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Managing Peace and Security in Southeast Asia:  
Does ASEAN have the Political Will?

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## **Abstract**

In a global system increasingly faced with non-traditional security threats, this paper will argue that, given its inability to effectively mitigate the situation of the Rohingya in Western Myanmar, ASEAN displays a lack of political will to manage peace and security in Southeast Asia. In order to argue that ASEAN does not yet have the political will to effectively maintain peace and security in light of the challenges Southeast Asia is facing in the 21st Century, this paper will address the changing definition of effectiveness in the maintenance of international peace and security. This includes the advent of so called 'new wars' comprised of transnational, non-traditional threats, and the changing norm of state responsibility in addressing these threats. ASEAN's development as the regional governing body with a mandate for peace and security in Southeast Asia will be examined through the creation of the ASEAN Charter and aspirations toward the ASEAN Community. Analysis of ASEAN's political will to address non-traditional peace and security threats will be based on its willingness to adopt international norms of state responsibility towards peace and security, and to hold its members to account in this responsibility. This analysis will include a focus on ASEAN's institutional mechanisms, developmental challenges, and the non-traditional threats facing the region. Finally, ASEAN's ability to transcend its' traditional approach to conflict within ASEAN member states will be viewed through the case study of how the regional body is not responding in an effective manner to the Rohingya in western Myanmar. ASEAN's political will to respond to threats to regional stability, such as Myanmar's inaction over the Rohingya, is important in that the response to international threats is becoming increasingly left to regional groups as the UN system contends with limited resources, effectively putting ASEAN under the international microscope as it must prove itself capable of responding. If ASEAN is unable to prove its ability to transcend negotiation and non-interference based conflict resolution, than a region of the world weary of outside intervention may find the international community at their door to neutralize threats that could spill over into other regions. Given developments within ASEAN, and the prominence of 'ASEAN Way' norms of conflict prevention and non-intervention, ASEAN's ability to move beyond rhetoric and negotiation towards effective action on issues of peace and security in Southeast Asia seems unlikely.

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## Introduction

Threats to international peace and security have evolved over time, and their dynamics have become increasingly complicated since the beginning of the 21<sup>st</sup> Century, perhaps due to factors stemming from an increasingly transient and interconnected world. Alongside the evolution of threats, norms of state sovereignty and the rights and responsibilities of the state have changed in response. What was once an international system of fully autonomous states evolved in an international community, where some autonomy was traded in order to better maintain global peace and security. The term ‘international community’ is a concept still being defined, and there does not yet stand an agreed upon definition. However, this paper will define the international community as one based on United Nations membership. This definition is a reflection of how the UN has been the foremost driving force of norm change regarding the responsibilities of states, as it “is the only global institution with the legitimacy that derives from universal membership, and a mandate that encompasses security, economic and social development, the protection of human rights, and the protection of the environment.”<sup>1</sup> This new international community was one based on the changing norms of national security as human security, and that the responsibilities of the state should change to reflect this within its domestic institutions and foreign diplomacy. The concept of human security is also a concept which has created much recent discussion over what it means in policies around international peace and security. This paper will define human security as “an ongoing effort to find a balance between ‘freedom from fear’ and ‘freedom from want.’”<sup>2</sup> This definition means that security for an individual or a community must offer physical safety, freedom from violence, war, and injustice,

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<sup>1</sup> John Baylis, Steve Smith, and Patricia Owens, *The Globalization of World Politics: An Introduction to International Relations*, 4th ed. (New York, NY: Oxford University Press, 2008), pg. 314.

<sup>2</sup> Yukiko Nishikawa, "Human Security in Southeast Asia: Viable Solution or Empty Slogan?," *Security Dialogue* 40, no. 2 (2009): pg. 215

and security in balance with meeting the basic needs for life, which includes food, shelter, and gainful employment.

Human security and a shifting of the definition of state responsibility are essential for addressing the fact that although the world is faced with threats to international order brought about predominantly by the actions of states, no longer are these threats the only ones to which the world must collectively respond. Human security and state responsibility are both norms which came out of the concept that the international community can no longer leave states to do what they deem to be their right within their borders, not after the international community had solemnly declared “never again”<sup>3</sup> to allow crimes against humanity and atrocities such as those witnessed during the 20<sup>th</sup> Century. The fact that the world is still faced with atrocities years after the adaption of the Universal Declaration of Human Rights shows how much further the international community still needs to go. However, the fact that terms such as human security, and doctrines like the Responsibility to Protect (R2P), are in existence demonstrates the fundamental shift that has occurred and the powerful effect norms have had on the legitimacy of the actions of sovereign states.

Since the era of state as the central political actor began, traditional threats to peace and security outside of open warfare have been relegated to the sphere of domestic politics and therefore under the jurisdiction of the sovereign state.<sup>4</sup> However, there is increasing recognition that allowing states to be the primary actor for addressing threats is no longer an adequate

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<sup>3</sup> "The Universal Declaration of Human Rights, UDHR, Declaration of Human Rights, Human Rights Declaration, Human Rights Charter, The Un and Human Rights," UN News Center, accessed March 23, 2013, <http://www.un.org/en/documents/udhr/history.shtml>. "The Universal Declaration of Human Rights, which was adopted by the UN General Assembly on 10 December 1948, was the result of the experience of the Second World War. With the end of that war, and the creation of the United Nations, the international community vowed never again to allow atrocities like those of that conflict happen again."

<sup>4</sup> John H. Currie, Valerie Oosterveld, and Craig Forcese, *International Law: Doctrine, Practice, and Theory* (Toronto: Irwin Law, 2007), pg. 281: "in international law, sovereignty is essentially autonomy from other states in both domestic matters and foreign relations. Used in relation to territory, it means autonomous control of that territory."

response to non-traditional threats, or “problems without passports,”<sup>5</sup> that cross borders and even whole regions. These “problems without passports” may not be completely new to the international system, but the scope and speed to which they manifest themselves across territories through processes of globalization have become a unique challenge to the 21<sup>st</sup> Century.

The historical account of and debate surrounding globalization is beyond the scope of this paper, but for the sake of analysis, globalization will be defined as:

a historical transformation in the economy in that livelihoods and modes of existence change; in politics, the locus of power gradually shifts above and below territorial states, forming a multi-level system; and in culture, an erosion of certain lifeways and the emergence of new hybrid forms occur.<sup>6</sup>

This transformation has resulted in the expansion of international flows of goods, services, capital and information, which has accelerated both the positive and negative impacts of these transactions for states and the international community as a whole. The need to address these impacts have been one of the main motivations behind the new questions surrounding legality, legitimacy and the use of force, and the idea of state sovereignty as a responsibility.<sup>7</sup> If the negative and positive impacts of these transactions are to be mitigated and managed, states must play their part in the international system.

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<sup>5</sup> A term coined by former UN Secretary-General Kofi Annan in an article for *Foreign Policy*: his description of the term was: “We are all consumers in the same global economy. We are all influenced by the same tides of political, social, and technological change. Pollution, organized crime, and the proliferation of deadly weapons likewise show little regard for the niceties of borders; they are problems without passports and, as such, our common enemy. We are connected, wired, interdependent.” Kofi A. Annan, “Problems With Passports,” *Foreign Policy*, no. 132 (September 1, 2002): pg. 30.

<sup>6</sup> James H. Mittelman, “Globalization and Its Critics,” in *Political Economy and the Changing Global Order*, by Richard Stubbs, ed. Geoffrey R. D. Underhill (Don Mills, Ontario: Oxford University Press, 2006), pg. 64.

<sup>7</sup> The First of the Basic Principles of The Responsibility to Protect is “State Sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself.” Gareth J. Evans and Mohamed Sahnoun, eds., *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (Ottawa: International Development Research Centre, 2001), pg. xi.

Southeast Asia is in a unique position regarding its response to the pressures of globalization. It is still negotiating the path it will follow in order to manage these new threats to international security, as it is a fairly young region in both its economic development and its development of state institutions. It remains a region of the world that has long been influenced by external powers, including during periods of colonialization and opposing ideologies during the Cold War. Due to these external forces and history of intervention, the region has developed a staunch non-interventionist stance, especially as it continues to face a long period of development, reconstruction, economic growth and social stability, all the while facing destabilizing regional threats. These threats, and Southeast Asia's desire to keep the international community from directly intervening in its affairs, are what make ASEAN's ability to effectively respond to these threats crucial for the stability and independence of the region.

ASEAN remains the regions' best mechanism for this response as it remains "the premier regional grouping in terms of its longevity and centrality to regional processes"<sup>8</sup> in Southeast Asia. It is contained within a distinct geographic area, whereas other regional groupings encompass the region at large or focus strongly on one governance issue, such as the Asia-Pacific Economic Cooperation (APEC), with its focus on economic cooperation and a membership far beyond the geographic region of Southeast Asia<sup>9</sup>. As well, although ASEAN began as primarily an economic mechanism, this paper will discuss the ways in which ASEAN is moving towards a regional organization based on norms of human rights and security through analysis of the ASEAN Community.

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<sup>8</sup> Jim Rolfe, "Regional Security for the Asia-Pacific: Ends and Means," *Contemporary Southeast Asia: A Journal of International and Strategic Affairs* 30, no. 1 (April 2008): pg. 103

<sup>9</sup> APEC Secretariat, "About APEC," Asia-Pacific Economic Cooperation, What is Asia-Pacific Economic Cooperation?, accessed March 24, 2013, <http://www.apec.org/About-Us/About-APEC.aspx>.

The successes and failures of this governing body's ability to manage regional threats could have wide-ranging effects for the international community as well. One of these effects is that ASEAN has the potential to act as a model for other developing regions in how to manage both internal and external threats, while at the same time reconciling with the international pressure to conform to international norms of human rights and human security. This situation is uniquely faced by developing states in what can be described as a post-Westphalian world order:

whereas the Westphalian order rested on a notion of sovereignty that granted status protection from interference by outsiders, the post-Westphalian account is based on the notion of 'sovereignty as responsibility' – the idea that sovereigns enjoy the right to non-interference only insofar as they protect the fundamental rights of their citizens.<sup>10</sup>

Many developing countries are faced with this dilemma, in that they must find that developmental balance between “freedom from fear” and “freedom from want”, all the while being pressured by outside forces calling for adherence to international norms. Stated in another way, it is the age-old ‘guns and butter’ dilemma, where a country with limited resources can choose to allocate them towards military might or towards social development, or feeding their population. Other regional bodies, such as the European Union (EU), emerged in a very different international system, and were protected and isolated from the forces of globalization faced by emerging regions today.<sup>11</sup> This is one reason why ASEAN, and not the EU, may be better placed to act as a model of regional governance for the developing world in the 21<sup>st</sup> Century.

However, as discussed in order for ASEAN to be an emerging model regional body, it must prove its ability to address peace and security, or both guns and butter, within its member states. Given its inability to effectively respond to the situation of the Rohingya in western

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<sup>10</sup> Alex J. Bellamy, Paul Williams, and Stuart Griffin, *Understanding Peacekeeping*, Second ed. (Cambridge, UK: Polity, 2010), pg. 13.

<sup>11</sup> Shale Horowitz, "Restarting Globalization after World War II: Structure, Coalitions, and the Cold War," *Comparative Political Studies* 37, no. 2 (March 2004): pg. 127: “Following two world wars and the Depression, international trade and finance had been in retreat for decades, and protectionist forces seemed dominant in all the major economies. National governments seemed bent on heavily restricting international economic transactions to preserve economic stability and fuller employment.”

Myanmar, ASEAN displays a lack of political will to effectively manage peace and security in Southeast Asia. The case of the Rohingya in Myanmar demonstrates the potential for instability found in the region, and how the spill-over effects of non-traditional threats could affect more than just the region itself. The importance of ASEAN's ability to respond goes beyond its ability to keep other international forces at bay. Its effectiveness in addressing transnational threats and holding its members to account for addressing these threats could raise the legitimacy of ASEAN, allowing it to take a more central role in the governance of a region which staunchly opposes outside intervention.

The Rohingya are an ethnic group facing persecution within Myanmar, a member country of ASEAN. Their situation offers a unique view on ASEAN and its role in responding to security concerns facing Southeast Asia. The question of whether or not there should be a response to the Rohingya based on the changing norms of state responsibility is a part of a larger argument regarding justifications for intervention, and is beyond the scope of this paper. However, given the spillover effects of the conflict already affecting the region, if Myanmar does not respond in a way that effectively addresses the threats placed on their neighbours by this conflict, and does not uphold its state responsibility in doing so, how should ASEAN respond? Has it responded appropriately for the regional governing body responsible for maintaining peace and security, and what does its response say about its political will to do so?

This argument will be addressed in two main parts. The first part will explore the changing landscape of effectiveness in maintaining peace and security, and the devolution of responsibility from the United Nations to other actors, including regional bodies. It will then address ASEAN's evolution as a regional governing body, and the case for its role as the main body for maintaining peace and security in Southeast Asia. The second part of this argument will

address the potential for instability in Southeast Asia, and the non-traditional threats facing the region. The case of the Rohingya in western Myanmar will then be analyzed through ASEAN's response, and its political will to put pressure on Myanmar to uphold its obligations as a state, and if it cannot or will not, than ASEAN must have the political will to intervene. In defining political will, this paper will use the argument presented in author Heidi Hardt's analysis of regional responses to peace operation demands, that the political will to react and respond is based on ASEAN member states' "perceptions of the conflict and [is] derived from a variety of incentives."<sup>12</sup> The incentives presented by the author include legal, political and economic. This 'political will' within ASEAN will be analysed to determine whether ASEAN can effectively respond to the non-traditional security threats the region is faced with.

This argument will assume that the motivation for ASEAN to be seen to have the political will to effectively respond to threats is that of obtaining legitimacy within the international community as a regional governing body. As argued by John Arendshorst in his article on the effectiveness of ASEAN Charter and human rights in Myanmar, "a demonstrated willingness to hold its members responsible for following its rules would establish ASEAN as a political, economic, and social force on the world stage akin to NATO or the European Union."<sup>13</sup> The ability for ASEAN to ascend to the same level of integration and security capabilities as those organizations is up for debate, but ASEAN must prove it is at least working towards effective management of peace and security in Southeast Asia by regional adherence to its rules if it wants to keep international actors from intervening in its affairs.

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<sup>12</sup> Heidi Hardt, "Rapid Response or Evasive Action? Regional Organization Responses to Peace Operation Demands," *European Security* 18, no. 4 (December 2009): pg. 390.

<sup>13</sup> John Arendshorst, "The Dilemma of Non-Interference: Myanmar, Human Rights, and the ASEAN Charter," *Northwestern Journal of International Human Rights* 8, no. 1 (Fall 2009): pg. 118.

## Part I: Effectiveness in the Maintenance of Peace and Security

As threats to peace and security change so must responses to them if these responses are to remain effective. From the perspective of a regional governing body, effective responses are due in large part to the political will to address the changing landscape of the responsibilities of states, and the need within states to create institutions and mechanisms to address non-traditional threats. Holding states to this responsibility under threat of intervention if they do not address threats within their borders represents the changing norms of international sovereignty. Effectiveness in addressing non-traditional threats to peace and security will be explored through delegation of responsibility, subsidiarity, and legitimacy in responses to threats.

According to Box 1.6 from Peace Operations in Global Politics, ‘new wars’ are:

“intrastate rather than interstate...take place in the context of state failure and social transformation driven by globalization and liberal economic forces...ethnic and religious differences are more important than political ideology...civilian casualties and forced displacement are dramatically increasing...[and] the breakdown of state authority blurs the distinction between public and private combatants.”<sup>14</sup>

In this context, it is imperative that evaluation of the effectiveness of ASEAN moves beyond traditional interstate warfare and takes into account conflict which moves beyond state boundaries.

Each year the World Bank releases a report that focuses on a specific aspect of development. The 2011 World Development Report focused on non-traditional security threats and the connection between conflict, security, and development while reconstructing and stabilizing fragile and weak states. In the face of security threats that go beyond inter-state conflict, the Report called for various new responses and tools. However, the “central message of the Report is that strengthening legitimate institutions and governance to provide citizen security,

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<sup>14</sup> Alex J. Bellamy, Paul Williams, and Stuart Griffin, *Understanding Peacekeeping*, Second ed. (Cambridge, UK: Polity, 2010), pg. 35. Source of Box 1.6: Newman, E. (2004) ‘The “New Wars” Debate’: A Historical Perspective is Needed’, *Security Dialogue*, 35 (2): 173-89, pgs. 174-175.

justice, and jobs is crucial to break cycles of violence.”<sup>15</sup> Therefore, the key to ending cycles of violence and instability in Southeast Asia is for ASEAN and member states to address both internal and external stresses and threats to state stability<sup>16</sup> through the creation of legitimate institutions and governance at the state and intrastate level.

How then can these changing dynamics of non-traditional threats, which can be internal and external to a state, be effectively addressed through changing norms and the structures for responding to them?<sup>17</sup> The doctrine of the Responsibility to Protect (R2P) emerged seeking to answer this question. The Foreword to the Report of the International Commission on Intervention and State Sovereignty (ICISS), titled “The Responsibility to Protect”, claims that the purpose of the report is to investigate the dilemma of the “‘right of humanitarian intervention’: the question of when, if ever, it is appropriate for states to take coercive – and in particular military – action against another state for the purpose of protecting people at risk in that other state.”<sup>18</sup> The question in particular relates to the international community operationalizing this norm of responsible sovereignty and creating a process of intervention based on universal legitimacy.

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<sup>15</sup> *World Development Report 2011: Conflict, Security, and Development*. (Washington D.C.: International Bank for Reconstruction and Development / The World Bank, 2011), pg. 2.

<sup>16</sup> *World Development Report 2011: Conflict, Security, and Development*. (Washington D.C.: International Bank for Reconstruction and Development / The World Bank, 2011), pg. 7: “The WDR approach emphasizes that risk of conflict and violence in any society (national or regional) is the *combination* of the exposure to *internal and external stresses* and the strength of the “immune system,” or the social capability for coping with stress embodied in *legitimate institutions*.”

<sup>17</sup> This dilemma is inherent in the following analysis from the report by ICISS on ‘The Responsibility to Protect’: “2.12 The UN is an organization dedicated to the maintenance of international peace and security on the basis of protecting the territorial integrity, political independence and national sovereignty of its member states. But the overwhelming majority of today’s armed conflicts are internal, not inter-state. Moreover, the proportion of civilians killed in them increased from about one in ten at the state of the 20<sup>th</sup> century to around nine in ten by its close. This has presented the organization with a major difficulty: how to reconcile its foundational principles of member states’ sovereignty and the accompanying primary mandate to maintain international peace and security (“to save succeeding generations from the scourge of war”) – with the equally compelling mission to promote the interests and welfare of people within those states (“We the peoples of the United Nations”). Gareth J. Evans and Mohamed Sahnoun, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (Ottawa: International Development Research Centre, 2001), pg. 13.

<sup>18</sup> Gareth J. Evans and Mohamed Sahnoun, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (Ottawa: International Development Research Centre, 2001), pg. VII.

Action through the doctrine of R2P is authorized by the United Nations system, which is based on authorization by the United Nations Security Council (UNSC) which must consent through a majority vote for any military operation to be considered authorized and legal. The United Nations remains the legitimate body for the maintenance of international peace and security as laid out in the United Nations Charter.<sup>19</sup>

ASEAN and its member states are held to the principles outlined in the Charter of the United Nations since they are signatories to the UN Charter. Therefore they must recognize the shift of R2P and the recognition of the international community that “there is no transfer or dilution of state sovereignty. But there is a necessary re-characterization involved: from *sovereignty as control* to *sovereignty as responsibility* in both internal functions and external duties.”<sup>20</sup> The ICISS report alludes to the fact that rights and responsibilities of states within the international community are not static, and therefore neither is what is seen as legitimate action.

ASEAN’s role in enforcing the rights and responsibilities of its member states is based on that fact that, although the jurisdiction over decisions regarding peace and security has been placed on the UNSC, the UNSC can transfer this jurisdiction to regional bodies. Chapter V, Article 24 of the UN Charter confers that the UNSC has the “primary responsibility for the maintenance of international peace and security.”<sup>21</sup> However, Chapter VI, Article 33 outlines that before a dispute goes before the UNSC, “any parties to any dispute...shall, first of all, seek solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to

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<sup>19</sup> United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, Available At: [Http://www.un.org/en/documents/charter/index.shtml](http://www.un.org/en/documents/charter/index.shtml) [accessed 24 February 2013], Article 1.

<sup>20</sup> Gareth J. Evans and Mohamed Sahnoun, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (Ottawa: International Development Research Centre, 2001), pg. 13.

<sup>21</sup> United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, Available At: [Http://www.un.org/en/documents/charter/index.shtml](http://www.un.org/en/documents/charter/index.shtml) [accessed 24 February 2013, Article 24.

regional agencies or arrangements, or other peaceful means of their own choice.”<sup>22</sup> The UNSC is therefore designed to be not only the ultimate authority for the approval of military action, but also as a mechanism of last resort for the maintenance of peace and security, when all other responses have failed or where there are no other mechanisms which can or are willing to respond.

Therefore, regional responses to threats to peace and security have been mandated by Chapter VIII of the UN Charter, which states that

“Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security... [and] Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.”<sup>23</sup>

The United Nations has not only mandated regional organizations to respond to threats to international peace and security within their region of influence, but Article 52 also calls for any member country of those regional organizations to use that mechanism first. This Article dictates ASEAN’s role as the first responder to threats facing Southeast Asia, as long as it can show that it is willing and able to respond.

Article 52 of the UN Charter could perhaps best be operationalized through the principle of subsidiarity,<sup>24</sup> which in global governance is a trend that has been argued as the solution to an overburdened United Nations, which faces a world of increasing threats and a lack of resources to respond to them. Author W. Andy Knight argues for this model of decentralized control, and

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<sup>22</sup> United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, Available At: [Http://www.un.org/en/documents/charter/index.shtml](http://www.un.org/en/documents/charter/index.shtml) [accessed 24 February 2013], Article 33.

<sup>23</sup> United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, Available At: [Http://www.un.org/en/documents/charter/index.shtml](http://www.un.org/en/documents/charter/index.shtml) [accessed 24 February 2013], Article 52.1-52.2.

<sup>24</sup> “The principle of subsidiarity favours decentralized control within a tiered governance system,” David O’Brien, “The Search for Subsidiarity: The UN, African Regional Organizations and Humanitarian Action,” *International Peacekeeping* 7, no. 3 (Autumn 2000), pg. 57

that since the Cold War era structural changes which have occurred in the international system have had effects on security arrangements. He argues for a security model

“in which lower levels of governance are not denied of their competencies as long as they are capable of carrying out specific tasks assigned to them. It is a model that would allow the more immediate levels...to be responsible for carrying out global governance tasks which they can effectively and efficiently handle.”<sup>25</sup>

Taking into account the growing trend of response to world crises occurring amongst many different world actors, and not always with the direct involvement of the UN, there is an assumption that, given recent trends of regional and other responses to peace and security issues, this reality is likely to be the future of the maintenance of peace and security in the international system.<sup>26</sup>

Regional responses also have advantages over an international response, as argued by Rodrigo Tavares, in that the cultural backgrounds and personal relationships create trust among regional leaders. As well, in a crisis situation regional organizations are able to respond much more quickly due to geographic proximity to the crisis and with a smaller bureaucratic structure.<sup>27</sup> Tavares also explains that regional bodies have an interest in maintaining regional stability due to the regional impacts of instability that would affect members within the regional

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<sup>25</sup> W. Andy Knight, "Towards a Subsidiarity Model for Peacemaking and Preventive Diplomacy: Making Chapter VIII of the UN Charter Operational," *Third World Quarterly* 17, no. 1 (1996): pg. 32.

<sup>26</sup> W. Andy Knight, "Towards a Subsidiarity Model for Peacemaking and Preventive Diplomacy: Making Chapter VIII of the UN Charter Operational," *Third World Quarterly* 17, no. 1 (1996): Pg. 32-33. Knight explains that “The implementation of such a model at the global level is not all that far-fetched for four reasons: 1) there is a recognised need at the moment to protect the UN system from further ‘overload’ if it is to survive as an effective and efficient world institution; 2) provision has already been made, within the UN Charter (Chapter VIII), for dividing the labour of global governance between the universal body and regional arrangements and agencies; 3) the subsidiarity concept is compatible with that provision and the view expressed in 1992 by UN Secretary-General Boutros Boutros-Ghali that the UN and regional organizations should cooperate to build consensus on regional conflicts and should engage in other ‘joint undertakings’, with regional organisations, even taking the lead in addressing crises within their region.”

<sup>27</sup> Rodrigo Tavares, "Understanding Regional Peace and Security: A Framework for Analysis," *Contemporary Politics* 14, no. 2 (June 2008): pg. 111.

body.<sup>28</sup> Member states are less likely to maintain ‘buy-in’ and adherence to a regional body like ASEAN, and its rules and regulations, if the regional organization cannot effectively enforce its rules and regulations and maintain stability for its member states. Although it can be argued that effectiveness in maintaining peace and security in the international system will be increasingly measured through responsible sovereignty of states and the principle of subsidiarity, there is also a question of making such a focus responsive to the human security of those involved in the conflict.

James Pattison’s consequentialist solution for effective intervention to uphold state responsibility seeks to answer an essential question raised by the ICISS report on *The Responsibility to Protect*,<sup>29</sup> namely determining which actor should be placed with the international community to respond to any given threat and become the primary agent of protection in response to human rights abuses.<sup>30</sup> The consequentialist approach argues that “an intervener’s effectiveness is the *primary* (and a *necessary*) determinant of its legitimacy.”<sup>31</sup> If a state or a regional body cannot be effective in its response, it loses its role as the legitimate actor.

Pattison uses one definition of effectiveness which this paper will argue is the most important aspect to judge whether ASEAN could be effective in addressing peace and security in Southeast Asia. This definition explains how effectiveness must be based on “an intervener’s ‘local external effectiveness,’ which depends on whether an intervener is likely to promote or harm the enjoyment of basic human rights of those in the political community that is subject to

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<sup>28</sup> Rodrigo Tavares, "Understanding Regional Peace and Security: A Framework for Analysis," *Contemporary Politics* 14, no. 2 (June 2008): pg. 111.

<sup>29</sup> Gareth J. Evans and Mohamed Sahnoun, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (Ottawa: International Development Research Centre, 2001), pg. 147.

<sup>30</sup> James Pattison, "Whose Responsibility to Protect? The Duties of Humanitarian Intervention," *Journal of Military Ethics* 7, no. 4 (2008): pg. 264.

<sup>31</sup> James Pattison, "Whose Responsibility to Protect? The Duties of Humanitarian Intervention," *Journal of Military Ethics* 7, no. 4 (2008): pg. 398.

its intervention.”<sup>32</sup> This means the intervention must improve the human rights situation, not make it worse. Beyond maintaining control over its own affairs, according to Bernard Ong, “recognition matters because it creates more policy options and widens the range of resources a region may tap into for its security and socio-economic development.” The international community will be much more likely to invest in ASEAN’s security apparatus if it views it as a responsible and effective partner.

### **ASEAN as a Regional Governing Body**

Now that effective responses to threats to peace and security in the international system have been established on norms and principles of responsibility, subsidiarity, and legitimacy, it is important to detail how ASEAN evolved to become the regional body which has the primary responsibility for peace and security in Southeast Asia. The establishment of ASEAN as a regional governing body, and its role in the international system is crucial for understanding how the norm of non-interference still plays such a central role in its approach to its member states, and in turn its political will to enforce its own rules and regulations. This adherence to non-intervention and consensus decision making based on a lack of formal structures could have a drastic impact on its evolution towards the ASEAN Community and the desire for regional recognition and political legitimacy. This section will also explore how the “ASEAN Way” represents an element of instability in a still developing region.

The Declaration on the Establishment of the Association of Southeast Asian Nations was signed in Bangkok on 8 August 1967 by the five original member states: Indonesia, Malaysia, Philippines, Singapore and Thailand. The Bangkok Declaration acknowledged that the founding ASEAN states and their Southeast Asian neighbours

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<sup>32</sup> James Pattison, "Whose Responsibility to Protect? The Duties of Humanitarian Intervention," *Journal of Military Ethics* 7, no. 4 (2008): pg. 399.

share a primary responsibility for strengthening the economic and social stability of the region and ensuring their peaceful and progressive national development, and that they are determined to ensure their stability and security from external interference in any form or manifestation in order to preserve their national identities in accordance with the ideals and aspirations of their peoples.<sup>33</sup>

The preference for non-intervention within ASEAN was founded from the fact that Cold War politics weighed heavily on its formation, as it saw itself as the regional counterweight to external influence by the great powers, especially against power vacuums and communist threats.<sup>34</sup> Its founding coincided with conflict that was gripping the region including the Vietnam War and the Vietnamese occupation of Cambodia, whilst the budding organization “was an active player in the management of these conflicts, and its role in defining the norms and mechanisms to manage regional order became more discernible.”<sup>35</sup> ASEAN was not only a counter-balance to the geopolitics of the Cold War, but it was also a way for Southeast Asian states to move forward from the history of colonization and international interference and to begin setting the conditions of international engagement in the region. The Bangkok Declaration was also when ASEAN members pledged their support for the United Nations Charter and the Universal Declaration of Human Rights.

One of the first conditions put forward by ASEAN to the international community was a call for the establishment of the Zone of Peace, Freedom and Neutrality (ZOPFAN). The

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<sup>33</sup> ASEAN Secretariat, "The Asean Declaration (Bangkok Declaration) Bangkok, 8 August 1967," The Asean Declaration (Bangkok Declaration) Bangkok, 8 August 1967, accessed February 26, 2013, <http://www.asean.org/news/item/the-asean-declaration-bangkok-declaration>.

<sup>34</sup> Lee Jones, "ASEAN Intervention in Cambodia: From Cold War to Conditionality," *The Pacific Review* 20, no. 4 (December 2007): pg. 524-525: "ASEAN's prime *raison d'être* was to facilitate the continued survival of authoritarian capitalist regimes threatened by internal subversion and the external pressure of the Cold War" Quoting Lee Kwan Yew (2000:369-70) "[t]he unspoken objective was to gain strength through solidarity ahead of the power vacuum that would come with an impending British and later a possible US withdrawal... We had a common enemy – the communist threat in guerrilla insurgencies, backed by North Vietnam, China and the Soviet Union. We needed stability and growth to counter and deny the communists the social and economic conditions for revolutions... While ASEAN's declared objectives were economic, social and cultural, all knew that progress in economic cooperation would be slow. We were banding together more for political objectives, stability and security."

<sup>35</sup> Mely Caballero-Anthony, *Regional Security in Southeast Asia: Beyond the ASEAN Way* (Singapore: Institute of Southeast Asian Studies, 2005), pg. 5.

declaration, signed in Malaysia in 1971, “called for foreign powers’ recognition of ASEAN by not interfering with ASEAN’s internal affairs.”<sup>36</sup> The ZOPFAN declared that:

Indonesia, Malaysia, the Philippines, Singapore and Thailand are determined to exert initially necessary efforts to secure the recognition of, and respect for, South East Asia as a Zone of Peace, Freedom and Neutrality, free from any form or manner of interference by outside powers.<sup>37</sup>

This declaration was a signal to the international community that ASEAN was prepared to keep foreign powers out of Southeast Asian affairs. Bernard Ong argued that “ZOPFAN was, therefore, targeted at correcting foreign powers’ perception that ASEAN remained a region susceptible to power contest because of the inherent weakness of Southeast Asian states.”<sup>38</sup> ZOPFAN also sets the precedent for ASEAN’s desire for legitimacy from the international community to maintain non-interference in regional affairs.

The Treaty of Amity and Cooperation (TAC) in Southeast Asia was signed at the First ASEAN Summit in Indonesia on 24 February 1976. The TAC has become a treaty for countries to sign onto if they worked with or had other dealings with ASEAN.<sup>39</sup> The TAC declared the founding members of ASEAN’s acknowledgement for “the need for cooperation with all peace-loving nations, both within and outside Southeast Asia, in the furtherance of world peace,

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<sup>36</sup> Bernard Ong, "Recognizing Regions: ASEAN's Struggle for Recognition," *The Pacific Review* 25, no. 4 (September 2012): pg. 522.

<sup>37</sup> ASEAN Secretariat, "1971 Zone of Peace, Freedom and Neutrality Declaration Signed on 27 November 1971 in Kuala Lumpur, Malaysia by the Foreign Ministers," National University of Singapore Centre for International Law, October 4, 2009, <http://cil.nus.edu.sg/1971/1971-zone-of-peace-freedom-and-neutrality-declaration-signed-on-27-november-1971-in-kuala-lumpur-malaysia-by-the-foreign-ministers/>.

<sup>38</sup> Bernard Ong, "Recognizing Regions: ASEAN's Struggle for Recognition," *The Pacific Review* 25, no. 4 (September 2012): pg. 522.

<sup>39</sup> Susumu Yamakage, "The Construction of an East Asian Order and the Limitations of the ASEAN Model," *Asia-Pacific Review* 12, no. 2 (2005): pg. 3. “Once symbolic of the friendship between the ASEAN nations, the TAC has come to fulfill a new role in the twenty-first century – to symbolize the friendship between ASEAN and the wider world. This is, ASEAN now requests nations outside the region who wish to strengthen ties with ASEAN to sign the TAC.”

stability and harmony.”<sup>40</sup> The TAC also called for all contracting parties to respect the sovereignty and national identity of other contracting states, through both external and domestic non-interference.<sup>41</sup> Building off of ZOPFAN and the TAC, numerous other treaties and documents have signaled to the international community ASEAN’s desire to not only be taken seriously, but to maintain prominence and control over the geographic region of Southeast Asia. These treaties also meant that new members and TAC signatories who were willing to benefit from membership in or cooperation with ASEAN had to accept the condition of the norm of non-interference. The TAC set a strong precedent for non-interference, and as long as it remains a foundational doctrine of ASEAN it may hinder aspirations within the governing body to raise concerns with its member states around issues pertaining to peace and security cooperation in the region, as well as ASEAN’s ability to create closer cooperation within the ‘ASEAN Community.’

Beyond the original five members, ASEAN incorporated five more members beginning with Brunei in the 1980s and ending with the induction of Vietnam, Lao PDR, Myanmar, and Cambodia. Its growth in itself has affected ASEAN’s prospects for stability, not least for its cohesiveness as a regional body. Growth of regionalism, or regional cohesiveness and identity “connotes a political movement based on awareness of and loyalty to a region, combined with dedication to a region wide agenda of some kind. It provides a way of filtering knowledge and

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<sup>40</sup> The ASEAN Secretariat, "Treaty of Amity and Cooperation in Southeast Asia Indonesia, 24 February 1976," Association of Southeast Asian Nations, accessed February 24, 2013, <http://www.asean.org/news/item/treaty-of-amity-and-cooperation-in-southeast-asia-indonesia-24-february-1976-3>, preamble.

<sup>41</sup> Article 11 of the TAC states that “The High Contracting Parties shall endeavour to strengthen their respective national resilience in their political, economic, socio-cultural as well as security fields in conformity with their respective ideals and aspirations, free from external interference as well as internal subversive activities in order to preserve their respective national identities.” The ASEAN Secretariat, "Treaty of Amity and Cooperation in Southeast Asia Indonesia, 24 February 1976," Association of Southeast Asian Nations, accessed February 24, 2013, <http://www.asean.org/news/item/treaty-of-amity-and-cooperation-in-southeast-asia-indonesia-24-february-1976-3>.

grouping perspectives on the rest of the world.”<sup>42</sup> If processes of regionalism are to continue to drive the ASEAN Community forward, member states perceptions of ASEAN identity and inclusiveness is a factor which will have a strong bearing on their buy-in to the organization. This sort of identity buy-in can be seen most in the EU, where many citizens see themselves as Europeans, or members of the European culture. There has not as yet been such awareness in Southeast Asia.

While adherence to an “ASEAN Community” and loyalty of member states to the region might still be a passive by-product of being members of ASEAN, international legitimacy while maintaining adherence to the principle of non-intervention was what persuaded many of its newer members to join. As explained by author Shane Narine, “Part of ASEAN’s appeal to its new members...was the promise that the organization could improve their international standing while guaranteeing that, as a matter of principle, it would not interfere in their internal affairs.”<sup>43</sup> ASEAN was able to expand its membership not through identity cohesion but with strict adherence to non-intervention, thus reinforcing the ASEAN Way of interaction among member states.

In his article “Recognizing regions: ASEAN’s struggle for recognition,” author Bernard Ong argues that recognition and legitimacy are concepts which can be used to influence the strength of a regional governing body. He uses the explanation of how a state will seek recognition by other states through such actions as applying for membership with the United Nations, and that “membership in international organizations is thus becoming an increasingly

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<sup>42</sup> Ellen L. Frost, *Asia's New Regionalism* (Boulder, CO: Lynne Rienner Publishers, 2008), pg. 15

<sup>43</sup> Shaun Narine, "State Sovereignty, Political Legitimacy and Regional Institutionalism in the Asia-Pacific," *The Pacific Review* 17, no. 3 (2004): pg. 438.

crucial element of ‘diplomatic recognition and socialization.’”<sup>44</sup> This supports the argument that for ASEAN to survive it must balance appeasing its members while maintaining its effectiveness as a regional governing body in the eyes of the international community. If ASEAN loses the support of either the international community or the support of its member states, it loses legitimacy as a regional governing body on both fronts.

Hiro Katsumata describes this tension and how some Southeast Asian states are, on one hand, concerned with domestic legitimacy, and on the other hand aspires to pursue “liberal agendas...to be identified as ‘Western’ countries – advanced countries with legitimate international status.”<sup>45</sup> The tension lies in how they manifest this liberal agenda, which is generally “associated with a people-centred concept of sovereignty [with the reality that] the Westphalian conception of sovereignty and the non-interference principle have [both] been fundamental components of ASEAN diplomacy.”<sup>46</sup> In its creation of the ASEAN Community, will it be able to bridge non-interference and Westphalia sovereignty with concepts of responsibly sovereignty and human security?

A major challenge for ASEAN to overcome is to negotiate with its member states for them to give up an element of their autonomy. Using the desire of member states to gain international legitimacy may be a way to persuade them to accept norms of responsible sovereignty. Early cases of regional action through ASEAN demonstrated that member states were “willing to compromise autonomy in some areas – such as the economy – if they could gain

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<sup>44</sup> Bernard Ong, "Recognizing Regions: ASEAN's Struggle for Recognition," *The Pacific Review* 25, no. 4 (September 2012): pg. 518, quoting (Jonsson and Hall 2005: 133)

<sup>45</sup> Hiro Katsumata, "ASEAN and Human Rights: Resisting Western Pressure or Emulating the West?," *The Pacific Review* 22, no. 5 (December 2009): pg. 619.

<sup>46</sup> Hiro Katsumata, "ASEAN and Human Rights: Resisting Western Pressure or Emulating the West?," *The Pacific Review* 22, no. 5 (December 2009): pg. 622.

overall political legitimacy.”<sup>47</sup> An example of this was when Malaysia brought its conflict with Japan over rubber production to the regional level ASEAN in that even

non-rubber producing countries [were] convinced that Malaysia’s experience could be typical for the entire group in other areas and therefore rallied together...Japanese concessions to ASEAN were viewed by the five Southeast Asian countries as a major victory and reinforced their commitments to ASEAN.<sup>48</sup>

Whether this autonomy could move to other spheres is still up for debate, but recent calls by the international community for continued human rights work and further liberalization in Myanmar may show a renewed interest in the adoption of responsible sovereignty.

The need for continued development may play a role as a catalyst for responsible sovereignty, but it could also be a roadblock. Despite the beneficial aspects of carrying issues to the regional level and gaining legitimacy there, in his article on “State sovereignty, political legitimacy and regional institutionalism in the Asia-Pacific,” Shaun Narine argues that Asian states are not yet willing to permit a pooling of sovereignty as they are still developing and are “involved in the process of state-building...so long as states remain engaged in this process, they are unwilling – and perhaps unable – to create strong regional institutional structures.”<sup>49</sup> Narine explains that many ASEAN member states are relatively young states preoccupied with their stability and domestic legitimacy, and that “this concern is the most important factor in determining how far regional states are prepared to go in creating and encouraging effective regional institutions.”<sup>50</sup> This apprehension can best be expressed in an analysis of how extreme

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<sup>47</sup> Shaun Narine, "State Sovereignty, Political Legitimacy and Regional Institutionalism in the Asia-Pacific," *The Pacific Review* 17, no. 3 (2004): pg. 431.

<sup>48</sup> Bernard Ong, "Recognizing Regions: ASEAN's Struggle for Recognition," *The Pacific Review* 25, no. 4 (September 2012): pg. 528.

<sup>49</sup> Shaun Narine, "State Sovereignty, Political Legitimacy and Regional Institutionalism in the Asia-Pacific," *The Pacific Review* 17, no. 3 (2004): pg. 424.

<sup>50</sup> Shaun Narine, "State Sovereignty, Political Legitimacy and Regional Institutionalism in the Asia-Pacific," *The Pacific Review* 17, no. 3 (2004): pg. 426.

the development divide is between some ASEAN states, and how this does project pressure onto ASEAN for how its member states would like it to respond to regional concerns.

### **Differing Levels of Development: the ‘ASEAN Divide’**

Regional stability remains more of a development concern for some ASEAN member states as the region continues to be faced by differing levels of economic development. However, membership in a regional organization still offers less developed ASEAN states more economic and development opportunities they would not be able to capitalize on their own. The phrase ‘ASEAN Divide’ was one that originally related to economic disparity with ASEAN, but as argued by Susumu Yamakage “could equally... be applied to their political regimes and values.”<sup>51</sup> Economic development is also tied to ASEAN’s growing desire for legitimacy, for as

an aspiring region, recognition leads to material benefits and elevates status. In addition to the attainment of legal rights, recognition allows a region greater access to funding and commercial opportunities. It may also serve as a means to rectify a distorted image of the region portrayed by the international community, and reduce instances of unfair treatment by powerful states. Further, cumulative recognition increases the stability of the region.<sup>52</sup>

The table on the following page displays indicators for the political and economic development of ASEAN member states. Although there are many other measures of a state’s capacity, these indicators demonstrate a few of the key components of economic and governance stability.

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<sup>51</sup> Susumu Yamakage, "The Construction of an East Asian Order and the Limitations of the ASEAN Model," *Asia-Pacific Review* 12, no. 2 (2005): pg. 6.

<sup>52</sup> Bernard Ong, "Recognizing Regions: ASEAN's Struggle for Recognition," *The Pacific Review* 25, no. 4 (September 2012): pg. 520

**Table 1: Ranking State Capacity of ASEAN Member States**

ASEAN Member States	Corruption Perceptions Index 2012 <sup>53</sup>	GDP per capita (current US \$) 2012 <sup>54</sup>	Freedom in the World 2013 Status <sup>55</sup>	Failed States Index 2013 <sup>56</sup>
Brunei Darussalam	55	\$41,127	Not Free	Stable 63.2
Cambodia	22	\$946	Not Free	Warning 88.0
Indonesia	32	\$3,557	Free	Warning 78.2
Lao PDR	21	\$1,399	Not Free	Warning 83.7
Malaysia	49	\$10,381	Partly Free	Stable 66.1
Myanmar	15	---	Not Free	Warning 94.6
Philippines	34	\$2,588	Party Free	Warning 82.8
Singapore	87	\$51,709	Partly Free	Stable 34.0
Thailand	37	\$5,474	Partly Free	Warning 75.1
Vietnam	31	\$1,596	Not Free	Warning 73.1

<sup>53</sup> Transparency International, "Corruption Perceptions Index - 2012," Corruption Perceptions Index - 2012, 2012, Results, accessed March 21, 2013, <http://cpi.transparency.org/cpi2012/>: "The Corruption Perceptions Index ranks countries and territories based on how corrupt their public sector is perceived to be. A country or territory's score indicates the perceived level of public sector corruption on a scale of 0 - 100, where 0 means that a country is perceived as highly corrupt and 100 means it is perceived as very clean."

<sup>54</sup> The World Bank Group, "GDP per Capita (current US\$)," The World Bank: Open Data, 2013, accessed July 21, 2013: "GDP per capita is gross domestic product divided by midyear population. GDP is the sum of gross value added by all resident producers in the economy plus any product taxes and minus any subsidies not included in the value of the products. It is calculated without making deductions for depreciation of fabricated assets or for depletion and degradation of natural resources. Data are in current U.S. dollars." World Bank national accounts data, and OECD National Accounts data files: Catalog Sources World Development Indicators. [http://data.worldbank.org/indicator/NY.GDP.PCAP.CD?order=wbapi\\_data\\_value\\_2012+wbapi\\_data\\_value+wbapi\\_data\\_value-last&sort=asc](http://data.worldbank.org/indicator/NY.GDP.PCAP.CD?order=wbapi_data_value_2012+wbapi_data_value+wbapi_data_value-last&sort=asc).

<sup>55</sup> Freedom House, Freedom in the World 2013: Democratic Breakthroughs In The Balance (Freedom House, 2013), pg. 13-17, accessed July 19, 2013, [http://www.freedomhouse.org/sites/default/files/FIW%202013%20Booklet%20-%20for%20Web\\_1.pdf](http://www.freedomhouse.org/sites/default/files/FIW%202013%20Booklet%20-%20for%20Web_1.pdf).

<sup>56</sup> The Fund for Peace, "The Failed States Index 2013," The Fund for Peace, accessed July 21, 2013, <http://ffp.statesindex.org/rankings-2013-sortable>: Rankings: "The rank order of the states is based on the total scores of the 12 indicators. For each indicator, the ratings are placed on a scale of 0 to 10, with 0 being the lowest intensity (most stable) and 10 being the highest intensity (least stable). The total score is the sum of the 12 indicators and is on a scale of 0-120."

Myanmar's ranking on the Failed States Index, coming in at 96.2, means that the country is facing a high risk of state failure. What is also telling about the above rankings is that four other states have rankings over 80, which means they are also at a very high risk for state fragility. These ratings show that the governance and institutional capacity with these countries are still extremely weak and underdeveloped, especially when they are compared to Singapore. However, Singapore is the outlier in the region, as it is the only country deemed to be stable.

Judging from the figures in the above table, regional disparity of Gross Domestic Product (GDP) alone is striking, with the five original members having the highest GDP, besides the sixth member country to join, Brunei Darussalam. All ten countries also remain a diverse group of political systems, and with such regional disparities in mind, the following section will determine how ASEAN is currently addressing the need for new institutions and practices, or what might still be standing in the way. Moving forward, author Katsumata explains that ASEAN is faced with having to regain legitimacy it has lost "on the ground that it has not been able to deal effectively with a set of new challenges, including the Asian financial crisis, internal conflicts, terrorism, non-traditional security issues such as pandemic diseases and, most importantly, human rights abuses in Myanmar."<sup>57</sup> Much of this lost legitimacy can be argued on the assertion that as long as the 'ASEAN Way' demonstrates the diplomatic norms and values of consensus and dialogue before institutional structure and legal process when it comes to managing peace and security, effectiveness in cooperation around these issues will be hampered by lengthy consultation and calls for the principle of non-intervention to be kept. Power dynamics of the region also mean that the five original members of ASEAN created the organization with their interests in mind, including the TAC. Gross Domestic Product is the most

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<sup>57</sup> Hiro Katsumata, "ASEAN and Human Rights: Resisting Western Pressure or Emulating the West?," *The Pacific Review* 22, no. 5 (December 2009): pg. 626.

striking division between the five original members and the five countries which later joined, demonstrating the rapid but still unequal economic development and economic systems in the region.

Article VIII of the UN Charter already establishes that responsibility for addressing threats to international peace and security falls first on regional organizations which claim this as a part of their mandate. The question of whether or not ASEAN identifies itself as the organization to manage peace and security in Southeast Asia was answered when the 1992 Singapore Declaration formally signaled ASEAN's desire to have security as a part of its institutional structure. Paragraph three of the declaration was ASEAN's call for the Treaty of Amity and Cooperation in Southeast Asia to "provide a common framework for wider regional cooperation embracing the whole of Southeast Asia."<sup>58</sup> It goes on to state that "ASEAN will also seek the cognizance of the United Nations for the Treaty through such means as an appropriate Resolution."<sup>59</sup> The fact that ASEAN was seeking recognition from the United Nations regarding its jurisdiction over security issues in its geographic region shows that it sought to be seen as the legitimate institution for the management of peace and security.

Even before the entry of the last four members of ASEAN, there was talk of a regional defense community.<sup>60</sup> Traditional security has been addressed by ASEAN since its inception, and as according to Jim Rolfe,

calls for a more formal regional security system are strange. Much of the "traditional" security aim has already been achieved. Consider the Asia-Pacific region 50 or 60 years

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<sup>58</sup> ASEAN Secretariat, "Singapore Declaration Of 1992 Singapore, 28 January 1992," Association of Southeast Asian Nations, accessed February 23, 2013, <http://www.asean.org/asean/asean-summit/item/singapore-declaration-of-1992-singapore-28-january-1992>, Paragraph Three

<sup>59</sup> ASEAN Secretariat, "Singapore Declaration Of 1992 Singapore, 28 January 1992," Association of Southeast Asian Nations, accessed February 23, 2013, <http://www.asean.org/asean/asean-summit/item/singapore-declaration-of-1992-singapore-28-january-1992>, Paragraph Three

<sup>60</sup> See Seng Tan, "'Talking Their Walk'? The Evolution of Defense Regionalism in Southeast Asia," *Asian Security* 8, no. 3 (2012): pg. 236.

ago. Then it was a region in which war was almost legitimate and always possible as a means of resolving inter-state disputes.<sup>61</sup>

His statement also describes how the threats facing Southeast Asia are no longer traditional security threats, and it also shows how norms and structures can change and evolve over time.

The most important institutional development pertaining to ASEAN's realization as an effective manager of regional peace and security came in the signing of the ASEAN Concord II, or the Bali Concord II, which "laid out the vision for the ASEAN Community comprising economic, security, and social-cultural pillars."<sup>62</sup> The ASEAN Political-Security Community (APSC) Blueprint represents the hoped for forward trajectory for ASEAN, while providing a more concrete a roadmap and timetable to establish the APSC by 2015. The preamble to the APSC Blueprint claims that

The APSC shall promote political development in adherence to the principles of democracy, the rule of law and good governance, respect for and promotion and protection of human rights and fundamental freedoms as inscribed in the ASEAN Charter.<sup>63</sup>

In doing so, the development of this pillar will "help accelerate the pace of ASEAN community building and elevate ASEAN's profile in the world."<sup>64</sup> The Blueprint also seeks to elevate a concept of human security to the forefront of this process. As discussed in the previous section, the aspirations of ASEAN to implement a community are outlined within the Charter, which also states that it will seek to "address non-traditional security issues."<sup>65</sup> Furthermore, the blueprint builds off of the ASEAN Charter in its acknowledgement that the ultimate goal of ASEAN

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<sup>61</sup> Jim Rolfe, "Regional Security for the Asia-Pacific: Ends and Means," *Contemporary Southeast Asia: A Journal of International and Strategic Affairs* 30, no. 1 (April 2008): pg. 100

<sup>62</sup> See Seng Tan, "'Talking Their Walk'? The Evolution of Defense Regionalism in Southeast Asia," *Asian Security* 8, no. 3 (2012): pg. 237.

<sup>63</sup> *ASEAN Political-security Community Blueprint*. (Jakarta: ASEAN Secretariat, 2009), pg. 1-2.

<sup>64</sup> *ASEAN Political-security Community Blueprint*. (Jakarta: ASEAN Secretariat, 2009), pg. 9.

<sup>65</sup> *ASEAN Political-security Community Blueprint*. (Jakarta: ASEAN Secretariat, 2009), pg.2.

community building is to create “a Rules-based Community of shared values and norms.”<sup>66</sup> Despite the clear aspirational language used in both the Charter and the APSC Blueprint, the reality of how far ASEAN has to go will be based on how member states perceive security concerns within their borders and ASEAN’s role in addressing them, as well as whether human security will enter into their assessment of the threats they face.

Addressing threat perception, in the article “Providers Not Protectors: Institutionalizing Responsible Sovereignty in Southeast Asia,” author See Seng Tan describes how due to much of the focus being on development and economic integration “ASEAN states, for all intents and purposes, continue to maintain and promote sovereignty as an inalienable and unequivocal *right* rather than as a *responsibility*.”<sup>67</sup> This statement summarizes the main deficit facing ASEAN’s ability to deal with human security issues in Southeast Asia.

Regarding how the idea of sovereignty as a right could shift towards becoming a responsibility, author Herman Kraft argues that the ASEAN Intergovernmental Commission on Human Rights (AICHR) could be used as a platform for ASEAN to implement R2P in Southeast Asia may be valid, but the structural weaknesses found in AICHR shows its weakness as a model. The Terms of Reference of the AICHR demonstrates that “as an inter-governmental body, the AICHR is subject to influence of the ASEAN states through their respective members. It will operate on the basis of fundamental ASEAN principles of consensus and consultation.”<sup>68</sup> It seems that the AICHR will be influenced as much by “The ASEAN Way” as any other ASEAN mechanism before it.

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<sup>66</sup> *ASEAN Political-security Community Blueprint*. (Jakarta: ASEAN Secretariat, 2009), pg.2.

<sup>67</sup> See Seng Tan, "Providers Not Protectors: Institutionalizing Responsible Sovereignty in Southeast Asia," *Asian Security* 7, no. 3 (2011): pg. 202.

<sup>68</sup> Herman Kraft, "RtoP by Increments: The AICHR and Localizing the Responsibility to Protect in Southeast Asia," *The Pacific Review* 25, no. 1 (March 2012): pg. 39.

ASEAN states unanimously endorsed the principle of the ‘Responsibility to Protect’ through their support for the adoption of the Outcome Document of the High-level Plenary Meeting of the General Assembly in September 2005, or the World Summit Outcome Document (WSOD). Enshrined in paragraphs 138-139 of the document is the principle of R2P,<sup>69</sup> in which the international community pledges to take action in the face of an escalation towards or occurrence of war crimes, genocide, ethnic cleansing and crimes against humanity. The main point of contention for many of the ASEAN states was found within the content of Pillar Three of the Report of the Secretary-General entitled “Implementing the responsibility to protect” which calls for a “timely and decisive response (sect. IV)”<sup>70</sup> that works to save lives and finds results instead of being tied up in process and procedure.<sup>71</sup>

There is one aspect of R2P that could be complementary to the ASEAN Way – maintaining its notions of sovereignty, non-interference, and consensus decision-making – which is its focus on preventive action. However, what could pose the biggest challenge in implementing any of the norms of R2P is that “there is still a degree of ambivalence regarding the principle’s relevance to Southeast Asia due to an assumption that conflicts in the region are

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<sup>69</sup> UN General Assembly, *2005 World Summit Outcome: Resolution / Adopted by the General Assembly*, 24 October 2005, A/RES/60/1, Available At: <http://www.unhcr.org/refworld/docid/44168a910.html> [accessed 25 March 2013] Paragraph 138: “Each individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means.” Paragraph 139: “The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.”

<sup>70</sup> UN General Assembly, *Implementing the Responsibility to Protect : Report of the Secretary-General*, 12 January 2009, A/63/677, Available At: <http://www.refworld.org/docid/4989924d2.html> [accessed 22 July 2013], pg. 22-23

<sup>71</sup> UN General Assembly, *Implementing the Responsibility to Protect: Report of the Secretary-General*, 12 January 2009, A/63/677, Available At: <http://www.refworld.org/docid/4989924d2.html> [accessed 22 July 2013], pg. 22-23: Section IV, Article 50 “In a rapidly unfolding emergency situation, the United Nations, regional, subregional and national decision makers must remain focused on saving lives through “timely and decisive” action (para. 139 of the Summit Outcome), not on following arbitrary, sequential or graduated policy ladders that prize procedures over substance and process over results.”

not of the nature or intensity to warrant the R2P's invocation."<sup>72</sup> The Responsibility to Protect has been brought up by the international community before in regards to Cyclone Nargis, where "the government of Myanmar's refusal to accept foreign assistance in May 2008 [resulted in] French Foreign Minister Bernard Kouchner [to] propose that the R2P be invoked to legitimize the forcible delivery of humanitarian assistance without the government's consent."<sup>73</sup>

Statements made by ASEAN member states at the UN General Assembly debate in July 2009 on R2P demonstrated that "ASEAN states have continued to reaffirm their support since 2005, at least in principle, for the R2P norm."<sup>74</sup> During the debate Indonesia, the Philippines, Singapore, Vietnam, Myanmar, and Malaysia all offered statements reiterating their support for the global norm. Both Malaysia and Singapore maintained their support for R2P, but raised concerns for its application. Singapore resisted the calls for R2P to be implemented in the aftermath of Cyclone Nargis in Myanmar, offering the statement that "for R2P to become an international norm...it cannot be tarnished by suspicions of domestic agendas or worse still, political grandstanding...for instance, some have tried to link R2P to humanitarian access in the wake of natural disasters."<sup>75</sup> Malaysia reiterated that the concept of R2P did not weaken the principle of state sovereignty, and also raised the issue of economic provisions as an element of human security stating:

"we believe that the economic well-being of a person is also an important facet of human protection. Donor assistance should be rendered on the basis of the need of the recipient

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<sup>72</sup> Mely Caballero-Anthony, "The Responsibility to Protect in Southeast Asia: Opening up Spaces for Advancing Human Security," *The Pacific Review* 25, no. 1 (March 2012): pg. 114.

<sup>73</sup> Alex Bellamy and Mark Beeson, "The Responsibility to Protect in Southeast Asia: Can ASEAN Reconcile Humanitarianism and Sovereignty?," *Asian Security* 6, no. 3 (2010): pg. 262.

<sup>74</sup> Mely Caballero-Anthony, "The Responsibility to Protect in Southeast Asia: Opening up Spaces for Advancing Human Security," *The Pacific Review* 25, no. 1 (March 2012): pg. 114.

<sup>75</sup> UN General Assembly. "A/63/PV.98. 98th Plenary Meeting." Sixty-third Session, 24 July 2009. [Http://responsibilitytoprotect.org/98thPlenary.pdf](http://responsibilitytoprotect.org/98thPlenary.pdf) [accessed 24 March 2013] pg. 7.

State, rather than by any set of pre-determined criteria which would result in that assistance is being used as a tool for political objectives.”<sup>76</sup>

Other states raised points of likely concern regarding intervention and state sovereignty, and also the potential role of ASEAN in operationalizing the concept of R2P. Indonesia spoke about its support for the state capacity-building measures of R2P, and its support for “innovative steps taken by some regional or subregional organizations in promoting capacity-building.”<sup>77</sup> The Philippines raised their concerns by stating that “the term “collective action” is clearly meant to be applied or used strictly in accordance with the Charter of the United Nations, bearing in mind respect for the sovereignty and territorial integrity of States, non-interference in their internal affairs, and respect for fundamental human rights.”<sup>78</sup> The Philippines, in its official statement, also raised concerns regarding R2P and budgetary balance for “items relating to the three intertwined and indivisible pillars of the United Nations – the promotion of peace and security, development, and human rights. R2P may further skew the balance against development.”<sup>79</sup> Of all the ASEAN Member States which spoke out in favour of R2P (despite their reservations), the most surprising was pre-reform Myanmar which came out with a simple statement that “the norm cannot be used to address all social ills, but rather is narrowly focused on the prevention of the four specific crimes and violations.”<sup>80</sup> Despite the reservations on coercive intervention and concern over political maneuvering and application of the norm of R2P, the fact that no ASEAN state came out against the norm shows that localization of R2P in Southeast Asia is possible.

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<sup>76</sup> UN General Assembly. A/63/PV.101. 101st Plenary Meeting. 28 July 2009, New York. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/428/47/PDF/N0942847.pdf?OpenElement> [accessed 24 March 2013] pg. 5

<sup>77</sup> UN General Assembly. A/63/PV.97. 97th Plenary Meeting, 23 July 2009, New York. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/419/71/PDF/N0941971.pdf?OpenElement> [accessed 24 March 2013] pg. 8

<sup>78</sup> UN General Assembly. A/63/PV.97. 97th Plenary Meeting, 23 July 2009, New York. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/419/71/PDF/N0941971.pdf?OpenElement> [accessed 24 March 2013] pg. 11

<sup>79</sup> UN General Assembly. A/63/PV.97. 97th Plenary Meeting, 23 July 2009, New York. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/419/71/PDF/N0941971.pdf?OpenElement> [accessed 24 March 2013] pg. 12

<sup>80</sup> UN General Assembly. A/63/PV.100. 100th Plenary Meeting. 28 July 2009, New York. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/427/85/PDF/N0942785.pdf?OpenElement> [accessed 24 March 2013] pg. 7

For many developing states, their interests lie in responding to peace and security issues in their own backyard. According to author Benjamin Miller in his article on “Explaining Variations in Regional Peace,” in regards to regional security: “small states respond in the first place to local factors and developments because this is the most important environment that affects their security interests. The regional environment creates the most direct external threats and opportunities for the local states.”<sup>81</sup> For developing states increasingly concerned for the maintenance of peace and security within their borders, regional mechanisms are viewed as more able to respond to their needs. For developing states such as Cambodia and Laos, or for reforming and democratizing Myanmar, the security of their regional environment will have the strongest effect on their ability to develop.

### **The ASEAN Way**

Disparity between members and the norm of non-interference are both compounded by the culture of what has been termed the ‘ASEAN Way.’ The ‘ASEAN Way’ has been characterized as norms which emphasized “a preference for informality and an aversion to the institutionalization of cooperation.”<sup>82</sup> Along with its characteristics of informality, and consensus decision making, the ‘ASEAN Way’ also emphasizes an aversion to intervention and a strong adherence to state sovereignty. Consensus decision making has been a corner stone to conflict resolution among ASEAN states, although it has not always been successful. Author Nicholas Khoo describes how “often consensus has been difficult to establish, and issues have been kicked down the road for resolution at a later date with adverse consequences for the organization.”<sup>83</sup>

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<sup>81</sup> Benjamin Miller, "Explaining Variations in Regional Peace: Three Strategies for Peace-making," *Cooperation and Conflict* 35, no. 2 (2000): pg. 157.

<sup>82</sup> Nicholas Khoo, "Constructing Southeast Asian Security: The Pitfalls of Imagining a Security Community and the Temptations of Orthodoxy," *Cambridge Review of International Affairs* 17, no. 1 (April 2004): pg. 143.

<sup>83</sup> Nicholas Khoo, "Constructing Southeast Asian Security: The Pitfalls of Imagining a Security Community and the Temptations of Orthodoxy," *Cambridge Review of International Affairs* 17, no. 1 (April 2004): pg. 143.

Khoo uses the example of ASEAN's failed policies of 'constructive engagement' with the military Junta in Myanmar and how such a policy decision negatively impacted ASEAN's reputation with the international community.<sup>84</sup>

It is important to note that the ASEAN Way is more than just an informal norm for relations among member states, but that it is found within the foundations of the Bangkok Declaration and the TAC. Many of those who praise ASEAN in its ability to maintain peace and security in Southeast Asia do so by claiming that ASEAN has not experienced inter-state wars since its founding. Although this may be a desired effect of regional governing bodies, as indicated previously, the main sources of conflict facing the 21<sup>st</sup> century are no longer between states but within them. The process of the substate spread of conflict and violence, or 'new wars', has affected how the world responds to conflict and peacekeeping operations.

ASEAN's striving for recognition builds into the argument made in this paper that if ASEAN can prove its ability to effectively address threats to peace and security in Southeast Asia, the international community would look more favourably upon the regional body as an effective partner in global peace and security. As Bernard Ong explains, "recognition entails an ongoing dynamic exchange of real benefits to not just the claimant states, but recognizing states too."<sup>85</sup> It also means that ASEAN will more likely be able to address threats in its own way, being able to convince member states to adhere to their responsibilities with the need for an overburdened UN or international community to respond. This also means the member states will maintain elements of 'the ASEAN Way' and keep external intervention at bay. The stakes have become higher in light of ASEAN implementing its own Charter and human rights

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<sup>84</sup> Nicholas Khoo, "Constructing Southeast Asian Security: The Pitfalls of Imagining a Security Community and the Temptations of Orthodoxy," *Cambridge Review of International Affairs* 17, no. 1 (April 2004): pg. 143

<sup>85</sup> Bernard Ong, "Recognizing Regions: ASEAN's Struggle for Recognition," *The Pacific Review* 25, no. 4 (September 2012): pg. 518

mechanism, in that there is a window in which ASEAN can prove itself to the international community. Its relationship with a reforming Myanmar could prove one of the biggest challenges to its legitimacy since “if ASEAN simply ignores Myanmar’s blatant contravention of the human rights policies in the Charter, it would effectively negate its own human rights mechanism and lose an opportunity to become a peer of the other major regional organizations.”<sup>86</sup> The concept of the ASEAN Charter and regional adherence to its provisions, especially those related to human rights and human security, will act as a litmus test for ASEAN’s political will to address peace and security.

### **The ASEAN Charter, Human Rights and Human Security**

Evolution towards the ASEAN Community means that through the regional body’s desire for increased legitimacy and recognition it must also meet the challenges of its responsibilities, and move beyond the ‘ASEAN Way’ towards codifying them. The ASEAN Charter represents an attempt to do this. The Charter was ratified by all ten member states and came into force on 15 December 2008. With the establishment of the ASEAN Charter, the inter-governmental organization was conferred legal personality for the first time in its history.<sup>87</sup> This meant that for the first time, its member states were legally bound to the rights and responsibilities outlined within the Charter, as Article 5.1 and 5.2 of the Charter outlines:

Member states shall have equal rights and obligations under this Charter. Member States shall take all necessary measures, including the enactment of appropriate domestic legislation, to effectively implement the provisions of this Charter and to comply with all obligations of membership.<sup>88</sup>

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<sup>86</sup> John Arendshorst, "The Dilemma of Non-Interference: Myanmar, Human Rights, and the ASEAN Charter," *Northwestern Journal of International Human Rights* 8, no. 1 (Fall 2009): pg. 119.

<sup>87</sup> ASEAN Secretariat, *The ASEAN Charter* (Jakarta: Association of Southeast Asian Nations, 2008), Article 3

<sup>88</sup> ASEAN Secretariat, *The ASEAN Charter* (Jakarta: Association of Southeast Asian Nations, 2008), Article 5

A key provision within this analysis is the fact that member states have a responsibility to enact domestic legislation to bring their policies in line with those of the Charter. For the first time, ASEAN is requesting its member states to move beyond their traditional stance on non-interference in domestic affairs. Although the principles outlined in the Charter still claim strict adherence to non-intervention, Principle 2(g) states that Member States shall engage in “enhanced consultations on matters seriously affecting the common interest of ASEAN.”<sup>89</sup> The Charter does not define what “enhanced consultations” would consist of, but it does make clear that cooperation around threats to the region are essentially for the stability of ASEAN, and that member states can no longer operate in isolation on issues that have effects on the region.

For much of its development ASEAN has been able to realize its goals without a legally binding document or formal institution(s) for conflict resolution. However, given the new threats facing the region, the need for “cumulative recognition from foreign powers...incentivized the desire among ASEAN members to work towards promoting regional cooperation”<sup>90</sup> is rising. Building upon the regional vision expressed through the charter,<sup>91</sup> the regional body also put forth its Blueprints of Cooperation through establishing the ASEAN Security Community, the ASEAN Economic Community, and the ASEAN Socio-Cultural Community.

Formal mechanisms for dispute resolution have, along with norms, been established even though they may not always be utilized. The above mentioned TAC and ZOPFAN, along with the 1996 Protocol on Dispute Settlement Mechanism and 2004 Protocol for Enhanced Dispute Settlement Mechanism make up this institutional framework. The 2010 Protocol to the ASEAN

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<sup>89</sup> ASEAN Secretariat, *The ASEAN Charter* (Jakarta: Association of Southeast Asian Nations, 2008), pg. 6.

<sup>90</sup> Bernard Ong, "Recognizing Regions: ASEAN's Struggle for Recognition," *The Pacific Review* 25, no. 4 (September 2012): pg. 533

<sup>91</sup> ASEAN Secretariat, *The ASEAN Charter* (Jakarta: Association of Southeast Asian Nations, 2008), Preamble: “Convinced of the need to strengthen existing bonds or regional solidarity to realise an ASEAN Community that is politically cohesive, economically integrated and socially responsible in order to effectively respond to current and future challenges and opportunities.”

Charter on Dispute Settlement Mechanisms adopted in Hanoi, Vietnam on 8 April 2010 is another mechanism which seeks to create within ASEAN rules-based mechanisms for the resolution of conflicts between states.

The ASEAN Charter also called for the establishment of the ASEAN Human Rights Body “relating to the promotion and protection of human rights and fundamental freedoms.”<sup>92</sup> With the advent of the ASEAN Human Rights Commission, the idea of human security is evident within the vision of the Charter and its vision of a “people-oriented ASEAN”<sup>93</sup> and therefore will be a central feature to the ASEAN community moving forward.

## **Section II: ASEAN and threats to Peace and Security in Southeast Asia**

The importance of ASEAN adopting effective measures for managing peace and security is demonstrated in the region’s capacity for instability due to internal and external threats. This section will discuss two different factors ASEAN could address which would influence the stability of states in Southeast Asia: strength of governance institutions and the ability to address outside stresses brought about by non-traditional threats. As mentioned through the World Development Report from 2011, the ability for states to deal with stresses through strong governance institutions will have a direct bearing on the stability of that state.<sup>94</sup> For the purposes of this argument the strength of institutions will be shown through various governance indicators of the ten ASEAN member states and what these indicators reveal about the capacity each state has to respond to stresses and therefore its stability. This section will then outline some of the

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<sup>92</sup> ASEAN Secretariat, *The ASEAN Charter* (Jakarta: Association of Southeast Asian Nations, 2008), pg. 19, Article 14.1.

<sup>93</sup> ASEAN Secretariat, *The ASEAN Charter* (Jakarta: Association of Southeast Asian Nations, 2008), pg. 5, Article 1.13.

<sup>94</sup> *World Development Report 2011: Conflict, Security, and Development*. (Washington D.C.: International Bank for Reconstruction and Development / The World Bank, 2011), pg. 7: “countries and subnational areas with the weakest institutional legitimacy and governance are the most vulnerable to violence and instability and the least able to respond to internal and external stresses”

main external stresses facing the region which are also reflected in the case study of the Rohingya, predominately: statelessness, refugees, migrant workers, as well as human and other illicit trafficking. All of these internal and external factors have an impact on human security and state capacity. The ability of ASEAN to deal with these stresses when the governance capacity of member states cannot will define its political will and effectiveness to do so.

### *Strength of Governance Institutions*

The need to focus on domestic stability could explain why some states choose to focus more on provision and economic development than their responsibility to uphold international norms of human rights. However, given the discussion on the changing scope of conflict and roots of instability, responsible governance will have to go beyond concerns for traditional security and income. The governance capacity of ASEAN member states has a direct impact on the capacity on the performance of ASEAN since “as states remain the main units of observation, the structure of regions, and their very definition is defined in terms of state capacity.”<sup>95</sup> Table 2 reflects governance indicators for the ten ASEAN member states, which serve as a reflection of the governance capacity and the stability of the states themselves.







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<sup>95</sup> Stefan Wolff, "The Regional Dimensions of State Failure," *Review of International Studies* 37 (August 2010): pg. 963

**Table 2: Country Ranks by Governance and Anti-Corruption Indicators Percentile Rank (0-100)<sup>96</sup>**

ASEAN Member States	Voice and Accountability	Political Stability / Absence of Violence	Governance Effectiveness	Regulatory Quality	Rule of Law	Control of Corruption
Brunei Darussalam	29.1	88.2	77.3	84.8	77.9	77.3
Cambodia	24.9	33.0	25.6	35.1	15.5	12.8
Indonesia	46.9	21.2	46.9	41.7	31.0	27.5
Lao PDR	5.6	47.2	17.1	19.4	18.3	13.7
Malaysia	33.8	52.4	81.0	74.4	66.2	57.8
Myanmar	2.3	13.7	2.4	1.4	4.2	0.5
Philippines	48.8	9.0	55.9	43.6	34.7	22.7
Singapore	42.7	90.1	99.1	97.2	93.4	96.2
Thailand	33.3	16.5	59.7	56.4	48.4	44.5
Viet Nam	8.5	52.8	45.0	29.4	38.5	29.9

Source: The World Bank Group, "The Worldwide Governance Indicators (WGI) Project," Governance & Anti-Corruption WGI 1996-2012 Interactive Home, accessed July 21, 2013, <http://info.worldbank.org/governance/wgi/index.asp>.

	90th-100th Percentile
	75th-90th Percentile
	50th-75th Percentile
	25th-50th Percentile
	10th-25th Percentile
	0th-10th Percentile

Analyzing the above table, it is clear that there is a discrepancy between member states in regards to the six dimensions of governance<sup>97</sup> used by the Worldwide Governance Indicators.

<sup>96</sup>The World Bank Group, "The Worldwide Governance Indicators (WGI) Project," Governance & Anti-Corruption WGI 1996-2012 Interactive Home, accessed July 21, 2013, <http://info.worldbank.org/governance/wgi/index.asp>.: The Worldwide Governance Indicators report on six broad dimensions of governance for over 200 countries over the period 1996-2011.

Discussion of the elements of state weakness or strength demonstrated by the six indicators is beyond the scope of this paper.<sup>98</sup> However, the discrepancy between neighbours Thailand and Myanmar demonstrates how one country's ability to respond to threats, with Thailand outpacing Myanmar by over 44 points on the indicators for governance effectiveness, regulatory quality, rule of law, and control of corruption. The one area the two countries come relatively close to is the indicator for Political Stability and Absence of Violence, with a gap of only 2.8 points. Myanmar remains within the 0-10<sup>th</sup> Percentile for five of the six indicators, performing well below even Vietnam and Cambodia.

Due to this inequality, it is clear that in regards to achieving region-wide security, "No-one state should (and probably cannot) dominate the processes; multilateral and consensual processes are likely to be more effective than "strong state dominant" ones. The regional architecture must, therefore, promote a multilateral approach."<sup>99</sup> If a true multilateral approach is not promoted by ASEAN, the regional strong states of Singapore, Thailand, Indonesia, and Brunei Darussalam are unlikely to address the security needs facing their less developed neighbours. To not take a multilateral approach would affect their security as well, since these governance indicators also bring into question ASEAN's ability to implement institutions and mechanisms which some of its member states may lack the institutional strength to carry out, whether due to a lack of financial or governance capacity.

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<sup>97</sup> Daniel Kaufmann, Aart Kraay and Massimo Mastruzzi (2010). "The Worldwide Governance Indicators: A Summary of Methodology, Data and Analytical Issues". World Bank Policy Research Working Paper No. 5430 [Http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1682130](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1682130)

<sup>98</sup> Daniel Kaufmann, Aart Kraay, and Massimo Mastruzzi, "Governance & Anti-Corruption WGI 1996-2012 Interactive Resources," Governance & Anti-Corruption WGI 1996-2012 Interactive Resources, Using the WGI Data: Cross-Country Comparisons, accessed July 22, 2013, <http://info.worldbank.org/governance/wgi/resources.htm>. According to the "The six aggregate indicators are reported in two ways: (1) in their standard normal units, ranging from approximately -2.5 to 2.5, and (2) in percentile rank terms from 0 to 100, with higher values corresponding to better outcomes."

<sup>99</sup> Jim Rolfe, "Regional Security for the Asia-Pacific: Ends and Means," *Contemporary Southeast Asia: A Journal of International and Strategic Affairs* 30, no. 1 (April 2008): pg. 108

*Stresses facing Southeast Asia*

To describe all non-traditional threats facing the region is beyond this paper, however, this section will seek to address major issues facing the stability of the region which have at their core political causes, effects and solutions. This section will set the stage for why the situation of the Rohingya remains a concern to international peace and security. ASEAN's inability to find a solution for the Rohingya will only work to exacerbate the threats briefly discussed below, and the shocks they represent to developing states at different levels of stability.

*Statelessness*

According to Article 1 of the 1954 Convention relating to the Status of Stateless Persons<sup>100</sup> “the term ‘stateless person’ means a person who is not considered as a national by any State under the operation of its laws.”<sup>101</sup> A Discussion Paper produced by a Regional Expert Meeting on the Human Rights of Stateless Persons in Southeast Asia, held in Bangkok, Thailand on 28-29 October 2010 highlighted the fact that statelessness exists in eight of the 10 ASEAN member states.<sup>102</sup> The Report goes on to address how the issue of stateless in ASEAN member

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<sup>100</sup> The Convention was adopted by the United Nations Conference on the Status of Stateless Persons, held at the Headquarters of the United Nations in New York from 13 to 23 September 1954. The Conference was convened pursuant to resolution 526A (XVII)<sup>1</sup> of 26 April 1954 of the Economic and Social Council of the United Nations. For the Final Act, recommendation and resolution adopted by the Conference, see UN General Assembly, Convention Relating to the Status of Stateless Persons, 28 September 1954, United Nations, Treaty Series, Vol. 360, P. 117, Available At: [Http://www.unhcr.org/refworld/docid/3ae6b3840.html](http://www.unhcr.org/refworld/docid/3ae6b3840.html) [accessed 18 February 2013]

<sup>101</sup> UN General Assembly, Convention Relating to the Status of Stateless Persons, 28 September 1954, United Nations, Treaty Series, Vol. 360, P. 117, Available At: [Http://www.unhcr.org/refworld/docid/3ae6b3840.html](http://www.unhcr.org/refworld/docid/3ae6b3840.html) [accessed 18 February 2013]

<sup>102</sup> UN High Commissioner for Refugees, *Regional Expert Roundtable on Good Practices for the Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons in South East Asia*, 2 March 2011, Available At: [Http://www.refworld.org/docid/4d6e09932.html](http://www.refworld.org/docid/4d6e09932.html) [accessed 20 July 2013] Pg.2, quoting (UNHCR, 2009 Statistical Report: Trends in displacement, protection and solutions, 2010)

states is a “problem of substantial magnitude,”<sup>103</sup> highlighting how much of the problem stems from issues surrounding history, nationalism and identity.

One of the concerns around undocumented and stateless persons is the heightened risk of migration movements and human trafficking, two issues which are closely related in Southeast Asia.<sup>104</sup> According to the International Organization for Migration (IOM), Asia and the Pacific is home to “just under 15 per cent of the total global figure”<sup>105</sup> for migrants and that the region “continues to host the largest number of refugees and displaced people in the world.”<sup>106</sup> Such a large number of refugees and displaced persons mean that there is a need for strong institutions to address the needs of these vulnerable populations. According to UNHCR, many states in Southeast Asia do not have solid legal frameworks to deal with refugee flows and statelessness, and therefore “refugees and stateless people in the region are treated as illegal migrants, subject to detention and deportation.”<sup>107</sup>

The data for the risk of human trafficking in Southeast Asia paints a picture of the extent of many regional governments lack of effective effort to address human trafficking. Each year the U.S. State Department releases a Trafficking in Persons Report, in which countries are ranked from Tier 1 to Tier 3, with each ranking “based more on the extent of government action

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<sup>103</sup> UN High Commissioner for Refugees, *Regional Expert Roundtable on Good Practices for the Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons in South East Asia*, 2 March 2011, Available At: [Http://www.refworld.org/docid/4d6e09932.html](http://www.refworld.org/docid/4d6e09932.html) [accessed 20 July 2013] Pg.2, quoting (UNHCR, 2009 Statistical Report: Trends in displacement, protection and solutions, 2010)

<sup>104</sup> UN High Commissioner for Refugees, *Regional Expert Roundtable on Good Practices for the Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons in South East Asia*, 2 March 2011, Available At: [Http://www.refworld.org/docid/4d6e09932.html](http://www.refworld.org/docid/4d6e09932.html) [accessed 20 July 2013] Pg.30, quoting (UNHCR, 2009 Statistical Report: Trends in displacement, protection and solutions, 2010): “statelessness has been shown to heighten the risk of trafficking and that statelessness is one of the factors that underlies the forced displacement of Muslim residents of northern Rakhine State in Myanmar.”

<sup>105</sup> IOM, "International Organization for Migration," Asia and the Pacific - Regional Overview, Regional Overview, accessed July 20, 2013, <http://www.iom.int/cms/en/sites/iom/home/where-we-work/asia-and-the-pacific.html>.

<sup>106</sup> IOM, "International Organization for Migration," Asia and the Pacific - Regional Overview, Regional Overview, accessed July 20, 2013, <http://www.iom.int/cms/en/sites/iom/home/where-we-work/asia-and-the-pacific.html>.

<sup>107</sup> UNHCR, "2013 UNHCR Regional Operations Profile - South-East Asia," UNHCR Where We Work, Working Environment, accessed July 20, 2013, <http://www.unhcr.org/pages/4b17be9b6.html>.

to combat trafficking than on the size of the problem.”<sup>108</sup> The 2013 report ranks all ten member countries of ASEAN as at least Tier 2, with Burma (Myanmar), Malaysia, Cambodia and Thailand as Tier 2 Watch List countries.<sup>109</sup> Each country is placed on a tier which measures government action to combat trafficking rather than the size of the problem. Tier 2 is where “governments do not fully comply with the TVPA’s minimum standards but are making significant efforts to bring themselves into compliance with those standards.”<sup>110</sup> The Tier 2 Watch List is where governments do not meet the minimum standards and where there is little evidence that the government is increasing efforts to combat trafficking.<sup>111</sup> The fact that four ASEAN countries are currently on the Tier 2 Watch List shows that human trafficking in Southeast Asia remains a serious problem; one which is unlikely to be managed on a country level. The link between statelessness and human trafficking is made clear in the report, especially regarding Myanmar and the fact that “since authorities refuse to recognize members of certain ethnic minority groups (including the Rohingyas) as citizens and do not provide them with identification documentation, members of these communities are made more vulnerable to trafficking.”<sup>112</sup> This is an issue that has impact beyond Myanmar, as many ASEAN are countries of diverse ethnicities face with their own issues of statelessness and complex refugee flows.

As ASEAN moves closer to the realization of economic integration, with the ASEAN Charter calling for “a single market and production base...in which there is a free flow of goods, services and investment; facilitated movement of business personal, professionals, talents and

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<sup>108</sup> U.S. Department of State, *Trafficking in Persons Report 2013* (Washington, D.C., 2013), pg. 41, accessed July 10, 2013, <http://www.state.gov/documents/organization/210737.pdf>.

<sup>109</sup> U.S. Department of State, *Trafficking in Persons Report 2013* (Washington, D.C., 2013), pg. 56, accessed July 10, 2013, <http://www.state.gov/documents/organization/210737.pdf>.

<sup>110</sup> U.S. Department of State, *Trafficking in Persons Report 2013* (Washington, D.C., 2013), pg. 44, accessed July 10, 2013, <http://www.state.gov/documents/organization/210737.pdf>.

<sup>111</sup> U.S. Department of State, *Trafficking in Persons Report 2013* (Washington, D.C., 2013), pg. 44-46, accessed July 10, 2013, <http://www.state.gov/documents/organization/210737.pdf>.

<sup>112</sup> U.S. Department of State, *Trafficking in Persons Report 2013* (Washington, D.C., 2013), pg. 111, accessed July 10, 2013, <http://www.state.gov/documents/organization/210737.pdf>.

labour, and freer flow of capital,”<sup>113</sup> as a regional body it must contend with economic migration as a destabilizing factor. This is especially important due to the fact that the region faces such differing levels of economic development. Samuel Cheung argues that for developing economies in an increasingly globalized world, the mix of statelessness and economic discrimination and that “these countries continue to witness spontaneous regional migration to the extent that, in some instances, the number of undocumented foreign workers has been higher than the number of those documented.”<sup>114</sup> Economic migration from more impoverished countries, such as the Cambodia, Lao PDR, Myanmar and Vietnam, to countries which are seen to offer more economic opportunities such as Malaysia and Thailand, is a potential destabilizing factor for a region seeking to facilitate the free movement of labour across borders.

As people cross borders, they bring more with them than just themselves, leading to trafficking of drugs and other illicit material as another serious issue facing the region. According to the United Nations Office on Drugs and Crime (UNODC) 2012 World Drug Report, Southeast Asia has seen an increase in opium production, with Myanmar and Lao PDR accounting for 20 percent of global production.<sup>115</sup> Some of the world’s main trafficking routes stem from the opium production area in Southeast Asia, and China remains its main market, as according to the UNODC report, China currently accounts for seven per cent of global opiate seizures.<sup>116</sup> The report also states that large amounts continue to enter China through northern Myanmar.<sup>117</sup>

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<sup>113</sup> ASEAN Secretariat, *The ASEAN Charter* (Jakarta: Association of Southeast Asian Nations, 2008), pg. 4, Article 1.5.

<sup>114</sup> Samuel Cheung, "Migration Control and the Solutions Impasse in South and Southeast Asia: Implications from the Rohingya Experience" *Journal of Refugee Studies* 25, no. 1 (March 2011): pg. 56.

<sup>115</sup> UNODC, *World Drug Report 2012* (United Nations Publication, Sales No. E.12.XI.1), pg. 27.

<sup>116</sup> UNODC, *World Drug Report 2012* (United Nations Publication, Sales No. E.12.XI.1), pg. 29.

<sup>117</sup> UNODC, *World Drug Report 2012* (United Nations Publication, Sales No. E.12.XI.1), pg. 29.

The combination of weak governance institutions and external threats to these institutions demonstrates the inherent vulnerability of the region to shocks. This vulnerability means that if shocks are not addressed effectively through regional or international intervention, the maintenance of peace and security of the whole region may be at stake. The next section will argue that the Rohingya represent one of these shocks occurring in what is the most vulnerable country in Southeast Asia. If this shock is not effectively addressed by forces outside of Myanmar itself, it may push a fragile and democratizing state into a failed one.

### **The Rohingya as a Threat to Regional Peace and Security**

The history of the Rohingya as a distinct ethnic group is contested, however the current crisis stems from the colonization of Myanmar under the British and the resulting ethnic conflict within that country after independence. The Rohingya have been a stateless people since “the 1974 Emergency Immigration Act, [in which] the Rohingyas became non-citizens.”<sup>118</sup> The 1982 Citizenship Law cemented this status, when the government of Myanmar declared that the ethnic groups deemed citizens of Myanmar included “the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan and ethnic groups as have settled in any of the territories included within the State as their permanent home from a period anterior to 1185 B.E., 1823 A.D. are Burma citizens.”<sup>119</sup> The Rohingya are not included in the list of recognized ethnicities entitled to citizenship in Myanmar, and are seen by many to have come into the country during the time of British colonialism, and therefore are seen as economic migrants from Bangladesh.

The Rohingya represent a threat to regional peace and security in so far that Myanmar is unable or unwilling to find a solution to the sectarian violence and subsequent migration of the

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<sup>118</sup> Robyn Lui, "Such a Long Journey: Protracted Refugee Situations in Asia," *Global Change, Peace & Security* 19, no. 3 (October 2007): pg. 189.

<sup>119</sup> *Burma Citizenship Law*, 15 October 1982, Socialist Republic of the Union of Burma, available at: <http://www.refworld.org/docid/3ae6b4f7.html> [accessed 16 June 2013], Article 3.

Rohingya to neighbouring states. The current stakes for the resolution of the Rohingya issue are high for the internal stability of Myanmar, as a current special report by Reuters highlighted the concern that unrest in western Myanmar “threatens to derail the democratic transition in Myanmar.”<sup>120</sup> Derailing the democratic transition in Myanmar would have consequences for the fragility of the country, and for the region as a whole.

The Rohingya make a compelling case study for determining ASEAN’s effectiveness in maintaining peace and security and its political will to do so as they represent a protracted conflict which contains the elements likely to destabilize Myanmar and possibly even Southeast Asia. Not only is the situation protracted, but the discriminatory treatment of the Rohingya can be seen as systemic. The fact that the Rohingya are denied access to a citizenship violates their fundamental human security. As discussed earlier, human security implies a responsibility to protect from not only ‘freedom from want’ but also ‘freedom from fear.’ According to a report by Human Rights Watch (HRW), the Rohingya are faced with discriminatory policies which target them for their ethnicity and religion, two issues which could indicate that their treatment contains elements of ethnic cleansing. Labelling their treatment as such could lead to operationalizing the R2P, and its implications for external intervention.

The Human Security implications of the restrictions placed on the Rohingya mean that every facet of their lives is controlled by local authorities. One such restriction is their inability to marry without permission, which may take years to obtain<sup>121</sup>. Along with restrictions on

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<sup>120</sup> Andrew R.C. Marshall, "Special Report: Plight of Muslim Minority Threatens Myanmar Spring," Reuters, June 15, 2012, accessed January 07, 2013, <http://www.reuters.com/article/2012/06/15/us-myanmar-rohingya-idUSBRE85E06A20120615>.

<sup>121</sup> Human Rights Watch, "Burma: Revoke 'Two-Child Policy' For Rohingya | Human Rights Watch," Burma: Revoke 'Two-Child Policy' For Rohingya | Human Rights Watch, May 28, 2013, accessed June 18, 2013, <http://www.hrw.org/news/2013/05/28/burma-revoke-two-child-policy-rohingya>.”the discriminatory two-child rule has been enforced alongside regulations that require Rohingya couples seeking to marry to obtain permission from the authorities by paying hefty bribes. Couples often have to wait for extended periods, sometimes as long as two years, before receiving permission.”

marriage, local regulations restricting birth registration and issuing birth certificates violates Article 7 of the Convention on the Rights of the Child.<sup>122</sup> Statelessness is a serious concern for the stability of the region, but represents an issue which outside influence can accomplish very little in respects to a government changing its citizenship laws. As argued by author Robyn Lui, outside interference and pressure can try to influence policy, but it is up to the discretion of national governments on who will be a citizen within the state boundaries. This is telling, especially through Lui's argument that "paradoxically, governments are the agents that cause and solve the problem of statelessness,"<sup>123</sup> that one of the main underlying causes of the instability for the Rohingya could be solved with a change in policy on behalf of the government of Myanmar.

The Rohingya also represent a protracted refugee situation, which have been defined by the UNHCR as situations in which refugees have "been living in exile for five years or longer."<sup>124</sup> Many of these refugees end up in settlements in Southern Bangladesh. The role of Bangladesh is beyond the scope of this paper, but the UNHCR did comment that in Bangladesh:

The majority of the refugees remain entirely dependent on humanitarian assistance. There is a relatively high incidence of physical and mental health problems, exploitation, and of sexual and other forms of violence. The physical and emotional well-being of refugees is significantly affected by the lack of progress toward solutions to their situation.<sup>125</sup>

The two ASEAN states which receive the most Rohingya refugees are Thailand and Malaysia. In Malaysia, some Rohingya refugees have been able to assimilate into the culture and find work,

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<sup>122</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, Vol. 1577, P. 3, Available At: [Http://www.unhcr.org/refworld/docid/3ae6b38f0.html](http://www.unhcr.org/refworld/docid/3ae6b38f0.html) [accessed 26 March 2013]

<sup>123</sup> Robyn Lui, "Such a Long Journey: Protracted Refugee Situations in Asia," *Global Change, Peace & Security* 19, no. 3 (October 2007): pg. 193

<sup>124</sup> UN High Commissioner for Refugees, *Protracted Refugee Situations. High Commissioner's Initiative*, December 2008, Available At: [Http://www.unhcr.org/refworld/docid/496f041d2.html](http://www.unhcr.org/refworld/docid/496f041d2.html) [accessed 17 February 2013]: pg. 2.

<sup>125</sup> UN High Commissioner for Refugees, *Protracted Refugee Situations. High Commissioner's Initiative*, December 2008, Available At: [Http://www.unhcr.org/refworld/docid/496f041d2.html](http://www.unhcr.org/refworld/docid/496f041d2.html) [accessed 17 February 2013]: pg. 9

but unfortunately “an immigration policy shift in 2002 exacerbated their undocumented status and the attempt to regularize their status, reconciling their long-term presence in the country with domestic labour needs and humanitarian considerations, was abandoned.”<sup>126</sup> In Thailand, there have been documented reports by HRW and the British Broadcasting Corporation (BBC) that the country has not only been unwelcoming but has actually been complacent in human rights abuse against the Rohingya. HRW documented a case where the Thai navy would push boats of Rohingya migrants out to sea, and even included accusations that the Thai military were shooting at them.<sup>127</sup> The BBC, after a lengthy investigation, found that after Rohingya fled Myanmar on boats, these “boats were being intercepted by the Thai navy and police, with deals then made to sell the people on to traffickers who transport them south towards Malaysia.”<sup>128</sup> The link between statelessness and human trafficking has already been demonstrated to be strong, with the fact that they are stateless leaving them in many cases without documentation to prove their identity. A lack of registration is especially dangerous for children who are trafficked, particularly in regards to identifying their age.

The fact that the Rohingya are stateless peoples results in the fact that many of their rights will not be addressed within a governance system where states have a responsibility towards their citizens alone. In response to this situation, it was clear that ASEAN has not been willing to take this seriously since “when ASEAN states were confronted with the Rohingya boat people issue in 2009, rather than activating human rights mechanisms within the ASEAN charter, the issue was delegated to the Bali Process on People Smuggling, Trafficking in Persons

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<sup>126</sup> Samuel Cheung, "Migration Control and the Solutions Impasse in South and Southeast Asia: Implications from the Rohingya Experience" *Journal of Refugee Studies* 25, no. 1 (March 2011): pg. 66

<sup>127</sup> "Thailand: Fleeing Rohingya Shot in Sea by Navy | Human Rights Watch," Thailand: Fleeing Rohingya Shot in Sea by Navy | Human Rights Watch, March 13, 2013, accessed March 24, 2013, <http://www.hrw.org/news/2013/03/13/thailand-fleeing-rohingya-shot-sea-navy>.

<sup>128</sup> Jonah Fisher, "Burmese Refugees Sold on by Thai Officials," BBC News, January 21, 2013, accessed February 05, 2013, <http://www.bbc.co.uk/news/world-asia-21115728>.

and Related Transnational Crimes.”<sup>129</sup> Delegating the issue to the Bali Process demonstrates that, instead of operationalizing (and therefore legitimizing) mechanisms within the ASEAN Charter to effectively address the situation of boat people, ASEAN instead passed the responsibility over to a voluntary and non-binding process<sup>130</sup> designed to raise awareness of people smuggling, trafficking in persons and related transnational crime. The Bali Process is designed to support and encourage regional cooperation around issues such as migration and trafficking, not intervening in specific cases of illegal migration.

### *Recent Tensions*

The Rohingya and separatist insurgencies in Southeast Asia represent another rising concern for stability in the region. This is especially true for addressing instances of state failure and fragility, and control over border regions as

“ethno-territorial separatist movements, described as ‘a transborder movement, composed of territorially contiguous but politically bi-sected ethnic communities’ pursuing ‘claims that transcend state borders’ and thereby diffusing ‘communal action across borders’ and potentially causing ‘domestic communal conflicts [to] spill over [into] the (regional) international system.’”<sup>131</sup>

These simmering tensions and external and internal conflicts led to an outbreak of violence in May 2012, when a woman from the Buddhist community in Rakhine state was raped and murdered by Muslim men.<sup>132</sup> According to reports by Human Rights Watch, on 3 June ten Muslims were killed in retaliation by Buddhist villagers for this attack and “local police and

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<sup>129</sup> Samuel Cheung, "Migration Control and the Solutions Impasse in South and Southeast Asia: Implications from the Rohingya Experience" *Journal of Refugee Studies* 25, no. 1 (March 2011): pg. 64-65.

<sup>130</sup> "The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime," Home | Bali Process, Regional Support Office - The Bali Process, accessed July 20, 2013, <http://www.baliprocess.net/>.

<sup>131</sup> Stefan Wolff, "The Regional Dimensions of State Failure," *Review of International Studies* 37 (August 2010): pg. 964. Quoting D. Horowitz, *Ethnic Groups in Conflict* (Berkeley, CA: University of California Press, 1985).

<sup>132</sup> Matthew F. Smith and Tirana Hassan, *The Government Could Have Stopped This: Sectarian Violence and Ensuing Abuses in Burma's Arakan State*. (New York: Human Rights Watch, 2012), pg. 1.

soldiers stood by and watched the killings without intervening.”<sup>133</sup> This attack set off the sectarian violence in the region during which clashes “razed homes and places of worship in northern parts of the state, kill[ing] an estimated 80 and displac[ing] tens of thousands more.”<sup>134</sup> Although tensions lingered between the Muslim and Buddhist communities in Myanmar’s northern Rakhine State, leading at times to violence outbursts between the two populations, more serious themes emerged regarding the stability of the reform process in Myanmar. Analysis by International Crisis Group even points to how reforms within the government of Myanmar may have even led to long simmering tensions between communities coming to the surface after years of repression, stating that “local dynamics demonstrate the violence was not spontaneous and suggest that it has taken place not in defiance of reforms but because of them.”<sup>135</sup> As the ruling party of Myanmar loosens its grip on the absolute power it has previously enjoyed, it must work quickly to create and strengthen democratic institutions that can maintain peace and security. If it cannot or does not, it risks receding back to military rule or disintegrating into a failed state with little control beyond the capital.

According to news reports, during the violence in June 2012 Myanmar President Thein Sein acknowledged the extent of the violence, in which he reportedly stated that “there have been incidents of whole villages and parts of the towns being burnt down in Rakhine state...If necessary we will send more troops to restore stability.”<sup>136</sup> However, even with this acknowledgement by the president, the ability of the reforming government to deal with the underlying tensions while at the same time working on reforming the country is unlikely. A

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<sup>133</sup> Matthew F. Smith and Tirana Hassan, "The Government Could Have Stopped This": Sectarian Violence and Ensuing Abuses in Burma's Arakan State. (New York: Human Rights Watch, 2012), pg. 1.

<sup>134</sup> IRIN, "Briefing: Myanmar's Rohingya Crisis," IRINnews: Humanitarian News and Analysis, November 16, 2012, accessed July 01, 2013, <http://www.irinnews.org/report/96801/briefing-myanmar-s-rohingya-crisis>.

<sup>135</sup> Asia Report N\*238, "Myanmar: Storm Clouds on the Horizon," *International Crisis Group*, November 12, 2012, pg. 2.

<sup>136</sup> Gwen Robinson, "Rakhine Violence Concerns Myanmar Leader," *Financial Times*, October 28, 2012, accessed February 04, 2013, <http://www.ft.com>.

recent article in Reuters addressed this issue by stating that “Myanmar’s president is in a tight spot. Concessions towards the Rohingyas could prove unpopular among the general public, but perceived ill-treatment risks angering Western countries that have eased sanctions in response to human rights reform.”<sup>137</sup> This also raises the question of how much control the President and the new civilian government has beyond the new capital city. In the midst of reforms, Myanmar has found itself “caught between local resentment of Rohingya and international pressure to intervene, the government has been reluctant to accept outside assistance. It earlier rejected the [Organisation of Islamic Conference] OIC’s request to open a Myanmar office to assist Rohingya refugees.”<sup>138</sup> Regarding Pillar Three of R2P, not only was the government of Myanmar not effectively addressing the violence plaguing Rakhine state, but according to analysis of the government response by Human Rights Watch:

“The humanitarian response to the crisis has been severely hampered by restricted access to the affected areas, particularly to northern Arakan State. UN and independent humanitarian agencies and their local staff have been subjected to arrests, threats, and intimidation. At the time of greatest need, their work has been brought almost to a standstill.”<sup>139</sup>

The response flies in the face of the call to operationalize Pillar Three of R2P. If the state was not active in impeding the response to the crisis, than the local reaction described above could be an indication of the lack of control the government has over local authorities. The HRW report also depicts how even after the onset of the crisis access to parts of Rakhine State had “been limited by both the Burmese government and resentful local Arakan populations who claim the agencies have focused primarily on Rohingya populations over the years while neglecting the plight of the

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<sup>137</sup> Michelle Nichols, "U.N. Chief Urges Careful Handling of Myanmar Rohingyas Issue," Reuters, September 29, 2012, accessed February 4, 2013, [www.reuters.com](http://www.reuters.com).

<sup>138</sup> Gwen Robinson, "Rakhine Violence Concerns Myanmar Leader," Financial Times, October 28, 2012, accessed February 04, 2013, <http://www.ft.com>.

<sup>139</sup> Matthew F. Smith and Tirana Hassan, *"The Government Could Have Stopped This": Sectarian Violence and Ensuing Abuses in Burma's Arakan State*. (New York: Human Rights Watch, 2012), pg. 3

Arakan.”<sup>140</sup> Even San Sun Ku Kyi’s response is one that may not be able to override political sensitivities surround the issue of the Rohingya. She represents a unique personality within Myanmar politics by the fact that she has emerged as one of the few internationally recognized political figures who can unite various international, regional and domestic actors for peace. However, her role as an agent of peace and security<sup>141</sup> is limited by her role as a political actor, and therefore she may not be the most appropriate actor to come out as an activist for the Rohingya.

The religious aspects of the conflict remains a strong influence on whether violence will spread to other communities in Myanmar, as the narrative of clashes could move beyond the Rohingya and Buddhist communities in Rakhine State to encompass Muslim and Buddhist communities in Myanmar and beyond. Following the June 2012 violence, there was another series of clashes in October 2012, and according to International Crisis Group “in this second wave, the attacks appeared to be well-coordinated and directed towards Muslims in general and not just Rohingya, a potentially serious escalation.”<sup>142</sup>

News reports have proliferated in recent months of anti-Muslim unrest which is spreading across Myanmar.<sup>143</sup> Media, including commentary in the Bangkok Post, one of two leading English language media outlets in Thailand, are beginning to call out ASEAN over its

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<sup>140</sup> Matthew F. Smith and Tirana Hassan, *"The Government Could Have Stopped This": Sectarian Violence and Ensuing Abuses in Burma's Arakan State*. (New York: Human Rights Watch, 2012), pg. 4.

<sup>141</sup> Rodrigo Tavares, "Understanding Regional Peace and Security: A Framework for Analysis," *Contemporary Politics* 14, no. 2 (June 2008): pg. 110.

<sup>142</sup> Asia Report N\*238, "Myanmar: Storm Clouds on the Horizon," *International Crisis Group*, November 12, 2012, pg. 1.

<sup>143</sup> "Myanmar Muslims Seek Shelter in Monastery," *Al Jazeera - Central & South Asia*, May 30, 2013, accessed June 15, 2013, <http://www.aljazeera.com/news/asia/2013/05/2013530125247861407.html>. This article highlighted how the instability and violence “is casting fresh doubt over whether Thein Sein’s government can, or will, act to contain the racial and religious intolerance plaguing a deeply fractured nation still struggling to emerge from half a century of military rule.”

inaction.<sup>144</sup> If such conflicts are left unchecked by ASEAN, there could be much bigger regional consequences. There have already been reports in Indonesia that arrests have been made in connected with an alleged terrorist plot to bomb Myanmar's embassy in Jakarta in a possible protest against Myanmar's treatment of the Rohingya.<sup>145</sup> Even if protection of the Rohingya is not enough to elicit a response from ASEAN, perhaps the possibility for wider regional destabilization may spur action beyond empty gestures and an adherence to finding a consensus solution.

### **ASEAN's Approach to the Rohingya: The ASEAN Way versus Human Security?**

Regarding the situation of the Rohingya, it is important to engage the government and the opposition forces within Myanmar, but if conditions on the ground between Buddhist and Muslim communities do not change and remain outside of the influence of government security mechanisms, spill over from this level represents the real threat to the region. Former ASEAN Secretary-General Surin Pitsuwan has admitted as much, stating in October 2012 that the Rohingya

“are now under tremendous pressure, pain and suffering. If the international community, including ASEAN, are not able to relieve that pressure and pain, conceivably, [the 1.5 million of Rohingyas] could become radicalized and the entire region could be destabilized, including the Malacca Straits.”<sup>146</sup>

However, despite his call for intervention, an article in the Myanmar online newspaper the Mizzima featured a statement from Dr. Surin Pitsuwan that demand on Myanmar to reform its

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<sup>144</sup> Saridet Marukatat, "Asean Fails to Step into the Rohingya Mess," Bangkok Post, May 6, 2013, accessed June 1, 2013, <http://www.bangkokpost.com/opinion/opinion/348588/asean-fails-to-step-into-the-rohingya-mess>.

<sup>145</sup> Wulandari, Fitri. "Indonesia Kills Seven Terrorism Suspects in Two-Day Operation." Bloomberg.com. May 09, 2013. Accessed June 16, 2013. <http://www.bloomberg.com/news/2013-05-09/indonesia-kills-seven-terrorism-suspects-in-two-day-operation.html>.

<sup>146</sup> Yohanna Ririhena, "ASEAN Chief: Rohingya Issue Could Destabilize the Region," The Jakarta Post, October 30, 2013, accessed June 16, 2013, <http://www.thejakartapost.com/news/2012/10/30/asean-chief-rohingya-issue-could-destabilize-region.html>. The article describes the Malacca Straits as “the main shipping channel between the Indian and Pacific Oceans, linking major Asian economies such as India, China, Japan and South Korea.”

citizenship laws “would have to come from an institution higher than ASEAN, such as the UN Human Rights Council, and reiterated that ASEAN should only be concerned with humanitarian engagement.”<sup>147</sup> The response from the Secretary-General was clear that although ASEAN was willing to assist Myanmar is offering humanitarian assistance; it was “not the organization’s role to meddle in a member state’s internal legal affairs.”<sup>148</sup> Humanitarian intervention in this case will not solve the problem, which is political and structural in nature. Its basis remains in the laws of Myanmar, and the inability of the government and its institutions to effectively respond. A problem which must be addressed through institutions cannot be solved through humanitarian intervention.

It can be argued that through ASEAN’s inaction, it remains complacent in the political abuses against the Rohingya. Refugee rights in ASEAN member states are far behind international standards, with only two member countries having ratified the 1951 UN Convention relating to the Status of Refugees. The table below displays some of the other major UN Conventions and Covenants and the rate of ratification by ASEAN member states.

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<sup>147</sup> "ASEAN Cannot Support Rohingyas' Citizenship Claims: Surin," Mizzima News, November 18, 2012, accessed June 16, 2013, <http://www.mizzima.com/news/regional/8419-asean-cannot-support-rohingya-citizenship-claims-surin.html>.

<sup>148</sup> Hanna Hindstrom, "ASEAN 'cannot' Press Burma on Rohingya Citizenship," *Democratic Voice of Burma*, November 17, 2012, accessed February 2, 2013, <http://www.dvb.no/news/asean-%E2%80%98cannot%E2%80%99-press-burma-on-rohingya-citizenship/24824>.

**Table 3: UN Conventions Ratified by ASEAN Member States**

ASEAN Member	Convention relating to the Status of Refugees <sup>149</sup>	Convention on the Rights of the Child <sup>150</sup>	Convention on the Prevention and Punishment of the Crime of Genocide <sup>151</sup>	Covenant on Civil and Political Rights <sup>152</sup>	Covenant on Economic, Social and Cultural Rights <sup>153</sup>
Brunei Darussalam	--	Accession	--	--	--
Cambodia	Accession	Accession	Accession	Accession	Accession
Indonesia	--	Ratified	--	Accession	Accession
Lao PDR	--	Accession	Accession	Ratified	Ratified
Malaysia	--	Accession	Accession	--	--
Myanmar	--	Accession	Ratified	--	--
Philippines	Accession	Ratified	Ratified	Ratified	Ratified
Singapore	--	Accession	Accession	--	--
Thailand	--	Accession	--	Accession	Accession
Vietnam	--	Accession	Accession	Accession	Accession

For a region claiming that it is working towards regional enforcement through the ASEAN Charter and the creation of the ASEAN Community, such a discrepancy between accession to UN Conventions means it could be difficult to find universal agreement on the rules and regulations imposed by ASEAN.

State fragility is a growing concern in Myanmar given the infancy of its new reforms. Myanmar's inability to exert control over its border lands, and for the military to bring order to the violent clashes which erupted in Rakhine state between the Buddhist majority and the Muslim minority is a cause for concern of whether or not Myanmar is drifting into a failing state scenario. If Myanmar is a fragile state at best, the threat to already unstable aspects of human

<sup>149</sup> United Nations, "Convention Relating to the Status of Refugees," United Nations Treaty Collection, Status, accessed June 16, 2013, <http://treaties.un.org/Pages/showDetails.aspx?objid=080000028003002e>.

<sup>150</sup> United Nations, "Convention on the Rights of the Child," United Nations Treaty Collection, Status, accessed June 16, 2013, [http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg\\_no=IV-11](http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11).

<sup>151</sup> United Nations "Convention on the Prevention and Punishment of the Crime of Genocide," United Nations Treaty Collection, Status, accessed June 16, 2013, <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY>.

<sup>152</sup> United Nations. "International Covenant on Civil and Political Rights," United Nations Treaty Collection, Status, accessed June 16, 2013, [http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg\\_no=IV-4](http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-4).

<sup>153</sup> United Nations, "International Covenant on Economic, Social and Cultural Rights," United Nations Treaty Collection, Status, accessed June 16, 2013, [http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg\\_no=IV-3](http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-3).

security in the country may be cause for concern for state failure in Myanmar despite democratic reforms. For a state whose development falls drastically behind many of its neighbouring states,

“If some of the issues that fall under the category of ‘freedom from want’ – such as unequal distribution, limited participation, and uneven development – contribute to violent conflict, then attempts to achieve ‘freedom from fear’ will be ineffective until the problematic conditions related to ‘freedom from want’ have been addressed. This consideration is critical to the notion of the ‘responsibility to protect’, whereby threats are addressed in terms of a *state’s failure*.”<sup>154</sup>

Lee Jones argues in his article “ASEAN’s Albatross: ASEAN’s Burma Policy, from Constructive Engagement to Critical Disengagement,” that in regards to its dealings with Myanmar, “ASEAN’s failure to take a stronger line has less to do with any binding “norms” than with the interests of the region’s predominantly illiberal elites and the grouping’s increasing difficulties in achieving meaningful consensus.”<sup>155</sup>

A possible state failure or prolonged state fragility within Myanmar could have a drastic effect on its economic development, and the economic gains that could spill over into its neighbouring states. This alone may be enough to create a reaction with ASEAN and its member states, as it has been argued that “ASEAN’s outlook has increasingly aligned with the West’s, not out of concern for democracy and human rights, but rather because ASEAN’s ruling classes have come to see in Burma’s continued intransigence a threat to their developmentalist projects.”<sup>156</sup> The big question is whether in Myanmar’s instability will be seen as enough of a threat to development that ASEAN will decide to take action. Myanmar itself remains one of the weak links in a region which is still plagued by unequal development and state instability. State legitimacy is directly linked to state failure, and Narine presents Mohammed Ayoob’s argument

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<sup>154</sup> Yukiko Nishikawa, "Human Security in Southeast Asia: Viable Solution or Empty Slogan?," *Security Dialogue* 40, no. 2 (2009): pg. 216. Italics are the authors.

<sup>155</sup> Lee Jones, "ASEAN's Albatross: ASEAN's Burma Policy, from Constructive Engagement to Critical Disengagement," *Asian Security* 4, no. 3 (2008): pg. 271

<sup>156</sup> Lee Jones, "ASEAN's Albatross: ASEAN's Burma Policy, from Constructive Engagement to Critical Disengagement," *Asian Security* 4, no. 3 (2008): pg. 272

that “in contrast to traditional interpretations of international security...the insecurity of the developing world emanates from conflicts that are *internal* to the states.”<sup>157</sup> However, the argument this paper has presented is that conflicts are no longer strictly internal for any state, especially not in Southeast Asia.

In the Report of the Eminent Persons Group (EPG) on Vision 2020, the report outlines the approach envisioned by the EPG to be that of

‘human security and development’ to describe the general thrust adopted by the EPG – we are not concerned with “political security” or “economic security” or “civic security” as distinct problems – rather, we are concerned with all of them, as components of “human security and development.”<sup>158</sup>

The report comprised recommendations put forward by prominent government officials, academics and those from the private sector tasked with “developing a plan for a peaceful and stable Southeast Asia, making recommendations to create vibrant economies in ASEAN, and examining how to build a community of caring societies, as well as an outward looking ASEAN.”<sup>159</sup> These concerns with human security and development expressed by the EPG demonstrate how there may be leaders, or at least opinions, within ASEAN that the norm of human security and development may be able to trump that of non-interference and consensus decision making if it interferes with human security and development.

If ASEAN is truly claiming that with the Charter it is enforcing Member States to enact domestic legislation which reflects the responsibilities outlined in the Charter, than each member

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<sup>157</sup> Shaun Narine, "State Sovereignty, Political Legitimacy and Regional Institutionalism in the Asia-Pacific," *The Pacific Review* 17, no. 3 (2004): pg. 428. (Quoting Ayoob 1995)

<sup>158</sup> ASEAN EMINENT PERSONS GROUP, "Report of the ASEAN Eminent Persons Group (EPG) on Vision 2020: The People's ASEAN," Association of Southeast Asian Nations, Section 3: Approach, accessed June 23, 2013, <http://www.asean.org/news/item/report-of-the-asean-eminant-persons-group-epg-on-vision-2020-the-people-s-asean>.

<sup>159</sup> ASEAN EMINENT PERSONS GROUP, "Report of the ASEAN Eminent Persons Group (EPG) on Vision 2020: The People's ASEAN," Association of Southeast Asian Nations, Section 1: Executive Summary, accessed June 23, 2013, <http://www.asean.org/news/item/report-of-the-asean-eminant-persons-group-epg-on-vision-2020-the-people-s-asean>.

state must demonstrate its adherence to international human rights law. As explained in the previous section, and using the Universal Declaration of Human Rights as an example, Myanmar has denied the Rohingya freedom of movement (Article 13)<sup>160</sup>, citizenship (Article 15)<sup>161</sup>, and making it lengthy and difficult for the Rohingya to obtain marriage licenses (Article 16).<sup>162</sup>

The issue of the Rohingya and international opinion remains one of the biggest challenges faced by Myanmar in light of its recent democratic reforms and desire to integrate not only into the Southeast Asian economy but to open itself up to the world economically and culturally. This challenge can be seen in the recent visits of Myanmar President Thein Sein's recent visits to Europe in July 2013, where human rights groups in both France<sup>163</sup> and the United Kingdom, including British Prime Minister David Cameron,<sup>164</sup> raised their concerns about Myanmar's treatment of the Rohingya. The fact that foreign governments are beginning to put pressure on Myanmar over its treatment of the Rohingya demonstrates the willingness of the international community to test the new government over its ability to effectively maintain peace and security within its borders. It also demonstrates that foreign governments are watching the situation of the Rohingya, and that a lack of action on the part of Myanmar or ASEAN could illicit an international response.

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<sup>160</sup> UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Available At: [Http://www.unhcr.org/refworld/docid/3ae6b3712c.html](http://www.unhcr.org/refworld/docid/3ae6b3712c.html) [accessed 24 March 2013] Article 13 states that "(1) everyone has the right to freedom of movement and residence within the borders of each state."

<sup>161</sup> UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Available At: [Http://www.unhcr.org/refworld/docid/3ae6b3712c.html](http://www.unhcr.org/refworld/docid/3ae6b3712c.html) [accessed 24 March 2013] Article 15 states that "(1) Everyone has the right to a nationality and (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."

<sup>162</sup> UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Available At: [Http://www.unhcr.org/refworld/docid/3ae6b3712c.html](http://www.unhcr.org/refworld/docid/3ae6b3712c.html) [accessed 24 March 2013] Article 16 states that (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution."

<sup>163</sup> RFI, "Hollande Urged to Push Myanmar Reform as Thein Sein Visits Paris," RFI, July 17, 2013, accessed July 19, 2013, <http://www.english.rfi.fr/asia-pacific/20130717-hollande-urged-push-myanmar-reform-thein-sein-visits-paris>.

<sup>164</sup> TODAY. "UK Raises Human Rights with Myanmar President." TODAYonline. July 15, 2013. Accessed July 17, 2013. <http://www.todayonline.com/world/asia/myanmar-leader-visits-britain>.

Although the Rohingya peoples may not fit the legal definition of genocide, which is found in Article II of the 1948 Convention on the Prevention and Punishment of Genocide,<sup>165</sup> it could be argued that violent eruptions against the Rohingya could still be construed as warning signs for something more concerning. Although the government has not come out with statements dehumanizing the Rohingya, they have shown considerable discrimination towards them by relegating them to a status of a non-citizen, and by stating that they are a people who are not valid occupants in Myanmar.<sup>166</sup>

In 2013 these warning signs escalated, and despite international pressures Myanmar instituted a two child policy on the Rohingya,<sup>167</sup> which local officials deemed as an “attempt to stop Buddhist attacks on Muslims.”<sup>168</sup> Myanmar has faced wide spread condemnation for this policy, and for the central government allowing local officials to implement such a policy, including from the UN Special Rapporteur on the human rights situation in Myanmar, Tomás Ojea Quintana, stated in a news release that the policy “provides further ammunition to local authorities, including the border security force Nasaka, to discriminate against and persecute the most vulnerable and marginalized group in Myanmar.”<sup>169</sup> Myanmar has also held fast to its

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<sup>165</sup> UN General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, United Nations, Treaty Series, Vol. 78, P. 277, Available At: [Http://www.refworld.org/docid/3ae6b3ac0.html](http://www.refworld.org/docid/3ae6b3ac0.html) [accessed 20 July 2013]: Article II: “In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.”

<sup>166</sup> Radio Free Asia, "Call to Put Rohingya in Refugee Camps," Call to Put Rohingya in Refugee Camps, July 12, 2012, accessed May 10, 2013, <http://www.rfa.org/english/news/rohingya-07122012185242.html>. “We will take care of our own ethnic nationalities, but Rohingyas who came to Burma illegally are not of our ethnic nationalities and we cannot accept them here... The solution to this problem is that they can be settled in refugee camps managed by UNHCR, and UNHCR provides for them. If there are countries that would accept them, they could be sent there”

<sup>167</sup> Example of international condemnation: Chris Lewa, "Two-child Policy in Myanmar Will Increase Bloodshed," CNN, June 06, 2013, accessed June 07, 2013, <http://www.cnn.com/2013/06/06/opinion/myanmar-two-child-policy-opinion>.

<sup>168</sup> Associated Press, "Burmese Muslims given Two-child Limit," The Guardian, May 25, 2013, accessed July 22, 2013, <http://www.guardian.co.uk/world/2013/may/25/burma-muslims-two-child-limit>.

<sup>169</sup> UN News Center, "Two-child Policy Violates Human Rights of Myanmar's Rohingya Muslims – UN Expert," UN News Center, May 31, 2013, accessed July 22, 2013, <http://www.un.org/apps/news/story.asp?NewsID=45055>.

citizenship laws despite repeated allegations for their repeal from activists, which Human Rights Watch states “effectively denies Burmese citizenship to Rohingya on discriminatory ethnic grounds.”<sup>170</sup> Along with the warning signs of ethnic cleansing, the security of the population of Myanmar and Southeast Asia could be placed in jeopardy if a solution for the Rohingya is not found. Recent reports have documented several attacks that have occurred in Myanmar and the surround region, allegedly in retaliation for the perceived persecution of the Rohingya.<sup>171</sup> These attacks are not only worrying for their occurrence far from Rakhine state, but also for the fact that they could signal increased incidences of terrorism in the region, usually the treatment of the Rohingya as a rallying call for groups looking to recruit.

Given the warning signs for state fragility in Myanmar, it would be in ASEAN’s interest to become a strong partner alongside the reformers within the country. The government of President Thein Sein is timidly re-examining the two-child policy for the Rohingya after widespread international condemnation that was poured onto Myanmar.<sup>172</sup> It is in this pressure that ASEAN could be the most supportive, by enforcing Myanmar’s adherence to its obligations under international law it can help to take some of the pressure off of the central government. Using the ASEAN Charter and the ASEAN Inter-governmental Commission on Human Rights (AICHR) as a justification for strong intervention into the situation of the Rohingya could send a signal for human rights activists and reformers in other member states that if they are committed

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<sup>170</sup> Human Rights Watch, "Burma: End 'Ethnic Cleansing' of Rohingya Muslims," Human Rights Watch (HRW), April 22, 2013, accessed June 23, 2013, <http://www.hrw.org/news/2013/04/22/burma-end-ethnic-cleansing-rohingya-muslims>

<sup>171</sup> "Explosion in Mandalay Wounds 5: Myanmar Police," The Hindu, July 22, 2013, <http://www.thehindu.com/news/international/south-asia/explosion-in-mandalay-wounds-5-myanmar-police/article4940568.ece?ref=sliderNews.>; Hussain, Zalir. "2 Rohingya Leaders Go Shopping for Terror in Indonesia." The Jakarta Post. July 11, 2013. Accessed July 22, 2013 <http://www.thejakartapost.com/news/2013/07/11/2-rohingya-leaders-go-shopping-terror-indonesia.html>; Udayan Namboodiri, "Bodh Gaya Bombings Linked to Burma Violence: Indian Official," Khabar South Asia in New Delhi, July 11, 2013, accessed July 22, 2013, [http://khabarsouthasia.com/en\\_GB/articles/apwi/articles/features/2013/07/11/feature-01](http://khabarsouthasia.com/en_GB/articles/apwi/articles/features/2013/07/11/feature-01).

<sup>172</sup> Chris Lewa, "Two-child Policy in Myanmar Will Increase Bloodshed," CNN, June 06, 2013, accessed June 07, 2013, <http://www.cnn.com/2013/06/06/opinion/myanmar-two-child-policy-opinion>.

to promoting peace and security in their countries, there are regional institutions and structures to which they can turn.

Herman Kraft, in his article on localizing and analyzing the R2P by using the norms established in the region through the AICHR, stated that even through the AICHR “the human rights debate in the region became subject to the limitations by ‘ASEAN norms’. Using the principle of non-interference as a justification, the ASEAN states essentially placed human rights outside the jurisdiction of the association as a collective body.”<sup>173</sup> However, perhaps the region is waking up to the realities it faces. During the June 2012 clashes, “ASEAN Secretary-General Surin Pitsuwan said he proposed setting up tripartite talks between the association, the United Nations, and Myanmar’s reformist government to prevent the violence having a broader regional impact.”<sup>174</sup> To demonstrate the concern ASEAN has for the regional effects of the conflict in Rakhine state, Pitsuwan told reports “Myanmar believes it is their internal matter, but your internal matter could be ours the next day if you are not careful.”<sup>175</sup> Whether this state could translate into action has yet to be seen.

## Conclusion

The evidence speaks clearly to the fact that the Rohingya represent a regional threat to peace and security within Southeast Asia, and the crisis can only have a regional solution due to Myanmar’s inability or unwillingness to address the underlying institutional basis for the crisis. The Rohingya represent a regional threat through the manifestation of non-traditional threats, or those that address security in a larger sense beyond the distinct categories of political, economic

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<sup>173</sup> Herman Kraft, "RtoP by Increments: The AICHR and Localizing the Responsibility to Protect in Southeast Asia," *The Pacific Review* 25, no. 1 (March 2012): pg. 36.

<sup>174</sup> AFP/xq, "Myanmar Declined Talks Offer on Violence: ASEAN," Channelnewsasia.com, October 30, 2012, [www.channelnewsasia.com/stories/afp\\_asiapacific/view/1234343/1/.html](http://www.channelnewsasia.com/stories/afp_asiapacific/view/1234343/1/.html).

<sup>175</sup> AFP/xq, "Myanmar Declined Talks Offer on Violence: ASEAN," Channelnewsasia.com, October 30, 2012, [www.channelnewsasia.com/stories/afp\\_asiapacific/view/1234343/1/.html](http://www.channelnewsasia.com/stories/afp_asiapacific/view/1234343/1/.html).

or civic security. Human security impacts the rights of each individual to live a life free of want and fear, and within this right there is implied a responsibility of the state to ensure that it is working towards the protecting each individual against threats to want and fear.

This means that the ‘ASEAN Way’ will be challenged by the issues of human Security, human rights, statelessness, refugees and state failure. The ability of ASEAN member states to respond to these issues which clearly go beyond the borders of any one state, and therefore must be addressed in effective multilateral action. The norms of consensus decision making and non-interference are demonstrated clearly through ASEAN’s response to the Rohingya crisis to be ineffective. As ASEAN seeks to make suggestions on the sidelines, an immature and rapidly developed country may be losing its grip on its young democracy.

The ability to implement and enforce the ASEAN Charter will serve as a litmus test for ASEAN’s political will to moving beyond the ‘ASEAN Way.’ The case of the Rohingya clearly show how continued deference to the ASEAN Way and non-intervention has left ASEAN unable to address the threats facing the Rohingya and the region as a whole, since Myanmar has clearly stated that issues surrounding violent clashes, and the roots causes of this violence, remain the internal affairs of the state.

Threats presented by population demographics, economic stability, migration, environmental, and many other “problems without passports” have effects which go beyond the borders of any one ASEAN member country. It is essential for ASEAN to implement uniform responses to threats facing the region, especially in regards to displaced populations as it is not just Myanmar that could potentially be at risk to inaction, but within all the member states of ASEAN “displaced populations all share similar limitations to the fulfillment of their human rights, with their vulnerability to many types of non-traditional security challenges also

invariably heightened.”<sup>176</sup> ASEAN’s ability to implement uniform responses to peace and security threats within the region, especially responses which will receive buy-in from all member states, will mean finding a balance between promoting an ASEAN regional identity while still allowing for national identities to form and grow within the region.

The development of national identities within the region, given the relative immaturity of ASEAN member states, may have a lesson to learn from the European Union, in that “the European experience may indicate that states first need to possess, at the least, coherent national identities before they can loosen their hold on sovereignty and create powerful regional institutions.”<sup>177</sup> One of the most promising developments for advancing human rights and human security in Southeast Asia remains the ASEAN Intergovernmental Commission on Human Rights (AICHR). Although this mechanism has also been questioned for its effectiveness, as it has within its Terms of Reference “stated adherence to the principles of sovereignty, non-interference, consultation and consensus, and its focus on the promotion rather than protection of human rights.”<sup>178</sup> However as norms shift and international pressure on ASEAN grows, there could be an opportunity for R2P to have a more prominent role within ASEAN.

ASEAN remains the most likely agent for R2P in Southeast Asia, and although the adoption of R2P may be unlikely due to state member’s resistance to intervention, there is the possibility that the norms of R2P could be implemented over time. With the ASEAN Charter, the ASEAN Political Security Community (APSC), and the ASEAN Intergovernmental Commission on Human Rights (AICHR), Caballero-Anthony states that “it is suggested that a comprehensive

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<sup>176</sup> Mely Caballero-Anthony, "The Responsibility to Protect in Southeast Asia: Opening up Spaces for Advancing Human Security," *The Pacific Review* 25, no. 1 (March 2012): pg. 122.

<sup>177</sup> Shaun Narine, "State Sovereignty, Political Legitimacy and Regional Institutionalism in the Asia-Pacific," *The Pacific Review* 17, no. 3 (2004): pg. 433.

<sup>178</sup> Mely Caballero-Anthony, "The Responsibility to Protect in Southeast Asia: Opening up Spaces for Advancing Human Security," *The Pacific Review* 25, no. 1 (March 2012): pg. 116.

civilian protection agenda could at once take advantage of the shifting normative terrain in the region and provide the necessary entry point for expanding the concept (and operationalisation) of security and ultimately achieving the objectives behind the R2P.<sup>179</sup>

Offering recommendations of what ASEAN can do in the future is beyond the scope of this paper. However, the analysis of the Rohingya case and the inability for ASEAN to rise above consensus decision-making and become a rules based governing body are two situations which will severely limit its ability to manage crises in the future. Situations of natural disaster may be managed in a satisfactory manner, but many of the conflicts affecting the region are those that need a sustained political solution, and require ASEAN to gather the political will of its member-states in order to address them. As ASEAN continues to aspire towards the idea of an ‘ASEAN community’, it must also mature as an organization to provide legitimacy to the international community or risk being replaced.

This works to answer the question of effective intervention, and using the criteria of an actor who is best able to understand the local context and most likely to be found as an acceptable entity within the political population it is intervening in, ASEAN more than a UN force remains the most legitimate actor to intervene within its member states. However, if ASEAN cannot prove itself to be the right organization for the job, something else will take its place and may carry a much heavier hand in the internal affairs of the Southeast Asia states. This could be especially true if China, India or the United States are involved and prioritize their concerns of security above the desires of Southeast Asian states or allow the states to determine their own methods of engagement.

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<sup>179</sup> Mely Caballero-Anthony, "The Responsibility to Protect in Southeast Asia: Opening up Spaces for Advancing Human Security," *The Pacific Review* 25, no. 1 (March 2012): pg. 121.

The lack of political will with ASEAN's member states to move beyond adherence to the 'ASEAN Way' model of consensus decision making and enforce responsible sovereignty and protection of human security is the most significant road block to the intergovernmental bodies' effectiveness to address threats within Southeast Asia. While the Rohingya was used as a case study for non-traditional threats and ASEAN inaction within this paper, it is a situation that could be replicated in several ASEAN member states as they too struggle with weak governance and an adherence to claims of sovereignty and non-intervention. However, Myanmar remains the most precarious at the moment, and as long as the situation of the Rohingya is allowed to go unchecked in that country, the spillover effects of the conflict will continue to threaten the peace and security of Southeast Asia.

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