations. One major problem is the blurring of lines between combatants and non-combatants. As a result, civilians continue to account for the vast majority of casualties in armed conflicts. This was demonstrated most recently in Sri Lanka and Gaza, Palestine, where the vast majority of those who suffered casualties were civilians. The blurring of these lines also hindered humanitarian operations and prevented them from reaching out to civilians affected by conflict, violence and natural disasters. States' reluctance to grant outside actors access to areas of conflict compounded problems.

Discussion

The ensuing discussion focused on three themes:

• The nature and type of conflicts
• Forced evictions and its relation to human rights
• Humanitarian organisations' relations with state and regional institutions

The discussion clarified that not all conflicts constitute an armed conflict. For example, the tensions in southern Thailand and Papua, Indonesia, do not fit into the category of armed conflicts but are classified as 'violence'. The conflict in Mindanao, on the other hand, was openly declared as an internal armed conflict. Armed conflicts are thus measured through the prism of intensity. Other criteria such as how well the movement is organised and commanded, and whether or not the belligerents are able to carry out sustained attacks, determine an armed conflict. However, civilian protection is not limited to armed

conflicts and an issue that emerged was how to respond to the forced eviction and displacement of people due to large-scale developmental projects. It was discussed that (property) evictions and displacement as a result of extensive developmental programmes clearly constitute a human rights violation. Specifically, it constitutes the violation of the economic, social and cultural rights of the concerned person or group.

However, while issues of civilian protection occur in non-conflict situations, there are policy response challenges. One avenue through which to pursue discussion of civilian protection policies is ASEAN as it offers a regional framework and commitment to IHL. While it is an emerging avenue and the commitment exists, it is not robust enough at present and individual states advance an agenda on their own terms. At the same time, humanitarian organisations appear to prefer engaging states rather than regional institutions, thereby sidestepping regional institutions. Traditionally, humanitarian organisations prefer to engage individual states over institutions because states exercise final authority. However, with the increasing prominence of institutions like the European Union and ASEAN, humanitarian organisations are gradually expanding their engagement with them. As for the utility of ASEAN as a framework for discussing IHL, it was pointed out that ASEAN is not a human rights organisation but a security organisation. However, this does not take away from the fact that ASEAN can add value to human rights and civilian protection; the grouping regularly refers to IHL in its official documents.

Civilian Protection and the ASEAN Intergovernmental Commission on Human Rights

This session focused on: (1) priority areas in which AICHR can concentrate its first work plan, (2) AICHR's mandate and functions relevant to civilian protection, and (3) developments during the Bali Democracy Forum. AICHR is currently writing its work plan. According to AICHR's terms of reference, commissioners have three-year terms, with the possibility of one extension. So far, AICHR has met informally twice. The first meeting was an introductory one, reviewing the terms of reference and clarifying key terms such as 'human rights' and 'fundamental freedoms'. The second meeting was devoted to working on an outline for the AICHR work plan. In addition, points to be included in the AICHR rules of procedures were agreed upon. These rules of procedures are due to be formally adopted along with the first five-year work plan at the 43rd ASEAN Ministerial Meeting in July 2010.

Priority Areas for AICHR's First Work Plan

The three priority areas that were identified for AICHR's first work plan include:

- Migration in Southeast Asia – broadly defined to include refugees, trafficking of persons, asylum seekers, displaced persons, etc.
- Business and human rights – corporate social responsibility is already accepted as the third pillar of ASEAN (the socio-cultural pillar). An AICHR focus on accountability of businesses to human rights would open up a new avenue for civilian protection
- Women's and children's issues – with the establishment of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), it is important for AICHR to play a complementary role as effective communication between the two bodies avoids the duplication of work and helps promote these issues through the political-security community avenue by focusing on the rights of women in conflict situations, for example. (UN Security Council Resolutions 1325 and 1890)

The ACWC, a parallel body to the AICHR, was established in April 2010. ACWC specifically deals with the promotion and protection of women's and children's rights. The ACWC has very specific terms of reference applied to the rights they will monitor. These rights include those enshrined in CEDAW and the CRC. However this contrasts with AICHR because it does not have such a specific inclusion in its terms of reference. One common point of cooperation between the ACWC and AICHR is the investigation of protection frameworks for women in conflict, such as UN Security Council Resolutions 1325 and 1820. An agreement between AICHR and ACWC may be necessary to clarify the division of labour and avoid overlap. It is important to know how to use the existing space creatively and proactively.

AICHR's Mandate and Functions

AICHR's mandate and functions are not based on the ASEAN Human Rights Convention as many speculate; there is no ASEAN Human Rights Convention. AICHR's mandate is defined by its terms of reference, which is based on the following two principles (adopted from the ASEAN Charter):

- Adherence to the rule of law, good governance, principles of democracy, and consultation of government
- Respect for fundamental freedoms and promotion/ protection of human rights and of social justice

The scope of rights upheld by AICHR includes customary law, international law, the UN Charter and IHL.

AICHR has sometimes been referred to as a toothless commission, as it does not have the power to officially receive and process complaints. AICHR also does not have an explicit protection function. It was initially suggested, during the High Level Panel on the ASEAN Human Rights Body, that the new body have a peer review mechanism, an individual complaint mechanism and country visits. However, not all ASEAN states were in agreement of such

a structure. Despite its weak mandate, AICHR does have certain articles within its terms of reference, which could be interpreted creatively and therefore, provide more of a solid advocacy base. ASEAN heads of state agreed that in its first five years, AICHR should conduct a review on the promotion and protection of civilians within the region, including issues related to explicit protection.

Among the 14 functions listed in the AICHR terms of reference, four can effectively be utilised in implementing a 'disguised protection function'. One issue that could be discussed is the development of common approaches to human rights by ASEAN members as there is currently no official mechanism or process for dealing with cases submitted to AICHR, i.e. there is no power to receive a complaint. However, Article 4.8 in AICHR's terms of reference states that AICHR can conduct consultations with various entities within ASEAN, including civil society and victims organisations to gather information.

AICHR can also request thematic reports on very urgent issues and table them as important issues to be submitted to the ASEAN Foreign Ministers' Meeting. For example, the extrajudicial killings in the Philippines could be tabled as an issue. AICHR can obtain information from member states, in the spirit of dialogue and cooperation.

Article 4.9 in AICHR's terms of reference states that AICHR can work together with human rights institutions. In practice, AICHR can promote its relevant functions, both in times of peace and during armed conflict. AICHR also has the power to encourage ASEAN to implement declarations on pressing issues. ASEAN has declarations on children's rights, on violence against women, on trafficking of women, on protection of migrant workers and on the Millennium Development Goals (MDGs). It is within AICHR's power to encourage the implementation of the above-mentioned declarations.

The ASEAN declaration on the protection of migrant workers does not recognise irregular or undocumented migrant workers. One suggestion at the roundtable was that there should be a scorecard kept by the ASEAN Secretariat, keeping track of this declaration's implementation. AICHR can then address this issue, examining what additional protection frameworks for irregular or undocumented migrant workers can be implemented.

The oversight body for the ASEAN declaration on the protection of migrant workers is the ASEAN Committee on Migrant Workers (ACMW) and it encouraged member states to draft a legal instrument for the protection of migrant workers. However, these discussions collapsed in December 2009 in Malaysia. As a result, Indonesia will have to report to ACMW that the issue of undocumented migrant workers cannot be agreed upon and raise the question of whether the requested instrument should be legally binding or not, especially since Malaysia is not ready to accept such an instrument. This situation is a challenge for AICHR and it is well placed to accelerate these negotiations in collaboration with ACMW.

Bali Democracy Forum

The Bali Democracy Forum was established by Indonesia in 2008 to promote democracy in a collaborative way to encourage democracies and non-democracies to participate with one another on the issue of democracy. Anyone who respects human rights can be a part of this forum. Unlike the Community of Democracy, there are no criteria for who can engage in this forum. Attendees can have open conversations on how democracy is functioning in their country. The Bali Democracy Forum is an opportunity for improving civilian protection issues. However, it has to be translated into action by a government keen to develop a strong driving force for 'peace and democracy'. However, such a driving force does not currently exist. It was suggested that a technical working group of the AICHR, which meets monthly to address specific issues related to peace and democracy, should be implemented.

Discussion

The following topics were addressed during the discussion:

* AICHR's work on developing an ASEAN Human Rights Convention
* AICHR's link to the Human Rights Resource Center for ASEAN
* Creative interpretations of AICHR's mandate
* AICHR's link to national human rights commissions and other regional mechanisms

A central function of AICHR is to develop an ASEAN human rights convention. However, while it is a priority for the commission, there has not been a timeline decided to draft and produce a regional convention. However, negotiations for its development have begun. The support structure around AICHR is the Human Rights Resource Center for ASEAN which will provide a valuable tool for decision-makers, which will be of note during the drafting process of the ASEAN Human Rights Charter and future agreements.

The terms of reference for AICHR do not include a function for AICHR to specifically receive complaints. However, it can hold consultations with civil society and through such meetings, concerns can be raised. The various national human rights commissions have been very keen to work with AICHR, right from the beginning. However, there

are mixed feelings among AICHR commissioners as some are open to working with the national commissions and others feel that these commissions are national bodies and therefore unrelated to the functions of the regional commission. The discussion also highlighted that for countries without national human rights commissions, AICHR can work (under Article 4.9) with any national human rights-related mechanism, which could be a non-governmental organisation (NGO) or a government committee for example. This allows for those people without an effective mechanism to still pursue another avenue at the regional level.

As AICHR has many budgetary and human resource-related constraints, it is important that it utilises its resources strategically and creatively utilises its mandate. Its financial constraints are a result of the limited voluntary funds available from member states and third party donors being earmarked for 'promotional activities'. In addition, the discussion focused on how AICHR can work with other regional commissions – the ACWC and the ACMW – in order to ensure that their resources are used effectively. It was stressed that AICHR should be aligned with them, rather than subsume them. It should also be remembered that the ASEAN Charter upholds human rights, making it a permeating principle, which addresses all ASEAN entities.

Effective Human Rights Mechanisms for Civilian Protection in the ASEAN Region

This session gave an overview of the various human rights mechanisms that exist in the region. States may be the primary actors in developing and implementing national human rights bodies, however, others actors, such as civil society and the private sector, play an active part in human rights processes. Besides the presence of national human rights commissions in four ASEAN member states, there are other effective mechanisms available to the public.

Relevant Actors in National Human Rights Mechanisms

While it was acknowledged that the state remains the primary actor of reference, other actors were also identified as relevant to civilian protection. Non-state actors can have a negative effect on conflict situations, especially in cases where armed groups, not sanctioned by the state, commit acts of violence. Civil society organisations help provide aid to victims of human rights abuse and flag issues for the public. For the private sector, great contrasts exist between groups that actively practise corporate social responsibility and groups that benefit from conflict situations, such as the private security sector, which could capitalise on the situation by providing manpower and arms to the parties in conflict. Finally, constituencies based abroad, such as diasporas, could play a substantial part in conflict situations. This is best illustrated by the example of the Tamil diaspora, which provided extensive financial support to the Tamil Tigers until the latter's demise.

The creation of national human rights mechanisms requires several key components to effectively promote civilian protection. These include the optimisation of courts and the creation of the position of ombudspersons; the establishment of national human rights commissions; and the support of NGOs, civil society, and the private sector. Specialised administrative courts have proven to be more effective remedies than traditional processes in Thailand. This was best illustrated by the case of a court in Bangkok that suspended over 70 activities deemed inimical to the environment. Courts must also retain credibility to be effective, as allegations of corruption or subservience to the executive could weaken trust in the courts.

Ombudspersons sanction maladministration committed by public officials through the review of parliamentary processes and activities. While they do not focus exclusively on human rights protection, they can sanction members of the government guilty of violating human rights, and sanction them according to national laws.

Assessing National Human Rights Commissions

The performance of national human rights commissions varies widely across the region. The Indonesian Commission has recently been able to achieve success in dealing with women's issues due to its capable commissioners. In order for such commissions to be successful, it was recommended under the Paris Principles that the head commissioner be independent of the executive branch of government and be drawn from a pluralistic setting. The Paris Principles, which list key responsibilities for national human rights institutions, were formally adopted by the United Nations Human Rights Commission and the General Assembly in 1992. Some of the key institutional responsibilities include: (1) monitoring human rights violations; (2) advising

government, parliament and other national bodies on issues such as compliance with international human rights instruments; (3) working together with regional and international bodies; and (4) receiving, in some cases, quasi-judicial status. In addition to the head commissioner being independent, the establishment of a global network of human rights commissions was recommended. It was further suggested that the International Criminal Court issue scorecards to ensure the minimum standards of human rights protection by each commissioner. In the event that a commissioner does not meet these standards, it was recommended that the erring commissioner be delisted from the global network.

Other Processes for Protecting Human Rights at the National Level

Various processes exist for bodies to ensure the protection of human rights at the national level. Public participation through hearings on cases of human rights violations are utilised by some national human rights bodies, although this has limitations. Courts in some countries are viewed as non-transparent and overly monolithic, though specialised courts with adjunct judges have greater utility in adjudicating human rights cases. While ombudspersons have access to parliament, they mostly focus on internal auditing. For some countries such as Thailand, however, cases must pass through an ombudsperson before a court hears it. A pluralistic setting also assists in ensuring that victims of abuse have multiple options to seek restitution. In the case of the Philippines, the national human rights commission does not have the power to adjudicate or hear cases, but can issue advisory opinions. It once attempted to file an injunction against the Philippine government, but the Supreme Court rejected this. However, the commission draws strength from

its plurality, as it has established provincial divisions that have the power to investigate and issue reports, and can cooperate with courts by issuing people to testify, even if the commission cannot penalise violators.

Human rights committees are also particularly open to hearing the cases of vulnerable groups such as migrant workers or women and children, while civil society acts as a bridge between local groups and courts as well as other human rights institutions. Other modalities such as mediation may be used when going to court is impractical or impossible. This process involves civil society organisations, as they help prepare casework to ensure that victims are properly represented. However, more effective modalities exist in the prevention of human rights abuses. Courts have a passive role in training judges and lawyers in human rights law, while the media can aid in training its staff to recognise human rights abuses and to report these aggressively. The private sector also funds training in the form of human rights awareness as part of their corporate social responsibility mandate.

Many challenges to national human rights protection exist in the form of the complexity of the components of civilian protection, inadequate laws and policies, poor practices and training of personnel, and insufficient resources. Extensive social capital is also required to build cooperation between different actors and to establish proficiency in the protection of human rights. In addition, internal self-evaluation is also crucial in ensuring that standards of protection are upheld. Most importantly, institutions at the national level need to ensure that they are impartial and competent, whatever their form, to ensure that the public trusts their capabilities and outcomes.

Discussion

The following topics were taken up during the discussion:

* Credibility of national human rights commissions
* Structure of national human rights commissions
* Use of other national level instruments in place of national human rights commissions

The credibility of several human rights commissions was questioned during the discussion. In the case of Cambodia, three different commissions on human rights exist, but none are independent of the government. Problems with the internal composition of these commissions also exist. Persons affiliated with or friendly with the current government were allegedly assigned to represent civil society organisations in the commission, impairing the latter's impartiality and independence.

As a result, it was recommended that national human rights commissions retain independence from the executive branch of government, and be subjected to impartial assessments of their performance. The structure of several of these commissions was compared with one another. While a presidential decree established the Indonesian commission, the Thai and Philippine commissions owe their existence to their national constitutions. However, the Indonesian commission has been able to perform well despite poorly drafted terms of reference due to the efforts of capable commissioners. The Malaysian one was created by legal statute, but has allegedly been downgraded for its poor performance. Singapore relies on its courts rather than on a national human rights mechanism.

In the absence of an impartial or competent commission, it was recommended that plaintiffs in human rights abuse cases use the court system in their country, if they are pluralistic enough to competently judge human rights cases. In some cases, seeking mediation or routing cases through national ombudsmen could generate more effective and more immediate results. However, in countries that possess one-party systems, it was noted that checks and balances may not be effective in ensuring the impartiality of such institutions.

Completing the Pieces of the Puzzle:
Civilian Protection and the Responsibility to Protect in the ASEAN Region

This session addressed the question of whose responsibility it is to protect civilians. It explored the RtoP principles and pillars, as well as discussed the general perception of the RtoP concept in Southeast Asia.

The Responsibility to Protect

The 2005 World Summit Outcome document refers to two core principles:

- State sovereignty, implying that the primary responsibility to protect lies with the state
- Responsibility of the international community, through the United Nations (Chapters VI and VII of the UN Charter), to help protect populations through 'appropriate diplomatic, humanitarian and other peaceful means'

In 2001, there was a plea by former UN Secretary-General, Kofi Annan, for the international community to respond when the state is unable or unwilling to respond to mass atrocities. This was the prelude to the three main pillars of RtoP, which became a primary agenda for the UN.

The three main pillars of RtoP are as follows:

Pillar One: States are to protect their own populations under the following circumstances:
- Genocide
- War crimes
- Ethnic cleansing
- Crimes against humanity

Pillar Two: The responsibility to assist states in ensuring they meet this obligation is that of the international community. Prevention is emphasised in the second pillar. The UN, civil society, etc. should assist in enabling states to carry out this responsibility.

Pillar Three: There should be a timely and decisive response when a state is 'manifestly failing to protect its populations'.

There has been some weariness towards RtoP, as it is often misunderstood. Southern states fear that RtoP is an excuse for stronger states to intervene. However, the main thrust of RtoP is to avoid situations where the above-mentioned crimes arise.

The Perception of RtoP in Southeast Asia

Currently there is a lack of understanding of RtoP, how to apply it and the specific crimes it covers. If an incident is not within the four crimes listed, then it should not be used as a point of reference. Civil society, for example, appears to be using RtoP as a tool for action. After the recent Maguindanao massacre in the Philippines, some civil society organisations went to the government and said it needed to implement RtoP. A law firm, representing the victims, sent their case to AICHR via the ASEAN Secretariat in Jakarta. During Cyclone Nargis, some parties, both on the ground and internationally, including French Foreign Minister Bernard Kouchner, suggested that the definition of RtoP be expanded and applied. However, many familiar with RtoP insisted during Cyclone Nargis, as they do now, that RtoP's application has to be within the four crimes.

At the roundtable, many agreed that early warning systems should be on the agenda. The Asian Regional Forum (ARF), through many plans of action it produces, pushes for early warning systems, the promotion of human rights and the protection of civilians. There also needs to be capacity development of multilateral responses. If violence breaks out, building multilateral capacity in other institutions and assisting in mitigating conflicts and in mediation, are all geared towards enhancing capability. It is also important to link RtoP to existing regional frameworks. There are many institutions out there, but are they 'aligned'? Are they working together, especially in the area of RtoP and protection of civilians?

Discussion

The following topics were debated during the discussion:

- The roots of the RtoP agenda and its applicability in the Southeast Asia region
- ASEAN's relationship to the RtoP agenda
- The Maguindanao massacre
- Norm building and civilian protection

The discussion largely focused on how RtoP is viewed in the region, how it is applicable and what needs to be done to make it more comprehensive. After the 1999 NATO intervention in Kosovo, debates on the concept of humanitarian intervention emerged. Canada in particular, took a firm stance in questioning how the Kosovo intervention could occur without a firm legal basis. During global consultations, it was apparent that the only effective strategy would be to put gentle pressure on countries to take control of their own internal matters. The RtoP agenda has made it harder for countries to claim that their domestic policies do not concern the international community.

On the international community platform, ASEAN supports the RtoP principle, as long as the internal affairs of its own member states are not questioned and the non-interference principle is adhered to. ASEAN member states may raise concern and assist one another in situations of violence, as has been the case with southern Thailand. However, interference from countries outside of the regional body is not accepted. It was emphasised that unilateral action by states cannot be classified under RtoP, as the third pillar clearly states that military intervention has to be approved by the UN Security Council first, before it can be executed.

In response to this, the discussion illustrated that there were diverging views. Some expressed that ASEAN is not ready for RtoP. However, it was noted that the creation of AICHR is helpful in the development of civilian protection through common norms and the promotion of preventive measures. It was also mentioned that institutionalising RtoP would be problematic, in the same way it is for security sector reform (SSR), and disarmament, demobilisation and reintegration (DDR).

The recent Maguindanao massacre in the Philippines was cited as an example of the prospects and challenges that AICHR face. In response to the massacres, the ongoing law enforcement and judicial processes have resulted in the main suspects being arrested and multiple murder charges filed against them. In the discussion it was also raised that in the case of the Philippines, the violence in Mindanao is an internal armed conflict and as a result AICHR will have limited influence. Participants noted that rather than discussing the application of RtoP in this and similar cases, it would be more useful to consider the application of IHL.

It is important to analyse RtoP through the prism of normative development. It is through the promotion of ideas such as sovereignty as responsibility and human security that concepts like RtoP can become more widely accepted. Despite divergent views in the region, this workshop highlighted that RtoP is relevant and inextricably linked to civilian protection and that there are institutions and mechanisms within the state, region and the wider international community that should be better understood and utilised to improve civilian protection.

Programme

9 February 2010 (Tuesday)

08:30-09:00 **Registration**

09:00-09:10 **Opening Remarks**
Assoc. Prof. Mely Caballero-Anthony
Head of Centre for Non-Traditional
Security (NTS) Studies and
Secretary-General of NTS-Asia
S. Rajaratnam School of International
Studies (RSIS)
Nanyang Technological University (NTU)
Singapore

09:10-11:00 **Overview of Civilian Protection:
Legal Frameworks, Issues
and Challenges**
This session aims to identify the salient
issues and challenges of promoting
civilian protection in Southeast Asia. It
will address the following two central
questions as well as others that arise:

- How is civilian protection defined
within the legal framework of ASEAN
member countries?
- What are the gaps and challenges?

11:00-11:05 **Group Photo Opportunity**

11:05-11:15 **Break**

11:15-13:00 **Civilian Protection and the
ASEAN Intergovernmental
Commission on Human Rights**
This session aims to discuss
developments that took place at the Bali
Democracy Forum in December 2009. It
will address the following two central
questions as well as others that arise:

- What developments, relevant to
civilian protection, emerged at the
2009 Bali Democracy Forum?

- How can the ASEAN Intergovernmental
Commission on Human Rights
promote civilian protection in its first
five years?

13:00-14:00 **Lunch**

14:00-15:45 **Effective Human Rights
Mechanisms for Civilian Protection in
the ASEAN region**
This session will focus on national
human rights mechanisms that could
work to more effectively implement
civilian protection measures in the
ASEAN region. It will address the
following two central questions as well
as others that arise:

- Who are the actors needed for
furthering the agenda of civilian
protection?

- What human rights mechanisms can
they utilise to implement civilian
protection in their respective countries?

15:45-16:00 **Break**

Programme

16:00-17:30   **Completing the Pieces of the Puzzle: Civilian Protection and the Responsibility to Protect in the ASEAN Region**

This session will focus on the Responsibility to Protect (RtoP) and its inter-linkages with the broader concept of civilian protection. It will address the following two central questions as well as others that arise:

- How does RtoP feature in the Southeast Asian region and who are the principal stakeholders involved?

- What are the inter-linkages between RtoP and civilian protection?

17:30-17:45   **Closing Remarks: The Way Forward**

List of Participants

*in alphabetical order according to first names

1. **Mr Craig Strathern**
International Committee of the Red Cross
Multilateral Affairs Delegate in Asia
Unit 50-11-1, Level 11
Wisma UOA Damansara
No. 50, Jalan Dungun, Damansara Heights
50490 Kuala Lumpur
Malaysia
Telephone   : +60 (3) 2084-1814
E-mail   : kuala_lumpur.kua@icrc.org

2. **Mr Kwa Chong Guan**
Head of External Programmes
S. Rajaratnam School of International Studies
Block S4, Level B4, Nanyang Avenue
Nanyang Technological University
Singapore 639798
Telephone   : +65 6790-6975
E-mail   : iscgkwa@ntu.edu.sg

3. **Prof. Nguyen Dang Dung**
Director of the Research Center for Human and
Citizen's Rights
School of Law, Vietnam National University
144 Xuan Thuy Road
Hanoi
Vietnam
Telephone   : +84 (44) 3754-7913
E-mail   : dangdung52@yahoo.com

4. **Dr Tan Hsien Li**
Asian Society of International Law Research Fellow
Faculty of Law, National University of Singapore
Eu Tong Sen Building
469G Bukit Timah Road
Singapore 259776
Telephone   : +65 6516-1035
E-mail   : hsien_li@yahoo.com

5. **Ms Leena Ghosh**
International Committee of the Red Cross
Assistant Advisor for Multilateral Affairs in Asia
Unit 50-11-1, Level 11
Wisma UOA Damansara
No. 50, Jalan Dungun, Damansara Heights
50490 Kuala Lumpur
Malaysia
Telephone   : +60 (3) 2084-1814
E-mail   : kuala_lumpur.kua@icrc.org

6. **Ms Linda Quayle**
Visiting Scholar
S. Rajaratnam School of International Studies
Block S4, Level B4, Nanyang Avenue
Nanyang Technological University
Singapore 639798
Telephone   : +65 8442-1746
E-mail   : PAA553816@ntu.edu.sg

7. **Dr Mary Astrid Tuminez**
Assistant Dean (Executive Education) and Director
(Research)
Lee Kuan Yew School of Public Policy
National University of Singapore
469G Bukit Timah Road
Singapore 259776
Telephone   : +65 6516-5833
E-mail   : atuminez@nus.edu.sg

8. **Dato Param Cumaraswamy**
   Chair Person
   Working Group for an ASEAN Human Rights
   Mechanism
   Level 16, Wisma Tun Sambanthan
   Jalan Sultan Sulaiman
   50000 Kuala Lumpur
   Malaysia
   Telephone   : +60 (3) 2274-9844
   E-mail   : cparam@pc.jaring.my

9. **Mr Rafendi Djamin**
   Commissioner
   ASEAN Intergovernmental Commission on Human
   Rights (AICHR)
   Jl. Balan 3
   Kompleks AL, Pangkalan Jati
   Jakarta Selatan
   Indonesia
   Telephone   : +62 (21) 7073-3505
   E-mail   : rafendi@hrwg.org

10. **Prof. Simon Chesterman**
    Faculty of Law, National University of Singapore
    Eu Tong Sen Building
    469G Bukit Timah Road
    Singapore 259776
    Telephone   : +65 6516-7342
    E-mail   : Chesterman@nyu.edu or
                        lawsac@nus.edu.sg

11. **Mr Thun Saray**
    Director
    Cambodian Human Rights Development Association
    No. 1, St 158 Oukghna Toeung Kang
    Beng Raing Daun Penh P.P
    Cambodia
    Telephone   : +85 5321-8653
    E-mail   : saray@online.com.kh

12. **Dr Tin Maung Maung Than**
    Senior Research Fellow
    Institute of Southeast Asian Studies
    30 Heng Mui Keng Terrace
    Pasir Panjang
    Singapore 119614
    Telephone   : +65 6870-4504
    E-mail   : tin@iseas.edu.sg

13. **Mr Tobias Epprecht**
    International Committee of the Red Cross
    Head of Regional Delegation
    Unit 50-11-1, Level 11
    Wisma UOA Damansara
    No. 50, Jalan Dungun, Damansara Heights
    50490 Kuala Lumpur
    Malaysia
    Telephone   : +60 (3) 2084-1801
    E-mail   : kuala_lumpur.kua@icrc.org

14. **Prof. Vitit Muntarbhorn**
    Professor of Law
    Chulalongkorn University
    254, Phayathai Road
    Pathumwan, Bangkok
    Thailand 10330
    Telephone   : +66 (2) 2218-2017
    E-mail   : Vitit.M@chula.ac.th

15. **Asst. Prof. Cheah Wui Ling**
    Faculty of Law, National University of Singapore
    Eu Tong Sen Building
    469G, Bukit Timah Road
    Singapore 259776
    Telephone   : +65 9168-2280
    E-mail   : lawcwl@nus.edu.sg

RSIS Centre for Non-Traditional Security Studies

Website: *www.rsis.edu.sg/nts;*

Secretariat of the Consortium of Non-Traditional Security Studies in Asia: *www.rsis-ntsasia.org*

Faculty

1. **Assoc. Prof. Mely Caballero-Anthony**
    Head, Centre for Non-Traditional Security Studies
    and
    Secretary General, NTS-Asia
    S. Rajaratnam School of International Studies
    Block S4, Level B4, Nanyang Avenue
    Nanyang Technological University
    Singapore 639798
    Telephone   : +65 6790-5886
    Email   : ismcanthony@ntu.edu.sg

Research Staff

*in alphabetical order according to first names

1. **Dr Alistair D.B. Cook**
    Post-Doctoral Fellow
    Centre for Non-Traditional Security Studies
    S. Rajaratnam School of International Studies
    Block S4, Level B4, Nanyang Avenue
    Nanyang Technological University
    Singapore 639798
    Telephone   : +65 6790-6053
    E-mail   : isdbcook@ntu.edu.sg

2. **Ms Belinda Hui Kheng Chng**
    Programme Officer, Asia Security Initiative
    Centre for Non-Traditional Security Studies
    S. Rajaratnam School of International Studies
    Block S4, Level B4, Nanyang Avenue
    Nanyang Technological University
    Singapore 639798
    Telephone   : +65 6790-5889
    Email   : ishkchng@ntu.edu.sg

3. **Mr Jaspal Singh**
    Centre Administrator
    Centre for Non-Traditional Security Studies
    S. Rajaratnam School of International Studies
    Block S4, Level B4, Nanyang Avenue
    Nanyang Technological University
    Singapore 639798
    Telephone   : +65 6592-7522
    Email   : isjaspal@ntu.edu.sg

4. **Mr Kevin Punzalan**
    Research Analyst
    Centre for Non-Traditional Security Studies
    S. Rajaratnam School of International Studies
    Block S4, Level B4, Nanyang Avenue
    Nanyang Technological University
    Singapore 639798
    Telephone   : +65 6790-6982
    Email   : iskevinpunzalan@ntu.edu.sg

5. **Mr Pau Khan Khup Hangzo**
    Research Analyst
    Centre for Non-Traditional Security Studies
    S. Rajaratnam School of International Studies
    Block S4, Level B4, Nanyang Avenue
    Nanyang Technological University
    Singapore 639798
    Telephone   : +65 6790-6982
    Email   : iskkpau@ntu.edu.sg

6. **Ms Priyanka Bhalla**
    Associate Research Fellow
    Centre for Non-Traditional Security Studies
    S. Rajaratnam School of International Studies
    Block S4, Level B4, Nanyang Avenue
    Nanyang Technological University
    Singapore 639798
    Telephone : +65 6790-2035
    Email   : ispbhalla@ntu.edu.sg

About the RSIS Centre for Non-Traditional Security (NTS) Studies

The **RSIS Centre for Non-Traditional Security (NTS) Studies** conducts research and produces policy-relevant analyses aimed at furthering awareness and building capacity to address NTS issues and challenges in the Asia-Pacific region and beyond.

To fulfil this mission, the Centre aims to:

- Advance the understanding of NTS issues and challenges in the Asia-Pacific by highlighting gaps in knowledge and policy, and identifying best practices among state and non-state actors in responding to these challenges

- Provide a platform for scholars and policymakers within and outside Asia to discuss and analyse NTS issues in the region

- Network with institutions and organisations worldwide to exchange information, insights and experiences in the area of NTS

- Engage policymakers on the importance of NTS in guiding political responses to NTS emergencies and develop strategies to mitigate the risks to state and human security

- Contribute to building the institutional capacity of governments, and regional and international organisations to respond to NTS challenges

Our Research

The key programmes at the RSIS Centre for NTS Studies include:

1) Internal and Cross-Border Conflict Programme
- Dynamics of Internal Conflicts
- Multi-level and Multilateral Approaches to Internal Conflict
- Responsibility to Protect (RtoP) in Asia
- Peacebuilding

2) Climate Change, Environmental Security and Natural Disasters Programme
- Mitigation and Adaptation Policy Studies
- The Politics and Diplomacy of Climate Change

3) Energy and Human Security Programme
- Security and Safety of Energy Infrastructure
- Stability of Energy Markets
- Energy Sustainability
- Nuclear Energy and Security

4) Health and Human Security Programme
- Health and Human Security
- Global Health Governance
- Pandemic Preparedness and Global Response Networks

The first three programmes received a boost from the John D. and Catherine T. MacArthur Foundation when the RSIS Centre for NTS Studies was selected as one of three core institutions leading the MacArthur Asia Security Initiative* in 2009.

Our Output

Policy Relevant Publications
The RSIS Centre for NTS Studies produces a range of output such as research reports, books, monographs, policy briefs and conference proceedings.

Training
Based in RSIS, which has an excellent record of post-graduate teaching, an international faculty, and an extensive network of policy institutes worldwide, the Centre is well-placed to develop robust research capabilities, conduct training courses and to facilitate advanced education on NTS. These are aimed at, but not limited to, academics, analysts, policymakers and non-governmental organisations (NGOs).

Networking and Outreach
The Centre serves as a networking hub for researchers, policy analysts, policymakers, NGOs and media from across Asia and farther afield interested in NTS issues and challenges.

The RSIS Centre for NTS Studies is also the Secretariat of the Consortium of Non-Traditional Security Studies in Asia (NTS-Asia), which brings together 20 research institutes and think tanks from across Asia, and strives to develop the process of networking, consolidate existing research on NTS-related issues, and mainstream NTS studies in Asia.

More information on our Centre is available at
www.rsis.edu.sg/nts

About the S. Rajaratnam School of International Studies, Nanyang Technological University

The **S. Rajaratnam School of International Studies (RSIS)** was established in January 2007 as an autonomous School within the Nanyang Technological University (NTU). RSIS' mission is to be a leading research and graduate teaching institution in strategic and international affairs in the Asia-Pacific.

To accomplish this mission, **RSIS** will:

- Provide a rigorous professional graduate education in international affairs with a strong practical and area emphasis
- Conduct policy-relevant research in national security, defence and strategic studies, diplomacy and international relations
- Collaborate with like-minded schools of international affairs to form a global network of excellence

Graduate Training in International Affairs

RSIS offers an exacting graduate education in international affairs, taught by an international faculty of leading thinkers and practitioners. The teaching programme consists of the Master of Science (MSc) degrees in Strategic Studies, International Relations, International Political Economy and Asian Studies. Through partnerships with the University of Warwick and NTU's Nanyang Business School, **RSIS** also offers the NTU-Warwick Double Masters Programme as well as The Nanyang MBA (International Studies). The graduate teaching is distinguished by their focus on the Asia-Pacific region, the professional practice of international affairs and the cultivation of academic depth. Over 200 students, the majority from abroad, are enrolled with the School. A small and select Ph.D. programme caters to students whose interests match those of specific faculty members.

Research

Research at **RSIS** is conducted by five constituent Institutes and Centres: the Institute of Defence and Strategic Studies (IDSS), the International Centre for Political Violence and Terrorism Research (ICPVTR), the Centre of Excellence for National Security (CENS), the Centre for Non-Traditional Security (NTS) Studies, and the Temasek Foundation Centre for Trade & Negotiations (TFCTN). The focus of research is on issues relating to the security and stability of the Asia-Pacific region and their implications for Singapore and other countries in the region. The School has three professorships that bring distinguished scholars and practitioners to teach and do research at the School. They are the S. Rajaratnam Professorship in Strategic Studies, the Ngee Ann Kongsi Professorship in International Relations, and the NTUC Professorship in International Economic Relations.

International Collaboration

Collaboration with other Professional Schools of international affairs to form a global network of excellence is a **RSIS** priority. **RSIS** will initiate links with other like-minded schools so as to enrich its research and teaching activities as well as adopt the best practices of successful schools.

For more information on the School,
visit www.rsis.edu.sg

POLICY ROUNDTABLE ON CIVILIAN PROTECTION: ISSUES AND CHALLENGES