



# Regional Workshop on the Protection of Civilians 15–16 July 2010

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

CENTRE FOR  
NON-TRADITIONAL  
SECURITY STUDIES



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# REGIONAL WORKSHOP ON THE PROTECTION OF CIVILIANS

REPORT

ORGANISED BY  
THE RSIS CENTRE FOR NON-TRADITIONAL SECURITY (NTS) STUDIES  
AND  
THE INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC)

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*This report summarises the proceedings of the workshop as interpreted by the assigned rapporteurs and editors of the RSIS Centre for NTS Studies. Participants neither reviewed nor approved this report.*

*This workshop adhered to Chatham House Rules. Accordingly, no attribution to speakers and attendees has been made.*

## Executive Summary

Asia has suffered protracted intra-state conflicts and violence, with significant repercussions for civilians. Alongside these civilian protection challenges, there have been considerable regional institutional developments in recent years such as the establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC). It is against this backdrop that the Regional Workshop on the Protection of Civilians organised by the RSIS Centre for Non-Traditional Security (NTS) Studies and the International Committee for the Red Cross (ICRC) was convened on 15–16 July 2010.

Participants from different backgrounds, including the fields of law, academia and civil society, came together with the aim of understanding the existing standards and frameworks, and the relevant policies; and to explore ways to build on existing mechanisms to advance the protection of civilians (POC) in Asia.

Three significant themes emerged from this Regional Workshop. They are: (1) the need for comprehensive and long-term protection; (2) the effectiveness and accessibility of existing mechanisms; and (3) the support strategies for states to exercise their responsibility to protect their citizens. Finally, participants identified potential ways forward to achieve a sustainable framework to ensure the protection of civilians.

### Comprehensive and Long-term Protection

Through the analytical lenses of legal, military, civil society and international organisations, participants concluded that the failure to utilise a rights-based approach allowed for the systematic violation of the freedom of expression and opinion, and that of thought, conscience and religion in Asia. Furthermore, participants noted that military intervention as a method of protection is unnecessarily coercive as it involves the use of force

in situations which can be resolved through conflict management and resolution processes. This approach is problematic as it exposes civilians to significant levels of violence and potential physical harm. In addition, greater attention has to be given to violations of civilian protection during peace time as these translate into long-term and systematic social challenges for states and societies on a broader level.

### Effectiveness and Accessibility of Existing Mechanisms

Focus group discussions on the protection of women, children, as well as internally displaced persons (IDPs), refugees and migrants in Asia identified three main themes. The first is the inconsistency between international treaty obligations and the implementation of suitable domestic laws. The second is poor accessibility to national protection mechanisms such as access to an independent judiciary and a fair, affordable and efficient legal process. The third is the low level of participation and weak representation of vulnerable sections of society in decision-making processes.

### Support Strategies for States and Societies

There was recognition that the responsibility to protect civilians rests primarily with the state. In Asia, there is political will at the national level but states need to strengthen their abilities to address civilian protection concerns and needs. Participants endorsed the role of the state, and recognised that other organisations can complement and support the obligations of states. States need to recognise the various actors involved in ensuring the protection of civilians and engage them in dialogue. Furthermore, states should strengthen cooperation and collaboration with non-state actors and develop a comprehensive POC framework. This cooperation and collaboration will need to be secured at and between the local, national, regional and international levels.

## The Way Forward

The implementation of guiding and operational standards is a priority for POC in Asia. These standards will inform states of their individual and collective responsibility, while serving as a point of reference for coordination among relevant actors and providing an avenue to raise awareness among states and societies. It was also noted that regional mechanisms are well placed to identify and evaluate challenges to POC, encourage cooperation in the region to address those challenges, and provide assistance at the local and national levels to state and non-state actors. Early warning indicators for the region could result from this process of evaluation and cooperation.

Participants identified five important ways to advance the POC agenda: (1) non-governmental organisations and civil society actors should bridge the communication gap between vulnerable persons at the grassroots level and government authorities; (2) the nexus between POC and corporate social responsibility should be explored. It was noted that the business community can

exercise significant influence on government policies; (3) greater collaboration between government agencies and international organisations such as the ICRC and the United Nations High Commissioner for Refugees (UNHCR) should be encouraged. It was noted that in addition to education and training, states ought to draw on the technical resourcefulness of personnel from such bodies; (4) the armed forces should be recognised as a significant resource in humanitarian operations. However, the military's involvement hinges on their aligning with principles intrinsic to humanitarian operations, that of impartiality and neutrality, in their operational frameworks; and (5) there is a need to utilise regional mechanisms such as the AICHR and ACWC. Indeed it was noted that a regional push to link the doctrine of RtoP with POC and human security would be helpful, as such a link could attract broad-based support. This will assist in advancing sustainable protection for civilians over the longer term, through encouraging multi-actor collaboration and capacity building at the national level, and the development of early warning systems at the regional and international levels to fulfil positions of responsibility.



## Opening Remarks

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

Associate Professor Mely Caballero-Anthony expressed, on behalf of the RSIS Centre for NTS Studies, a special welcome and thanks to colleagues from the International Committee of the Red Cross (ICRC), the co-hosts of the Regional Workshop on the Protection of Civilians (POC). She lauded the productive collaboration between the Centre for NTS studies and the ICRC in bringing together participants from various organisations, civil society and the United Nations (UN). Associate Professor Caballero-Anthony further extended a welcome to all participants on behalf of RSIS and the ICRC.

This Regional Workshop is the culmination of a series of workshops between the Centre for NTS Studies and the ICRC, including a workshop on POC held in February 2010 where a preliminary discussion was undertaken. Associate Professor Caballero-Anthony acknowledged the diverse backgrounds of the participants, which included academics and analysts, and extended to practitioners in the field and policymakers from Southeast Asia and beyond. She highlighted the role of practitioners and policymakers, particularly members of the Association of South East Asian Nations (ASEAN)-Institutes of Strategic and International Studies network, in assisting with the evaluation of the POC theme by providing useful insights on the practical realities and the dynamics of policymaking in the region.

Associate Professor Caballero-Anthony noted that Southeast Asia is home to several ongoing internal conflicts. These include the situation in Maguindanao, southern Philippines; the communal violence in parts of Indonesia,

including the rising tensions in Papua; and the flare-ups in Myanmar. As a consequence, an enquiry into the way populations are protected during situations of violence is deemed necessary. In addition, the legal and operational procedures or frameworks which countries have set up at the local, regional and international levels should be examined.

Increasingly in Southeast Asia, disruptions to peace and stability are categorised according to the implications they will have on government responsibility and accountability. For example, in southern Thailand, the situation is categorised as that of internal conflict rather than internal armed conflict due to the different implications the latter will have on the nature and extent of State obligations under international law.

Associate Professor Caballero-Anthony highlighted that any assessment of POC should extend to the way populations are protected not only in times of crises but also in post-disaster situations. Attention should be paid to the mechanisms in place to protect vulnerable groups such as women, children and persons who have left their places of origin.

Associate Professor Caballero-Anthony outlined the three most pressing regional concerns related to POC: human trafficking, sexual exploitation and abuse, and access to domestic redress. Despite ratification by some Southeast Asian countries of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC), it is observed that implementation of these within domestic legislation has been low and substantial reservations are made to the provisions contained within the Conventions. Some progress has been made in creating regional legal mechanisms for the prevention of human trafficking, but implementing mechanisms at the national level remain few.

Southeast Asia is also home to many people who have left their original places of residence such as refugees,

## OPENING REMARKS

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internally displaced persons (IDPs), stateless persons, and others classified as illegal migrants. Drawing attention to governing principles, Associate Professor Caballero-Anthony explained that refugees, unlike IDPs and stateless persons, are protected under international law, particularly by the Refugee Convention 1951. Despite the presence of supposedly better legislative support, refugees are not always well-protected in Southeast Asia, mainly because not all ASEAN member countries are signatories to and have ratified the Refugee Convention 1951, making the application of protection mechanisms a challenging endeavour. There are guiding principles on protecting persons who are internally displaced, but these are not widely implemented. There is also an international convention on the status of 'stateless' persons but it has been ratified by only 62 states and does not fully capture the different kinds of statelessness experienced in Asia. Besides the official categories of IDPs and refugees, there are others such as victims of trafficking, who become labelled as illegal or irregular migrants. Accordingly, Associate Professor Caballero-Anthony raised the question of how these people are protected. How are they forced into migration? Do states actually exercise their responsibility to protect? If yes, what are the nature and the content of the protection?

Associate Professor Caballero-Anthony, in placing the questions within a regional perspective, mentioned the recent creation of two regional bodies related to human rights: the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC). Associate Professor Caballero-Anthony expressed optimism that the Regional Workshop would lead to insights on how these two ASEAN bodies can work together to strengthen protection. She was interested in discussing the potential utilisation of these mechanisms.

Associate Professor Caballero-Anthony explained that in the interests of enhancing engagement and interaction, focus group discussions are a significant part of the Workshop, allowing participants to share their expertise in various areas and thus learn from one another.

*Mr Tobias Epprecht*

*Head*

*International Committee of the Red Cross (ICRC)*

*Regional Delegation in Kuala Lumpur*

*Malaysia*

Mr Tobias Epprecht extended a warm welcome to all participants on behalf of the ICRC and the Centre for NTS Studies. Mr Epprecht described the ICRC's founding in 1863, and its nature as an impartial, neutral and independent organisation providing protection and assistance to numerous persons affected by the sad and constant stream of conflict and other forms of violence. The ICRC visits prisoners of war and others who have lost their freedom, attempts to restore ties between family members separated by conflict, and assists victims in areas affected by war and violence by providing medical assistance and aid. These are a few of the activities carried out by the ICRC under the mandate conferred by the international community. The provision of protection in general, and POC in particular, has been and remains at the heart of the ICRC mission.

The ICRC currently conducts activities in some 80 countries around the world and maintains a permanent presence in more than 60 of them. In the Asia-Pacific region, the organisation has extensive operations in several conflict-affected countries. Mr Epprecht expressed relief that most countries in this part of the world are not directly touched by armed conflict on a large scale. However, low-level violence and other situations of humanitarian concern affect the lives of the region's population in numerous contexts. The ICRC strives to provide assistance and protection to people affected by such situations just as it does with those affected by wars.

Mr Epprecht asserts that the ICRC relies on the experience and expertise it has accumulated over the years to achieve this. However, it respects that the primary responsibility for the well-being of the people lies with states. It has therefore always engaged directly with governments and the armed and security forces of all countries to promote knowledge of international humanitarian law and other relevant legal frameworks, and encourage their

implementation at the national level. At the same time, it has proactively engaged with civil society and other actors related to national decision-making to further its own understanding of new trends and developments, as well as share its readings and expertise on issues and situations of concern. Mr Epprecht highlighted the ICRC's sincere interest in furthering its own understanding of track two organisations in this part of the world and developing its interaction with such organisations with a view towards cooperation.

Mr Epprecht emphasised that track two participants, through their privileged contact with and well-informed recommendations to decision-makers, play a key role in the promotion of peace, security and stability, as well as in shaping future protection and security frameworks at the national and regional levels. The ICRC was therefore eager to hear views and thoughts on today's challenges and opportunities in POC in the Asia-Pacific region. Mr Epprecht was interested in how international and regional mechanisms are contributing to the protection

of the vulnerable. How are political, legal, security and humanitarian actors and agencies interacting to further the POC agenda? Do the protection needs of people who have left their places of origin contradict those of the host community? Mr Epprecht looked forward to the opportunity to discuss these and other questions, and consequently find ways to strengthen and further protection within this region.

Mr Epprecht acknowledged and was grateful to all for attending despite their tight schedules and numerous obligations. He extended particular thanks to the Centre for NTS Studies, and Associate Professor Caballero-Anthony, for agreeing to collaborate with the ICRC to make this POC meeting possible. In addition to arriving at a common understanding, Mr Epprecht hoped that this Regional Workshop will strengthen and contribute to potential cooperation between the respective organisations and the Centre for NTS Studies and the ICRC, both at the national and regional levels.

## Keynote Address: Protection of Civilians within ASEAN

Capitalist-centred development strategies and concentration on military enforcement have characterised internal political conditions and human rights situations in many Association of Southeast Asian Nations (ASEAN) member countries. Respect for human rights principles during times of peace is closely related to the political 'character' of those in 'power' in ASEAN member countries. Independent judiciaries and fair legal processes are needed as safeguards against abuse of the rights of civilians.

### Development and Rights

Most ASEAN member countries fall into the category of developing countries, with significant numbers of people persistently living below the poverty line of US\$1.35 a day. This could be attributable to ASEAN's economic strategy and its failure to incorporate a concurrent rights-based approach into development agendas. Simultaneously, fundamental human rights principles, namely, the freedom of opinion and expression, the freedom of thought, conscience and religion, and minority rights are at risk of serious violations. This is caused by an absence of simultaneous counterchecks on the economic, social and cultural rights of all sections of society. Examples include the forced evictions, due to government-led development projects, of street vendors and urban-poor communities. In addition to this, high malnutrition, starvation and infant mortality rates are indicative of serious threats to civilians.

The strengthening of the right to freedom of opinion and expression could advance the process of democratisation in ASEAN. The free expression of views could serve to encourage governments to make progress in human rights and the elimination of corruption. Many ASEAN member countries still assume that the exercise of freedom of opinion and expression will threaten political stability and people's lives. This view seems to be borne out by the recent events in Thailand, where the exercise of the right to express an opinion on the political crisis resulted in civilian casualties, various forms of violence and arbitrary arrests. However, it should be noted that the exercise of this right does not necessarily lead to violence, as seen in the ongoing situation of Aung San Suu Kyi in Myanmar.

The right to freedom of thought, conscience and religion should be respected in heterogeneous ASEAN. Southeast Asia is host to multi-ideological beliefs and religious groupings. The rights of some minorities are often infringed on the pretext of wider public interest. As a result, many civilians are victimised, especially women and children. It is not uncommon to find authorities accommodating the views of the majority, providing space for their expression, and also facilitating accompanying acts of violence. Beyond the humanitarian concerns such practices create, they also impact on the broader economic and sociocultural rights of affected populations. For example, in Indonesia, the Ahmadiyya, a Muslim sect, was targeted, especially its women and children, as a result of a ministerial decree issued in June 2008 prohibiting its followers from spreading their teachings. Their places of worship and homes were attacked and destroyed by the local majority, including some members of local government, causing much suffering. The followers were forcibly displaced and deprived of their due rights. Similar situations have occurred where one dominant interpretation of religion and belief is emphasised and imposed. This was seen in Malaysia where a ban was issued on the use of the word 'Allah' by Christians. These examples demonstrate the reality of the lack of protections conferred on minority groups. They can be discriminated against based on ethnicity, race, religion, politics or sexual orientation.

These challenges are also manifested in protection concerns related to migrant workers within the ASEAN region. The region contains both sending and receiving countries. Migrant workers face many problems, particularly when they are in the countries of destination as undocumented or irregular workers. They may experience torture, abuse, arbitrary and poor conditions of detention, and forced deportation. Women migrant workers tend to experience relatively more exploitation, as seen in the experiences of Indonesian migrant workers in Malaysia (where these migrants are employed as domestic workers or in low-skilled jobs in the manufacturing, construction and plantation sectors). The root of the problem is poverty and the lack of protection frameworks in the country of origin due to development agendas under-rating the basic needs of its most vulnerable groups.

## Effects of Military Intervention and Enforcement

If longstanding conflict and violence prevail, civilians within ASEAN will continue to face a diverse range of potential and imminent threats. In these circumstances, methods of conflict resolution, especially the use of coercive military approaches, have to be reconsidered. Coercive military approaches involving the deployment of armed forces and military intelligence result not only in physical casualty in the form of murder, torture or arbitrary detention, but also cause the deprivation of economic and sociocultural rights.

In Aceh, Indonesia, there were military operations from 1989 to 1999, followed by a period of martial law between 2002 and 2003. Civilians from both sides of the conflict were the first casualties. They were victims of extortion by insurgent groups, and women and children were often used as instruments of war. For example, they were used as a tool by the Indonesian armed forces to force insurgent groups from the Free Aceh Movement (GAM) to surrender. Rape became a strategy and a tactic to pressurise insurgent groups. In addition, displaced Acehnese civilians in other parts of Indonesia experienced stigmatisation and discrimination. They were subjected to sweeping operations in Medan and Jakarta.

Similarly, in East Timor (now Timor-Leste) in 1999, the Indonesian local government and its armed forces recruited and trained local militia, drawing civilians into combat. The massacre in Mindanao in southern Philippines in 2009 was an example of a political opposition figure deploying civilian groups to defeat his competitor, resulting in the deaths of more than 50 civilians. The use of militia in the way highlighted above can cause social segregation and communal tensions in post-conflict environments. They can underpin hatred and revenge in post-conflict public life. In East Timor, the former members of the militia became refugees in Atambua, a town at the border with Indonesia, and thereafter assumed leadership of the local people. Hence, local people risk subjection to armed civilian groups during peace time as well as during conflict.

## Impunity and the Independence of the Judiciary

Efforts aimed at providing substantive protection to civilians and curbing cycles of impunity require an independent judiciary and a fair, affordable and fast legal process. Some ASEAN countries continue to undergo transitional political and judicial processes due to internal political conflicts and challenges in achieving public accountability of their governments. Many human rights violations take place because of the absence of fear of punishment by law enforcement agencies and judiciaries, or when state agencies conduct serious acts of violations or omissions. In some instances, non-state actors are supported by the state. For example, in Indonesia, violent acts were perpetrated by a group called the Indonesian Islamic Defenders on a large scale in provinces and cities in recent years. This occurred because there was no firm counter-enforcement by law agencies or action by political decision-makers to bring them to justice.

In Indonesia, impunity is demonstrated by the continued absolution enjoyed by personnel from military and police forces responsible for conducting serious violations during internal armed conflicts. For example, generals and commanders in office during the East Timor crises have been acquitted at ad-hoc tribunals whose international credibility is questioned. In Aceh and Papua, human rights violations during periods under martial law cannot be prosecuted because martial law was a state policy and the resolution of conflict was made mid-violence. Hence, in Aceh and Papua, the alleged violators of human rights are acquitted or never prosecuted. Independent and fair legal process will stop impunity and this is a guarantee needed to underpin POC. Such a legal process can extend justice to cases of corruption and populations deprived of economic and social rights. The ongoing impunity in a country reflects the politics of war and power in that country, and whether those in power respect and protect the fundamental rights of their own people.

## The Role of the ASEAN Intergovernmental Commission on Human Rights

The ASEAN Intergovernmental Commission on Human Rights (AICHR) is a concrete result of the implementation of ASEAN's Political-Security Community Blueprint. Although the mandate and functions of the AICHR remain far from ideal, its establishment is a positive step forward in the development of ASEAN's human rights framework for POC. The ASEAN Charter and the terms of reference of the AICHR dictate the overarching role of AICHR's scope of work across the political-security, economic and sociocultural pillars of the ASEAN community. AICHR contains within its terms of reference the key principle, 'to uphold international human rights principles set forth in the Universal Declaration of Human Rights, Vienna Declaration and Programme of Action, and other human rights instruments to which ASEAN members are parties'. Human rights and democratisation are intended as common needs or common goods, as a destination and measure of achievement within ASEAN. Hence, the underlying objective is that human rights concerns should be addressed by ASEAN as a whole.

When considering the role of the AICHR in addressing the human rights issues discussed above, the question of means and processes available to the AICHR arises. The AICHR is in the process of creating mechanisms to build relationships between itself and other human rights related institutions and communal groups in ASEAN. This can inform the AICHR on how to develop monitoring functions, complaint mechanisms and accountable reporting in the near future. The AICHR is also expected to play a role in preventing human rights violations, setting human rights standards, fostering the implementation of applicable universal human rights norms and ensuring these are implemented in all ASEAN member countries. It seeks to encourage the implementation of all ASEAN instruments related to human rights, and the implementation of all international human rights conventions ratified by member countries. AICHR's experience in performing this role is manifested in, for example, the Cebu Declaration on the Protection and Promotion of Migrant Workers which was adopted by ASEAN leaders a few years ago. In relation to standards

setting, the issue of how universal human rights norms can be integrated into people's lives within Southeast Asia needs to be considered. Cultural values from ASEAN member states should enrich the universally accepted human right norms.

The AICHR has agreed to draft the ASEAN declaration on human rights which is expected to be ready by 2011. This exercise is related not only to enunciating legal norms but also to changing the orientation and objectives of the processes of democratisation and respect for human rights in ASEAN. Towards this end, the obligation of state parties, as signatories to international conventions, to abide by the modalities of universal human rights principles should be emphasised. This is reinforced by the recognition of the obligation in the terms of reference of AICHR. This will facilitate the broader application of universal human rights norms to the region and guarantee the protection of civilians.

Standards setting processes for the implementation of independent judiciaries and the protection of migrant workers and minority rights need to be prioritised. The plan of action for the ASEAN security community should entail member countries promoting human rights principles and obligations through the establishment of programmes to encourage and support a robust rule of law, consistent legal infrastructure, a public service that operates effectively and efficiently, and good governance in the public and private sectors, including preventing and combating corruption.

For conflict resolution, there is an avenue for research management and information exchange at the ASEAN Peace Centre of Excellence. This can be extended to post-conflict issues, including the support of humanitarian assistance efforts by providing places for refugees and the implementation of resource development capacities in areas experiencing post-conflict resolution and rehabilitation. This modality can be used widely, but not before monitoring its implementation. Success in developing an ASEAN human rights framework and democracy is dependent on how ASEAN understands universal norms and values of law and humanity.

## Protection of Civilians: Frameworks, Norms and Actors

Massacres and major crises leading to humanitarian devastation have been widespread in Asia. POC is a concept which has been relevant for a long time, and remains so despite the growth of new elements such as 'fragile', 'failed' and 'rogue' states altering conventional notions of conflicts. Although the relevance of the concept is acute in armed conflict and situations of violence, it has increasing relevance in periods of peace and stability. The discourse on POC is increasingly influenced by a multilateral undertone comprising perspectives from the legal, political, security and humanitarian spheres. Therefore, to effectively understand the multi-dimensional needs of people at risk and discover potential points for collaboration between the different spheres, the first session of the Workshop focused on understanding the various interpretations of the term 'protection of civilians'. Undisputed was the fact that protection is a combination of legal obligations and customary duties, and should be treated both as an objective and a set of duties, and that protection includes the need to prevent or put a stop to potential violations.

### Gaps and Challenges Posed by Guiding Principles

The concept of protection in humanitarian crises is the subject of significant misunderstanding. Definitions and frameworks have to be synchronised in content and scope, so that at a minimum, current resources facilitate unconditionally the provision of basic needs and the realisation of legal rights. For comprehensive protection, there is a need for a global response encapsulating solutions which address the political, legal, security and military enforcement aspects of the issue. These solutions should address the physical safety of civilians and the elimination of impunity. They will have to ensure that violators are prosecuted and humanitarian efforts are in place to save lives, alleviate suffering and preserve the dignity of civilians. Although significant concerns on the issue by specialised agencies and authorities have been raised, discussions in the international sphere are limited.

In an environment of multiple intervening actors fulfilling aspects of responsibilities towards POC, reconciling the distinctions between areas of operation and the task of defining protection and professional standards are important. For example, in Darfur, the ample presence of humanitarian and human rights agencies was undermined by compromised standards on assistance rendered. This points to the need for basic professional standards which would be applicable to any organisation. A common professional standard will enhance the respect organisations receive from states and authorities. Although issues of priorities may vary, it was suggested that these standards be developed with POC as an overarching concept.

### *Defining Norms and Actors*

Changes in the operating humanitarian environment in Asia and the evolving roles of different actors and stakeholders affect applicable frameworks and norms. Since the 1990s and the emergence of variations in conflict situations, the quest for precise principles to support policies has led to the meaning and applicability of POC being adapted on an ad-hoc basis. The characteristics of civilians in need of protection have also been affected by the varying pressures on populations as scenarios of armed conflict evolve. For example, increasingly, women and children have been compelled to arm and engage in violence for their safety, inadvertently affecting their status as 'protected persons' under the Geneva Conventions. Also, violent events other than armed conflict have generated more categories of persons in need, such as IDPs, rural-urban refugees, bonded workers or the 'boat people'. These challenge the existing narrow definitions.

There has been a proliferation of actors with varying roles and responsibilities due to the need for POC to extend beyond situations of armed conflict. Increasingly, there is a need to address the safety of populations affected by natural disasters and other humanitarian emergencies. Relevant actors in these new situations include the civil defence and law enforcement sectors, asylum-offering agencies and other agencies handling the non-physical needs of civilians.

Furthermore, due to the concept's multi-sectoral applicability, POC has been the subject of varied interpretations by various actors. According to an independent study jointly commissioned by the UN Department of Peacekeeping Operations and the UN Office for the Coordination of Humanitarian Affairs in 2009, intervention for the protection of civilians falls into three paradigms. The first is a broad rights-based approach based on international humanitarian and human rights norms, which emphasises that all activities ensure full respect for the rights of the individual. This is used by most humanitarian and human rights actors. The second has protection of civilians from physical harm as the primary goal of intervention. Within the third paradigm, protection of civilians is considered an inherent end result of peacekeeping, and a separate mandated task is deemed redundant.

The state holds the primary duty to protect civilians. Purposeful implementation of this duty requires an investigation into the qualitative and quantitative capacity of states. Relevant actors and agents can support a state's obligations in relief programmes.

### **Frameworks**

POC is a subject of significant regional interest and is regularly discussed at the UN Security Council and subject to regular reporting by the Secretary-General. It is addressed by political, humanitarian, legal and security frameworks. The dividing lines between these categories are porous, overlapping and changing. This is especially so of the legal framework, whereas the security framework remains focused on military intervention. The legal framework is informed by the political, humanitarian and human rights discourse. It is difficult to make neat demarcations between disciplines. As a result, organisations find themselves making difficult decisions, such as in the Rwandan conflict where the ICRC had to abstain from providing assistance in areas too politically polarised or where extensive military intervention had taken place. Whilst undertaking an examination of the frameworks, particular attention was given to identifying commonalities in existing standards applicable to operating actors and frameworks. The discussion on the various frameworks is highlighted below.

- **Legal-Political Framework**

Humanitarian regulations and human rights are concerned with inter- and intra-state political relationships. The multi-dimensional nature of conflicts comprises a combination of political and criminal violence that extends to transborder criminality or trafficking. The additional need to govern these aspects has led to humanitarian and human rights principles being converted into legal instruments. Formal legal regulative instruments can be divided into two bodies of rule – international humanitarian law and international human rights law. The former is applicable in instances of armed conflict and the latter in all situations of peace and war. In some instances, the applicability of the regimes can be distinguished. For example, the right to life under Article 3 of the Universal Declaration of Human Rights, which is part of human rights law, does not apply to combatants in armed conflict; such combatants come under the remit of humanitarian law. The issue of domestic violence endured by women is a solely human rights issue, and does not involve humanitarian law. There are instances where the applicability of humanitarian law and human rights law exist along a continuum. For example, in the Philippines, villagers were relocated due to anti-insurgency operations. Following their relocation, there were many child deaths due to the displacement of local health institutions in host areas. Hence, a matter rooted in international humanitarian law ends up exacerbated by incidental economic and sociocultural factors. The observed trend of the province of international humanitarian law being usurped by international human rights law is not unwelcome, particularly if it addresses failures by states to act on, prevent or investigate breaches, but there is a need to be conscious of the impact that a merger between these two branches of law may have on POC.

One disadvantage of applying human rights law is that it only binds the state. Hence, in relation to the recruitment of child soldiers by the New People's Army (NPA, or Bagong Hukbong Bayan) – the armed wing of the Communist Party of the Philippines formed on 29 March 1969 – the responsibility for the phenomenon is inaccurately attributed to the state instead of the NPA. Under international humanitarian law, such an

asymmetrical nature of obligations does not exist; this body of law can be extended to any organised armed group. However, the only way to call the state to account under humanitarian law is through command responsibility, following the principle laid down in *Yamashita v. Styer* (1946).

The humanitarian and collective security legal order was built post World War II with the future prevention of war as its impetus. Over the next 30 years, frameworks were adjusted to respond to the myriad political changes around the world. There has been a shift from possibly accepting justifications to engage in war (*jus ad bellum*) to an outright prohibition subject to UN sanction, as reflected in Article 2 paragraph 4 and Article 39 of the UN Charter (*jus in bello*). The focus is no longer solely on the way hostilities are conducted, but includes how combatants behave in the pursuit of war. These shifts are caused by the multiple international and non-international armed conflicts. Hence, the Geneva Conventions 1949 were revised in 1977, a move triggered by the realisation that problems arose from internal armed conflict as well as international conflict.

Since the early 1990s, there has been a shift away from state responsibility to individual criminal responsibility, facilitated by the creation of new tribunals and commissions. Enforcement regimes governing state responsibility centre around the UN Security Council, which administers the rules on the use of force, and the UN human rights treaties governed by respective treaty bodies such as the Human Rights Committee. Individual criminal responsibility is addressed through tribunals, such as the Nuremberg Tribunal, and after the Cold War, the International Criminal Tribunal for the Former Yugoslavia which relies on the International Criminal Court for jurisdictional guidance. Also, there is the adoption by local courts of 'universal jurisdiction' to try those charged domestically for crimes of mass atrocities. The burden of proof in such tribunals, where trials are based on establishing individual responsibility linked to state actions, is of a high threshold compared to similar cases involving simply individual responsibility.

The Geneva Conventions operate on the presumption that an 'armed conflict' exists. However, ambiguity surrounds the definition of 'combatants'. There are increasing

instances of civilians arming in self-defence or being used by combatants. These persons may not be aware of the consequences of doing so. This contributes to the blurring of the distinction between combatants and non-combatants. The unresolved definition of the term 'terrorist' coupled with the lack of understanding of the characteristics of resistance fighters have led to dubious categorisations of civilians as terrorists. The mode of reaction to these changes has been to apply the old rules for responding to guerrilla warfare to situations involving terrorists and freedom fighters. As such, access to protection from the Geneva Conventions for these sections of society is delimited, and resistance fighters are denied constitutional protections because they are subject to military enforcement regimes based on the broad categorisation of 'terrorists'.

Different rules apply to non-international armed conflicts, which include civil wars or internal strife within the confines of the state. As per the 1977 terms of use of the Geneva Conventions, these situations are distinct from internal tensions and disturbances which are not considered 'armed conflict'. Within the Geneva Conventions, there is Common Article 3, which applies across the Conventions. Article 3 is applicable in instances of armed conflict which are not of an international character, and binds parties to the conflict to provide to persons not undertaking an active part in the hostilities, at the minimum, non-discriminatory humane treatment, protection from being taken hostage and protection under the rule of law, with access to humanitarian agencies such as the ICRC. In such cases, non-derogable rights within human rights law will apply. These categories of rights cannot be avoided even in times of state-declared 'emergency' as they constitute fundamental protections to human safety and dignity. These include: the right against arbitrary deprivation of life, torture, or cruel, inhuman or degrading treatment or punishment, slavery and servitude, forced or compulsory labour, protection of and recognition under the rule of law, and freedom of thought, conscience and religion.

- **Security Framework**

Some of the guidelines that have been produced by the UN include: UN Security Council resolutions 1820 (2008), 1888 (2009) and 1889 (2009) on women, peace

and security; resolution 1882 (2009) on children and armed conflict; resolution 1894 (2009) on protection of civilians in armed conflict; the UN Security Council's Aide Memoire for the Consideration of Issues Pertaining to the Protection of Civilians in Armed Conflict (2004); and the Operational Concept on Protection of Civilians in UN Peacekeeping Operations (by the UN Department of Peacekeeping Operations and Department of Field Support).

In addition to the preceding guidelines, many UN missions with the mandate for POC have developed their own operational guidelines aimed at achieving better protection through policies and mechanisms emphasising coordination. These include the UN Mission in Sudan (UNMIS), the UN-African Union Mission in Darfur (UNAMID) and the UN Organization Stabilization Mission in the Democratic Republic of Congo (MONUC). These are three examples of bottom-up inputs to meet operational challenges in the absence of clear strategic guidance.

Recognising that civilians now constitute the vast majority of victims of conflict, UN field missions should be robust in reflecting their willingness and ability to protect civilians who are under threat of physical violence. They should take pre-emptive action to prevent such threats from occurring. Component heads within UN missions should be aware of their responsibilities and be held accountable for their failure to implement steps to protect civilians. However, there is a lag by international governance authorities, such as the UN, in keeping up with the evolving needs of civilians. Also, international collective security structures have primarily been involved in maintaining peace and security between states. These have failed to evolve with the changing dynamics of conflict situations which, since the 1990s, have increasingly been intra-state in nature. Acknowledgement and resolution of these issues are needed to counteract misplaced assessments of the provision of security to civilians by UN Peacekeeping Missions, because the failure lies in the inadequate and inappropriate response by the international community and the indifference to providing a political backstop to peacekeeping missions. Due to the lag in development of POC principles and guidelines for peace operations at

the UN and multinational levels, peacekeeping missions lack strategic guidance and thus cannot be expected to effectively implement POC on the ground.

If conflicts are to be averted and communities are to live in safety and dignity, it is critical that military and police actors – both international and from host countries – have a clear understanding of their respective roles in protecting civilians. POC is a core business for the police, because they help protect communities, including IDPs and those in refugee camps, and contribute to longer term protection by developing local policing capacity. Therefore, more work is required to determine the operational requirements for police in implementing tasks related to POC. Strategic guidelines and principles are required to coordinate responsibilities and interaction with other key actors. This requires clearer direction and policies from the UN Security Council and Secretariat. This is to be complemented by a commitment from member states to actively develop an understanding of and guidelines on POC. Three emerging themes must be taken into account during these processes: 1) the importance of the political process; 2) the need to protect civilians from physical violence; and 3) the need to establish a longer-term protective environment.

### **Gaps and Challenges Posed by Operational Practices**

The primary responsibility to ensure the protection of a civilian population in a humanitarian crisis lies with the state. As raised above, there are a growing number of relevant intervening actors in situations of conflict and violence. This growth can support and encourage states, especially those requiring such intervention, to reinforce their capacities. There are different, and separate, spheres of operation: political, military, legal and humanitarian. For humanitarian assistance to be effective, each sphere needs to understand and respect, and more importantly, complement, the others' roles and functions.

### ***The Complexities of the Humanitarian Operating Environment***

In situations of conflict and violence, there is a need for adequate space for humanitarian action. Humanitarian

organisations face challenges in accessing the humanitarian situation. Organisations such as the ICRC, guided by their mandate, do not engage in providing protection and assistance unless they have physical proximity to the situation, yet it is the added value of the ICRC being able to engage with non-state actors that generally facilitates such proximity. The ultimate responsibility for protecting civilians lies with the state. Assistance rendered by humanitarian organisations or other agents are not substitutes for the state's role but are complementary or supplementary. There is a prevalent presumption amongst Asian national government authorities, that some political agenda underlies humanitarian aid. The Indonesian government's standards for the entry of humanitarian aid reflect this presumption. A request for foreign assistance has to fulfil the criteria that a need for assistance is endorsed by the state, the assistance required is beyond national capacities, and incoming assistance should be rendered without affiliations to political and/or religious standpoints, or have any form of commercial gain from philanthropic organisations as an underlying motivation. A concerted effort by states and agencies is needed to derive provisions on humanitarian assistance based solely on legal obligations and established normative frameworks. These will safeguard against presumptions of ulterior motives.

Inherent in POC efforts is the interface between actors such as humanitarian agencies and combatant agencies such as the armed forces. An important element for the creation of a favourable environment for POC is the instilling of respect for the rule of law and human dignity. There are many providers of humanitarian aid, and often, in the process of addressing the interests of those in need, the lack of coordination amongst these providers leads to confusion, overlap and even competition, with the rule of law being compromised. Hence, there is a need to develop operating standards to ensure a minimum level of professionalism in the provision of POC, whether in humanitarian or other situations. The wide-ranging responsibility to protect civilians can be best encapsulated within the doctrine of the Responsibility to Protect (RtoP). However, ASEAN states are wary of the implication of the use of 'coercion' under Pillar III of the doctrine, which makes advocating this recourse problematic. In the

greater interest of preventing crimes of mass atrocities, there is a need for dialogue – diplomatic and persuasive engagement among state, non-state and local civilian actors – within ASEAN to clarify and detail the contours of this shared, multi-tiered responsibility. The Council for Security Cooperation in the Asia Pacific (CSCAP) has begun efforts to this end.

During crisis situations, the national military can be an important resource for POC efforts, and thus there is a place for them to play an enhanced role. The military may be used to localise foreign assistance activities or to replace the presence of foreign military intervention where the latter may potentially trigger nationalistic tendencies or is regarded as undermining local governments. The speed and expertise of the military and its extensive technological, organisational and human resources are valuable and can be used to provide a systematic response to humanitarian emergencies and mass atrocities. For example, during the tsunami crisis in 2004, the physical presence of the military in Aceh, Indonesia helped to allay the threat from armed separatists jeopardising disaster relief efforts. Hence, the integration of military resources is as important as extending the responsibilities of POC to the armed forces. For this cooperation to be effective, the armed forces must be committed to impartiality and neutrality whilst assisting in humanitarian emergencies. In addition, during humanitarian crises, the military's interpretation of protection will need to be aligned with that adopted by humanitarian actors.

### ***Creating a Conducive Environment for the Protection of Civilians***

The creation of an environment conducive to POC is necessary to alleviate the immediate effects of specific patterns of abuse. It is important to engage in the dignified restoration of the lives of persons affected through reparation, restitution and rehabilitation. Towards this end, the signing, ratifying and implementing of relevant international treaties and international norms into domestic systems are essential. Thereafter, local awareness of these laws and norms has to be raised. Those responsible for the execution of these laws and norms have to be trained and supervised. Victims need to be assisted and avenues have to be established to inquire

into violations and to sanction those responsible. In addition, there should be provision of remedy, reparation and compensation to victims.

The state and its authorities, as the primary duty bearers of responsibility, bear the obligation to create a conducive environment for organisations to operate in and protect civilians. Secondary roles are undertaken by non-state and international actors with expertise and experience on the situation of conflict or violence. Organisations such as the ICRC and other human rights and humanitarian organisations and civil society can serve as regulatory or assistive mechanisms to primary duty bearers. The participation of individuals amongst affected communities is vital as local individuals are better able to judge the issues and respond accordingly.

The creation of a conducive environment and effective efforts towards cooperation and coordination amongst relevant sectors, government officials and local individuals will increase the quality of information transfers and analyses of situations. Such engagements will shift how international organisations are perceived, lead to greater acceptance of their engagement in POC activities and so improve their impact and effectiveness.

### ***Supporting UN Missions in Protecting Civilians***

Since the intervention in Liberia by the Economic Community of West African States (ECOWAS) in 1990, the frequency of humanitarian intervention with implied or specified mandates for POC has been on a steady increase. Influenced particularly by the mass atrocities in Rwanda in 1994 and the following year in Srebrenica in Bosnia, the Security Council has to date mandated 10 UN peacekeeping missions, starting with the UN Mission in Sierra Leone in 1999, all with the specific task of protecting civilians. Furthermore, the Brahimi Report on peace operations released in 2000 observed that 'UN peacekeepers – troops or police – who witness violence against civilians should be presumed to be authorised to stop it, within their means, in support of basic UN principles. However, operations given a broad and explicit mandate for civilian protection must be given the specific resources needed to carry out that mandate.'

Civilian communities rightly possess the expectation that they will be protected when a peacekeeping mission is authorised, especially if POC is a specifically mandated task. POC has more significance when host governments, which have the primary responsibility to protect civilians, are unable or unwilling to do so. In the case of the latter, peacekeeping missions are not able to optimally protect civilians in the absence of political will by governments involved in the conflict. It is also noted that UN structures have not adequately progressed to address certain aspects of POC. Consequently, due to the twin factors of constraints faced by the UN and the high expectations of civilian communities, peacekeeping and peacebuilding missions are often deemed to have failed to protect civilians against violence. Such reproach affects the credibility of the UN and its member states. The expectations held by conflict-affected civilians need to be managed through public information campaigns, to make communities aware that peacekeepers cannot realistically protect all civilians all the time.

According to an independent study by the UN Department of Peacekeeping Operations and the UN Office for the Coordination of Humanitarian Affairs, the shortcomings of peacekeeping operations included breaks in the protection chain from early warning, to the development of mandates, to implementation of those mandates at the mission levels. The UN Secretariat needs to address gaps in guidance frameworks on POC. There is also a lack of mission-wide strategies on POC. A closer partnership with troop- and police-contributing countries in developing POC mandates is needed. There also has to be knowledge management and mainstreaming among the civilian, military and police contingents engaged in POC operations so that they understand their protection responsibilities in relation to the host state, other relevant actors and host communities.

Specific to the UN, there should be a concerted effort to link the work of the UN Secretariat with its humanitarian agencies that have protection responsibilities, such as the UNHCR, United Nations Children's Fund (UNICEF) and the Office of the High Commissioner for Human Rights (OHCHR). In the interests of POC, the nexus between peacekeeping and peacebuilding should be

conflated. These have to be backed with doctrine and training developed based on the POC concept as well as qualitative resources. Such training should pay particular attention to distinguishing between notions adopted by the military of ‘restoring and maintaining security’ and those relevant to humanitarian aspects of POC. Similarly, it is important for UN missions to assimilate locals into their operations so that host governments and communities have a sense of ownership of the process.

## Discussion

The discussion centred on the following topics:

- Mainstreaming vulnerable sections of society, particularly women and children.
- Expanding the understanding and scope of actors.
- The role of the law in providing a predictable environment for those needing protection.

Issues were raised in relation to specific vulnerable sections of society, such as women and children. It was observed that gendered perspectives on conflict experiences were not reflected in the norms and regulations related to POC. For example, in some societies in Afghanistan, women’s access to protection is mediated by men. Hence, it is essential for local actors to be educated on POC, to ensure accountability in the event of inhibition of access to such protection. The UN Security Council resolution 1325 (2000) on women, peace and security was critiqued for not being applicable to situations spiralling into conflict, whilst addressing situations progressing to peace and stability.

In relation to children, it was highlighted that the development, application and implementation of protection norms are important in times of peace to

allow assessments of existing systems and how they are functioning. It was observed that the implementation of international humanitarian and human rights law in conflict situations is difficult, and adherence cannot be expected if the rule of law has not been tested in pre-conflict situations. For example, monitoring sexual abuse (as an act of war) is a requirement in times of war, as per UN child protection obligations. This is undermined by the lack of monitoring practice in peace times; in Asia, almost a quarter of the population of girls and boys are abused in times of peace and this has not been adequately addressed.

In light of the discussion to expand the contexts to which the concept of POC is applicable, there is a need to tailor the concept of POC to the needs of local communities and individuals. It is also important that local communities are aware and educated on these aspects. The education of locals is important to ensure that they can protect themselves. The inclusion of the business community in dialogue is considered essential. As contractors in the field, their involvement and influence can have significant impact. The concept of corporate social responsibility can be utilised to further the POC concept, because the business community is acknowledged as having significant leverage on policymakers.

In reaction to the evolving dynamics of the way human life is organised globally and domestically, the law tries to keep up to create a more predictable environment. International law represents the consensus of sovereign states. However, it does not efficiently accommodate imminent dangers to individuals and societies. It has lagged in developing norms and agencies to address dynamic developments, and this underpins challenges which continue to hinder efforts in POC.

## Recent Trends in the Protection of Civilians

The following looks at some of the frameworks that continue to be developed for civilian protection, namely, the whole-of-government approach, human security and RtoP. The main objectives of these frameworks are to address the protection needs of civilians and to further improve their security.

### The Whole-of-Government Approach

The whole-of-government approach is a recent development in addressing the protection needs of civilians. In the Asia-Pacific region, Australia has adopted this approach as a by-product of a search for solutions to Australia's security issues. Australia's success in leading the International Force for East Timor (INTERFET) in 1999 has generated new confidence in its capacity to play a regional political and military leadership role. Beyond East Timor, Australia has utilised the whole-of-government approach in addressing the humanitarian crises in the Solomon Islands, Papua New Guinea, Tonga, and more recently, Iraq and Afghanistan. Australia's efforts on civilian protection are premised on the belief that strong economic and governance foundations will enable regional countries they are assisting to better deliver on their sovereign responsibilities to provide stable and secure environments for their populations. Moreover, Australia has recognised that unless civilians are afforded physical protection in a safe political and social environment, sustainable peace is unlikely.

The conceptual framework for Australia's whole-of-government approach in international disaster and conflict management was laid down in the document, 'Strengthening Australia's Effectiveness for Managing Conflicts and Disasters Overseas: A Conceptual Framework'. The purpose of the document is to guide Australian government departments and agencies in operationalising the whole-of-government approach in international disasters and conflicts. The document is centred on a set of six guiding principles which help strengthen a culture of multi-agency collaboration, coordination, cohesion and complementarity. These principles include: employing a collaborative

and flexible approach, organisational and cultural diversity, strengthening proactive multi-agency engagement, promoting shared understanding to deliver comprehensive outcomes and commitment to continuous improvement.

Australia's whole-of-government approach seeks to provide coherence to its activities across a wide range of spheres including the political, military, police, development and humanitarian spheres. However, concerns were raised over the blurring of lines between security, development and humanitarian agendas under the whole-of-government approach. It was feared that this could create tension and friction in mandates and actors between the political and humanitarian spheres. It was suggested that rather than contributing to greater coherence, complementarity and coordination, approaches that conflate security and development objectives might produce greater complexity, contradiction and competition. From an Australian government perspective, however, the overlap and conflation of political, economic, social, cultural and security policies have come about as a result of a growing recognition of the interdependencies between these dynamics in conflict environments. As an enhanced protection mechanism, the whole-of-government approach holds great potential. Key to Australia's whole-of-government approach is an affirmation of prevention as the best solution and a recognition that the approach is constantly evolving and developing.

### Human Security

The concept of security has for too long been interpreted narrowly as state-centric security of territory from external aggression, as protection of national interests in foreign policy or as global security from threats such as a nuclear holocaust. The Human Development Report 1994 (HDR 1994) introduced a new approach to examining both national and global security concerns, linking the concept of security to individuals rather than to states. Human security is defined as safety from chronic threats such as hunger, disease and repression and/or protection from

sudden and hurtful disruptions in the patterns of daily life, whether in jobs, in homes or in communities. Human security advocates the notion of security to change in two basic ways: from exclusive stress on territorial security to greater stress on people's security, and from extending security through armaments to security through sustainable human development.

The HDR 1994 specifies seven dimensions of human security: personal, environmental, economic, political, community, health and food security. However, the breadth and apparent arbitrariness of the seven dimensions have led some to judge the concept of human security as too all-encompassing for practical purposes. In order for the concept of human security to be practical and feasible, it has been recommended it be made narrower in scope.

Nevertheless, human security has had considerable impact on international law through its initiation of a concerted focus on individual-oriented frameworks of analysis, applying these towards the development of new rules. Numerous human rights treaties have been influenced by human security principles, supported through advocacy efforts by civil society and non-governmental organisations (NGOs). These treaties include the Rome Statute of the International Criminal Court 1998 and the Optional Protocols to the Convention on the Rights of the Child 2000, the Convention against Transnational Organized Crime 2000 and its protocols, and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2000. Human security also influences international humanitarian law which protects persons who are not, or are no longer, participating in the hostilities and restricts the means and methods of warfare. Other legal instruments such as the Ottawa Convention 1997 on anti-personnel mines and the Optional Protocol to the Convention on the Rights of the Child 2000 on the involvement of children in armed conflict have been influenced by human security concepts.

The security of civilians is more effectively ensured through early prevention. Hence, the concepts on human security must be incorporated and applied in

POC in a broad sense, not being limited to situations of armed conflict. Human security concepts can inform the processes or approaches to civilian protection.

### **The Responsibility to Protect (RtoP)**

The concept of RtoP has in recent years emerged as a powerful norm aimed at the protection of human lives. RtoP focuses specifically on protecting populations from four distinct crimes: genocide, war crimes, crimes against humanity, and ethnic cleansing. RtoP comprises three pillars. Pillar I stresses that states have the primary responsibility to protect their populations from the four aforementioned crimes, Pillar II addresses the commitment of the international community to provide assistance to states in building capacity to protect their populations from the four crimes, and to assist those which are under stress before crises and conflicts break out, and Pillar III focuses on the responsibility of the international community to take timely and decisive action to prevent and halt the four crimes when a state is manifestly failing to protect its populations. RtoP, along with the concept of human security, evolved in response to demands of the changing security landscape (this is especially relevant to Southeast Asia). Pillars I and II have parallels in the Geneva Conventions which specify the responsibilities of states both individually and collectively, yet even this body of law lacks the necessary guidance as to how these responsibilities should be fulfilled.

There is (or was, at least, in 2005) a broad consensus amongst Southeast Asian countries on the value of RtoP, yet there remains a concern over aspects related to the implementation of the RtoP, particularly in relation to Pillar III. This pillar is oftentimes inaccurately equated solely with military intervention, contesting the agreed principle of 'non-interference' in the domestic affairs of Southeast Asian countries. Yet, if a state fails to protect its citizens, it can reasonably be argued that it loses its sovereignty. RtoP assists a state to fulfil its sovereign responsibilities – not territorial sovereignty, but the sovereignty to perform the duties of a state. Pillar III is intended to operate as a mechanism to mobilise the international community to prevent mass atrocities in the first instance, through economic, diplomatic and political

means, with the use of military force only as a last resort. There is a diversity of views among countries in Southeast Asia on how to proceed with the concept and a lack of clarity as to who will take the decision on whether any use of force is justified. Recent trends and developments show that there is progress in the promotion of RtoP in the region. One such development is the establishment in November 2009 of the AICHR which aims to promote and protect the human rights and fundamental freedoms of the peoples of ASEAN, thereby addressing both human security and the protection of civilians. This mechanism offers a positive entry point for the promotion and the implementation of human security and RtoP in Southeast Asia. Similarly, the ASEAN Political-Security Community Blueprint is itself a reflection of human security. The challenge is to translate the Blueprint into policy at the national level.

### Discussion

The discussion centred on the following topics:

- The role of NGOs in the whole-of-government approach.
- Reconciling the various threats to civilian security.
- RtoP's utility in Southeast Asia.

The discussion began with the experience of the Australian government's Asia Pacific Civil-Military Centre of Excellence. It was noted that the Centre employed staff from a number of government departments and agencies. It was also pointed out that NGOs are indispensable and the Australian government regularly sought their partnership. The Centre hosts a representative of a consortium of Australian NGOs to provide guidance on how best to reach out to NGOs and civil society organisations. It engages with NGOs through roundtable discussions, conferences and consultations. Such engagement helps break the barrier between military

and civil organisations, and helps promote healthy civil-military relations. AusAid, the Australian government's aid agency, is a good example of Government-NGO coordination. It often relies on NGOs to implement its programmes and disburse aid. It was observed that overall there is a very good relationship between Australian government agencies and NGOs.

With regard to the multiple threats to the human security of civilians, there have emerged two major schools of thought; the narrow 'freedom from fear' and the much broader 'freedom from want'. Proponents of 'freedom from fear' argue that the current conceptualisation of human security is too unwieldy and unhelpful. Labelling all potential harms to individuals as threats makes prioritising in political action impossible, whereas a narrow approach that focuses only on violent threats can lead to a defined and focused response. The two approaches are however not mutually exclusive. For example, poverty, within the remits of 'freedom from want', is the cause of many conflicts around the world. If the root causes of poverty are not addressed, the situation will deteriorate to a point where mass atrocities covered by RtoP may occur. Addressing the impact of violence and conflict while ignoring the underlying causes is not a long-term solution to conflict and civilian protection.

Initially, denial related to the applicability of the POC and RtoP concepts in the region was attributed to the notion that conflicts experienced in the region are different from those experienced by other regions such as, for example, Rwanda and Bosnia-Herzegovina. However, Southeast Asia experienced genocide in Cambodia under the Khmer Rouge regime. Numerous internal armed conflicts persist in Myanmar, Indonesia, southern Thailand and the Philippines, showing limited signs of improvement. Moreover, if these ongoing conflicts are left unaddressed, larger conflicts and mass casualties may result. Therefore, the probability of such conflicts leading to the mass atrocities covered by RtoP should not be ignored.

## Concurrent Thematic Sessions

A significant component of this Regional Workshop was the focus group discussions. These discussions encouraged participants to draw on their specialised experience and expertise. The participants were divided into three groups. Each group engaged in three thematic sessions which focused on the protection of women, the protection of children, and the protection of IDPs, refugees and migrants in Asia. Below is a summary of the proceedings of the discussions.

### **The Protection of Women in Asia**

Whilst contemplating the challenges for the protection of women in conflict situations, a parallel analysis of challenges posed to women during peace time was deemed essential. A number of key protection issues were identified in the discussions including domestic violence and forms of sexual violence or abuse. In times of conflict and natural disasters, women are particularly vulnerable to rape and abuse. They may also fall victim to abuse in camps for refugees and IDPs.

### ***Gendered Differences in Experiences of Conflict***

Women and men experience conflict differently, however, women have specific protection needs in times of conflict. In the past, the establishment of an IDP camp did not entail the consideration of the needs of women, such as separate bathing facilities. Demobilisation initiatives included rewards for men, while women received nothing. Recently, the differential impact of conflict has been recognised by a number of UN Security Council resolutions, with UN resolution 1325 recognising the impact of war on men and women. UN resolutions 1820 (2008) and 1888 (2009) address issues related to sexual violence in times of war.

It was acknowledged that there was some improvement in how the impacts of conflict on women by peacekeeping forces are addressed. However, the need for peacekeeping forces to include more women still existed. This development is instrumental in mitigating tendencies of bias against the needs of local women exposed to situations of conflict and violence. It was suggested that there was a

definite phenomenon of peacekeepers being involved in sexual exploitation and abuse, one that has been studied and documented, with numerous cases raised. Korean and Filipino comfort women were subjected to organised sexual assault and rape; similar instances were observed during the peacekeeping involvement in Bosnia – the main difference between the two situations was the level of organisational and institutional backing. In addition, the experiences such as that of the UN Transitional Authority in Cambodia (UNTAC), which contributed to the growth of the sex industry and an increase in HIV/AIDS rates show that there is still room for more to be done by member states to educate their peacekeepers. The experiences related to the Disarm, Demobilise and Reintegration process in Liberia demonstrate a lack of awareness of UN resolution 1325 and its requirements among peacekeeping operations staff.

### ***Similarities in Women's Experiences in Conflict and Peace Time***

The distinction between conflict and non-conflict situations is more fluid than traditionally thought. Women's experience of violence may be magnified in times of war; however, these are issues that also exist in times of peace. Examples of these include the prevalence of infant mortality and maternal death during peace time.

In addition to high levels of stress from post-traumatic disorder, conflicts can also lead to the normalisation of violence in post-conflict societies. Hence, while war may end, women continue to suffer violence and sexual abuse when their husbands return home. In addition to women experiencing conflict differently, it was suggested that conflict can also erode social structures, such as the way Bougainville – formerly Papua New Guinea's matrilineal society, where women may have traditionally held powerful roles – was transformed by conflict.

Discussions also touched upon the protection needs of women in detention in peace time. This was flagged as an area meriting further consideration. As the female population in detention is relatively small, there is less focus on processes in place for their protection.

This is especially so for those awaiting trial or yet to be convicted. Failure to address this during peace time undermines prevailing conditions during periods of conflict or violence.

In order to reconcile the violence experienced by women during times of conflict and help to rebuild a more equitable and sustainable society in the post-conflict period, institutions which advance justice, remedy and reconciliation must be cultivated. The concept of transitional justice was considered to be very important.

### ***Cultural and Structural Factors***

The protection needs of women, seen in the context of peace time as well as conflict situations, can be broadly categorised as being inhibited by either structural or cultural factors. There are certain cultural factors in Asia that make it even more difficult and unlikely for women to come forward to report abuse and seek help. For example, in some areas, Islamic radicalism has spurred some groups to lobby for the institution of Sharia law with its tight restrictions on women. Sharia law can be potentially constraining for women if it leads to structures restricting the amount of time women spend outside the house and thus constrain commitments such as working hours. This affects women's access to employment opportunities. Consequently, the ability of women to earn an income and support their children, particularly in single parent households, becomes impaired.

Women are a significant resource in a country's long-term development. To realise their potential, it is necessary to focus on their empowerment. It was expressed that certain manifestations of the empowerment of women, for example, their holding positions of political leadership tend to be little more than window-dressing exercises. The region suffers a lack of capacity in the implementation of policies aimed at addressing gender imbalances at the regional, national and local levels.

Above all, it was agreed by participants that gender equality is an important indicator of a society's development and its future progress. Gender equality positively impacts family life and community structures.

Ultimately, real participation of women in development and decision-making processes benefits the whole community. In addition, it is critical that approaches to enhancing women's protection do not take a one-dimensional view of women.

### ***Transnational Criminal and Economic Movement of Women***

Trafficking of women is one major protection concern in Asia. Economic vulnerability is a significant factor amongst market factors affecting the legal and illegal movement of women. These women comprise the supply of labourers while wealthier regions or countries often provide the demand. Women need protection from both sending and receiving countries. However, there are significant protection concerns for women in receiving countries. One issue raised was the physical abuse of legal migrant workers. A majority of migrant workers are women, whose experiences are complicated by the fact that receiving countries tend to be sidelined in the allocation of responsibility for migrant workers and refuse finalising bilateral agreements to this effect with sending countries due to economic considerations and the dictates of the market. As an example, the open borders between India and Nepal were highlighted. Japan was mentioned for its strict regulations on trafficking of women for sexual abuse and its bilateral relations with the Philippines to counter this issue.

Human trafficking is overwhelmingly securitised in Asia and there are significant misunderstandings on its interlinks with the human security concept. A result, and a manifestation, of this approach is that the key actors responding to the issue are the police, immigration authorities and attorney generals. Victims are not involved in these processes and are generally criminalised. While the participants did not advocate neglecting security concerns related to human trafficking, governments must complement these with human security considerations. In this regard, the AICHR was identified as a mechanism which could help in promoting a more multidimensional approach. As the AICHR cuts across the ASEAN Community's three pillars (political-security, economic and sociocultural), it can promote the incorporation of approaches that draw on notions of human rights into

security considerations in order to combat all stages of the trafficking of women. The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) was also identified as being able to play a role in helping to develop a systematic approach to the problem.

In addition to government authorities taking a multidimensional approach, actors from a multi-level background must be embraced, and capacities of civil society organisations and the private sector utilised.

### ***Gender Mainstreaming***

It is crucial that any approach to women's protection be devised and carried out through a 'women's protection' lens. In this regard, consultations with advocacy groups on behalf of women are useful. Sensitivity to the real and practical needs of women on the ground in the design of humanitarian assistance needs to be enhanced. It was argued that integrating a gendered perspective from the very beginning, that is, into the 'emergency' or humanitarian phase would help women, and societies, to move on and rebuild in post-conflict settings. In this context, it was also suggested that the participation of women in decision-making at an early stage is critical. This will help provide relevant actors with the relevant knowledge on the needs of women. Early involvement will also likely fuel future trends whereby women are more likely to participate in decision-making.

A multidisciplinary approach which integrates various processes would be needed. Continuity in intervening processes involving efficient tracing of the victim's history will ensure that victims do not undergo the trauma of revisiting their case over and over again with different actors and support services. Such an approach should take into account case management, health concerns, household responsibilities, cultural and structural factors, appropriate assistance for children, amongst others. Despite the overwhelming lack of multidisciplinary approaches in assisting women, particularly as victims of domestic or sexual abuse or trafficking, participants noted that in certain cities, such as Bangladesh and Thailand,

there are examples of services that act as one-stop shops, providing assistance that cut across the victims' broad range of needs. A multidisciplinary approach also requires an understanding of how different actors, for example, the police and peacekeepers, relate to NGOs.

### ***Cultural and Informal Structures***

A comprehensive approach will need to take into account both formal and informal governing structures. While the rule of law through formal structures is important, it was acknowledged that informal structures should not be avoided. These informal structures serve as an avenue for providing support and protection to women, but they also perpetrate injustices upon women. Therefore, effort should be put into establishing standard operating procedures and codes of ethics to try to regulate and utilise these structures of informal practices and mechanisms to protect and enhance women's protection or rights rather than let them perpetrate and exacerbate inequalities.

Another key issue that was discussed was women's empowerment. In the context of domestic violence, it was suggested that the installation of women into positions of leadership such as members of parliament, judges and managing directors, could help promote women's rights. However, elite empowerment of women does not always flow down to empowerment of women at the grassroots level. The differences in access to public and private spheres should be noted. While one may have gender equality in the public sphere, discrimination may still prevail in the private sphere. Thus, while elite empowerment is important, the need goes beyond the promotion of women to top public positions, and a key concern of the discussions was how to include women at all levels. Empowerment is a process that must begin with education. It was suggested that the most fundamental reason for why abuses occur with domestic workers is their low level of education, which leads to language difficulties and a poorer understanding of the law and regulations. It was also suggested that education would equip women with the capabilities to take advantage of the increasing number of spaces opening at higher levels of public representation. Targeted mentoring programmes and incentives for women are seen as important.





*Seated: Prof. Wei Zonglei, Maj-Gen. Dipankar Banerjee (Retd), Ms Diane M. Swales, Lt. Gen. Satish Nambiar (Retd), Mr Tobias Epprecht, Mr Rafendi Djamin, His Royal Highness Prince Norodom Sirivudh, Assoc. Prof. Mely Caballero-Anthony, Mr Alain Aeschlimann, Prof. Mohd Yusof bin Ahmad, Ms Khamphao Enthavan and Ms Ruby Rose L. Lora.*

*Standing: Mr Craig Strathern, Dr Hu Dawei, Col. Wiphusana Klaimanee, Mr Michael Smith, Datuk Hajah Rooslina Weti binti Pengiran Haji Kamaludin, Ms Rebecca Shrimpton, Ms Trinh Thi Thu Huyen, Mr Noriyuki Shiina (back row), Prof. Carolina Hernandez, Mr Anil Kumarsing Djp (back row), Dr Medelina Hendyito, Mr Richard Desgagne (back row), Ms Tsendendorj Bumkhorol, Ms Anastasia Isyuk (back row), Ms Anna Maria Pelosi, Prof. Raul C. Pangalangan, Ms Hu Xiangqun, Ms Wenny Kusuma, Mr Aries Nugroho and Mr Yang Razali Kassim.*

### ***International and Regional Mechanisms***

The UN Security Council resolutions, UN Conventions and guidance, and other regional mechanisms help to protect women. These different mechanisms are seen as reinforcing and complementary. However, it was thought that UN resolution 1325 was designed for a conflict situation that is moving towards its conclusion. The relevant concern raised was that these provisions concentrate on situations of armed conflict and its consequences but less on concerns of women in peace time. All ASEAN countries have ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). However questions were raised over the extent of incorporation of the provisions of these instruments into national law in these countries. Experiences varied across the region and were dependent on the country's national legal framework. However, it was observed that even when UN resolutions have been incorporated into domestic legislation, enforcement was typically a problem.

This brought the discussion to the issue of implementation. For the large part, participants agreed that there were mechanisms and processes in place, and that attention has to turn to implementing them. The issue of implementation with reservations to CEDAW within ASEAN was considered. For example, Brunei holds a reservation on the law requiring that a local woman apply for nationality for her child if she is married to a foreigner, whereas no such equivalent requirement applies to males. For effective implementation and accountability, governments have to first acknowledge the salience of women's issues and assert their urgency and importance. Thereafter, appropriate action to prevent and reduce injustices against women can be undertaken. In addition to the gaps in addressing gender issues, legislation was also in some cases discriminatory towards women, exacerbating injustice and inequality. For example, in the Philippines, the burden of proof with regard to accusations of infidelity is higher for women than it is for men.

### ***Access to Domestic Redress***

Numerous examples were given of services and organisations working across the region to advance women's rights and protection. These range from crisis centres to NGO services, support hotlines, women's councils which comprise government ministers, and community liaison officers. It was acknowledged by participants that as victims of abuse, women are generally more comfortable utilising NGO services than seeking help via official channels. One possible reason for this is that NGOs are more informal, active and engaging. In this sense, the non-governmental sector is seen to offer more effective, efficient and compassionate service for victims of abuse and violence.

A key issue that emerged was the difference in access available to women in rural and urban areas. For example, it was noted that while several countries in the region offered hotline support services, often NGO-led and government-sponsored, these are typically concentrated in urban areas.

### ***The Protection of Children in Asia***

Children in Southeast Asia are affected by a variety of conflict situations which results in significant suffering. The plight of children in armed conflicts was considered particularly significant because Southeast Asia is home to a number of ongoing conflicts, such as those in Myanmar, southern Thailand and southern Philippines, and post-conflict states such as Lao PDR, Cambodia and Timor-Leste.

#### ***Protection Concerns of Children during Peace Time***

Children are the subject of a number of protection concerns during peace time, notably forced labour. Many children are victims of the worst forms of child labour, such as bonded labour, slavery or practices similar to slavery, production and trafficking of drugs, or other work which is likely to harm their health and safety. In Cambodia, an estimated 313,000 children are trapped in the worst forms of exploitation, such as drug trafficking and prostitution. Many of the victims of forced labour are the result of human trafficking.

There is a need to focus on the demand side of human trafficking. Efforts against human trafficking traditionally focus on the supply side, with demand factors having been largely left out. However, it was observed that no matter how much effort is made to address the supply side (factors that cause people to leave home), human trafficking will continue as long as economic deprivation and demand for certain types of labour exist. Therefore, the law enforcement approach premised on border management will not solve the issue. However, proper border management will increase the price of trafficking labour and help regulate supply and demand.

### ***Child Soldiers***

Conflicts may affect children in some of the following ways: it deprives them of access to education, it traumatises them due to the loss of loved ones, they become orphaned, they are injured and maimed, and they are recruited as child soldiers.

The 'child soldiers' phenomenon takes three distinct forms: children can take direct part in hostilities (child soldiers), they can be used in support roles such as porters, spies, messengers, lookouts and sexual slaves, or they can be used for political advantage, either as human shields or in propaganda activities. Although children under the age of 18 are not formally recruited into government armed forces, they are reportedly used as informants, cooks, messengers and in other non-combatant roles, as was the case in Aceh, Indonesia. Child soldiers were reportedly used by the Free Aceh Movement (GAM) – as combatants, they became legitimate targets of government forces. Child soldiers are also reportedly used by rebel groups in the Philippines as informants and spies. Myanmar has the world's highest number of child soldiers, with children as young as 7 years old working as human shields, sex slaves and fighters. They are widely used by both government and opposition armies. While some children are recruited voluntarily for Myanmar's armed forces, others, especially orphans and street children, are vulnerable to forced recruitment.

Children are normally valued for the following reasons. Child soldiers tend to be physically small, agile and fast and therefore can move more covertly than adult soldiers. Child soldiers are easily influenced by propaganda and adult coercion, making them less likely to challenge the ideals and goals of their superiors. They rarely demand a soldier's wage, and their food requirements are also significantly less. National armed forces are sympathetic towards child soldiers during counter-attacks due to the emotional and ethical barriers to fighting against children. This makes child soldiers very suitable for deployment as human shields. They are often considered to be expendables and are therefore suitable for suicide missions or dangerous tasks such as mine clearing or spying.

Despite all the concerns over the military use of children, the proportion of children used as soldiers is actually low compared to the overall number of children affected by armed conflicts. Moreover, being a child soldier may not be completely without advantage. In some areas, children volunteered to be part of the armed forces where they were able to acquire important skills. From this perspective, children are not necessarily traumatised passive victims. As child soldiers, they develop valuable qualities such as leadership, judgement, determination and a sense of responsibility which could contribute to their overall development in later life. However, whether or not the experience of war leads to positive effects in post-conflict situations depends on how the child is treated once peace is achieved.

There are concerns over juvenile justice during peace time in Southeast Asia. There are significant rights issues related to the process, from the time a child is arrested, through to their treatment in places of detention and then litigation. There was agreement that regardless of the child's background, he or she is first and foremost a child and should be treated with utmost care and respect. With regard to the accountability of child soldiers for 'crimes' during conflict, it was pointed out that how the child became a soldier should not hold any weight, or should be given lesser weight, compared to the potential harm the child may be exposed to during the processes of criminalisation and prosecution.

### ***Child Protection Mechanisms***

As mentioned earlier in relation to the protection concerns of women, similarly, the credibility of protection standards during peace time impacts access to effective protection during situations of conflict or violence. The challenges of protecting children remain understudied due to problems related to a lack of awareness and data on the issues involved. All governments have signed the UN Convention on the Rights of the Child (CRC) and some governments have been working on these issues. There is a greater need for both quantitative and qualitative data to address child protection issues.

Mitigating the effects of conflicts on children must start with preventive actions before conflicts break out. Mechanisms such as centralised civil registration of children must be implemented so that every child can be accounted for. States must also create a legislative framework through the implementation of laws that guarantee and safeguard the rights of the child. Such a legislative framework must be capable of handling all forms of child abuse cases.

Mechanisms of child protection, no matter how strong, are vulnerable to impacts of conflict, making children vulnerable. In post-conflict situations, coordinated rehabilitation and reintegration efforts should be carried out for children affected by conflicts. Children in camps must be integrated into camp life and local communities. The physical and mental needs of children should be emphasised. Most importantly, a child's needs should be addressed holistically. A whole-of-society approach can be used, starting from the family up to the national level. Children first and foremost need the care and support of their parents and family members. Thus the primary role of the family should be emphasised when dealing with children in post-conflict situations. These efforts should be complemented by other efforts at the national level.

### ***Post-Conflict Child Protection Concerns***

The risk of children being wounded by the explosive remnants of war, such as land mines, remains high in the region. It was noted that within the region, Lao PDR was particularly interested in exploring this issue, through awareness raising and capacity-building efforts. The

incorporation of children into insurgency in, for example, southern Thailand is perpetuated through the spread of anti-government ideology to children. The problem is made worse by the infiltration of such ideology into education systems such as madrasahs. This has resulted in a rise in the number of children subscribing to ideals held by insurgents.

Complex emergencies, poverty, conflict and illiteracy combine to exacerbate protection issues for children. There are comprehensive international legal approaches for dealing with these issues but the adoption of such regulations by countries is low. If this is improved, the standard of protection for children can be enhanced with support from civil society and guidance from epistemological communities.

### ***The Protection of Internally Displaced Persons, Refugees and Migrants in Asia***

The following outlines the themes which recurred in the discussion on IDPs, refugees and migrants. It was noted that whilst mass displacement is a likely consequence of conflict, it is caused by other non-traditional security threats such as natural disasters. There was generally a low understanding and exposure to such categories of persons, with the concept of IDPs being new to most. Hence, the discussions revolved around the need for more clarity in norms and operational frameworks related to the various categories. The lack of coherence in interpretation and application leads to misdirected efforts in protecting IDPs, refugees and migrants. This informed the nature of discussions.

### ***Terminology***

Terminology can be a problem and legally restrictive terminology may be a factor leading to the reluctance of governments to ratify treaties. There was widespread agreement that the categories of persons who have left their places of original residence are ever expanding. There is a need to go beyond the established political nexus in refugee status determination to recognise persons in need of protection who have fled instances of natural disasters or who have been displaced due to development-induced challenges such as development projects and the lack of sustainable livelihoods. These

circumstances have compelled individuals to seek economic opportunities elsewhere within their country, or another country. Due to these factors, internal rural to urban migration is common in many countries, as is movement from less developed to more developed cities.

It was appreciated that persons in need of protection such as refugees, asylum-seekers or stateless persons are conflated due to the lack of norms and legislation distinguishing between the various categories of migrants. There is a tendency within Asia to consider the bulk of these persons as migrants seeking economic ends. Undoubtedly, the presence of economic migrants is substantial in Asia, and they experience a significant lack of social insurance and economic security. Consequently, there is pressure on non-economic migrants to mould themselves into economic migrants due to the low acceptability in the region of their political circumstances, and this has generally obfuscated the sociopolitical circumstances of asylum-seekers, IDPs, stateless and/or environmental refugees.

The rapidly multiplying categories of persons in movement internally or across borders challenge the clarity and adequacy of current definitions. This is especially so for IDPs. These definitions need to be clarified to avoid inconsistent interpretations. In the event the government is unable to make status determinations, international organisations make that determination. In line with its mandate, the UN High Commissioner for Refugees (UNHCR) operates on a mandate of 'inclusivity', that is, exclusion is subject to a high threshold. A common understanding within the region on these categories of persons and those being discovered is essential for the subsequent implementation, monitoring and enforcement of protection norms.

### **Framework**

It was recognised that the problem of a lack of protection standards for civilians lies in weaknesses in the implementation of international legislation through domestic legislation and policies, and the enforcement of measures at the national level. The low acceptability in the region of the issues of displaced persons and the low level of ratification of international treaties on this subject are due to and have led to government officials being

either ignorant of or unclear on what they are dealing with. Refugees are supported by robust international law, especially the Refugee Convention 1951. This Convention is backed by international human rights principles, especially those non-derogable even in times of 'emergency', such as protection against torture and degrading treatment. Therefore, international laws and norms exist, and the regional deficiency is in the weak incorporation of those into national legislation.

### **Criminality**

Many displaced persons are vulnerable to and face limited protection from engagement in criminal activity. Categories of persons who do not fall within international definitions for refugees or displaced persons are at risk. The inability of international or national norms to define their juridical status and the lack of alternative means of protection within the region make them vulnerable to being absorbed into the people smuggling and human trafficking market. This is worsened by the lack or slow pace of incorporation of international norms and standards into national frameworks. The absence of legal frameworks undermines identification of persons displaced due to genuine sociopolitical reasons and leads to their original genuine humanitarian condition becoming concealed. The greater danger for these people is being submerged in the underground economy, following which they are excluded from public resources such as health and employment facilities. Regional preventative mechanisms, such as the Bali Process, primarily securitise human trafficking, but this Regional Workshop, by emphasising protection aspects through a human security perspective, effectively highlighted another dimension to the predicament.

### **Initiatives and Solutions**

Asian governments recognise the increasing urgency of dealing with this phenomenon and seek to be educated on issues of international humanitarian and human rights law to initiate targeted efforts and dispel misconceptions. The development agendas of most countries in Asia are based on the capitalist model of development, which will continually precipitate flows of persons internally and across borders due to a range of reasons, from conflict to the search for better economic opportunities. Most

countries have identified the problems although they may need clarification and training on relating these issues to international frameworks. In fact, the government of Brunei Darussalam has sought to engage international organisations like the ICRC for training.

Resettlement offered in Asia has been on a small scale, with permission to stay in a country provided only for the short term. Furthermore, there was a tendency to keep persons in need of protection in displacement camps for long periods of time. Resettlement initiatives by countries in Asia are crucial to break the tendency of prolonged detention. The consensus at the Workshop was that bilateral cooperation between states in Asia is important in order to successfully address protection needs. Based on past experiences, it was felt that states coordinated better at this level.

The issue of the lack of quantification mechanisms within the region was raised. Such mechanisms are important, especially for tracking those who become 'illegal' or 'irregularised'. It was suggested that this phenomenon of displacement of persons should be linked to the RtoP doctrine, as the issue is potentially relevant to Pillars I and II of the RtoP. ASEAN can play an effective role in sensitising populations in the region to human rights norms and their place in society. Progress in this area has been made. Nevertheless, further advancements will take time as a change of mentality is needed.

### ***Engagement between Various Actors***

It was recognised that the governments of origin, transit and receiving countries and their law enforcement bodies, civil society in host countries, international organisations such as the UNHCR or the ICRC, and business communities, amongst others, play an influential role in addressing the protection needs of persons on the move from their places of original residence. Collaboration between international organisations such as the UN and the ICRC and local authorities and civil society is essential, if the shortcomings related to the developing nature of the issue and the resulting resource strains on host countries are to be addressed effectively.

Considering the primacy of capitalism within the development agendas of Asian countries, subsequent workshops should involve members of the business community as they could effectively lobby governments and influence political objectives. It was suggested that there should be a dialogue linking corporate social responsibility and POC.

### ***The Role of the Government***

As mentioned earlier, the juridical state holds primary responsibility in offering protection. However, in the event of failed and rogue states, the engagement of international organisations is important. There is a general tendency of states to prioritise national security interests over obligations related to POC, reflecting a lack of political will. Participants at the Workshop qualified this view with the observation that some states may have faced genuine restrictions related to resource and capability constraints. However, some have assumed these to be political manoeuvres to evade state responsibilities.

Governments are best placed to replicate international protection norms and standards within their countries. The prevalent tactic of raising the issues of accountability and culpability in instances of governmental failures was cited as an ineffective way of engaging Asian governments. A more positive approach ought to be adopted, in which the benefits to countries are highlighted. Asian countries disagree with the culture of conditionality attached to offers on cooperation by Western international organisations. 'Positive diplomacy' would be strategically more effective at achieving better cooperation and coordination for it facilitates trust-building and encourages common understanding on issues. An example of providing a solution or demonstrating the benefits of hosting refugees was given: the UNHCR described an initiative where it compiled a skills-set database pertaining to refugees in Malaysia. Through this, it sought to further its advocacy efforts for the right to work with refugees and also highlight refugees as an add-on labour resource for the host country.

### **Resources**

IDPs and cross-border asylum-seekers are perceived to strain health, food and employment-related resources, and these groups also raise concerns linked to the management of abandoned livestock in the rural hinterlands. Governments hosting displaced persons have to prioritise its resources for its citizens, within which significant disparities are pre-existent. Without resource issues being resolved, state authorities are reluctant to acknowledge their responsibility and engage further with persons displaced across borders. This underlies the aversion to incorporating and implementing international legal frameworks into domestic frameworks, due to the implications such acceptance of responsibility will have on host nations in terms of social accountability to its residents, including migrants.

Participants raised concerns related to the time and monetary constraints involved in setting up camps for displaced persons. International organisations do offer monetary assistance if requested by governments. However, it was highlighted that governments avoid making such requests to prevent the ‘internationalisation’ of the domestic situation. On the other hand, in cases where governments cooperated with international organisations to set up structured assistance camps for displaced persons, the facilities were utilised by local communities. This was due to locals finding conditions in these camps better than their existing standards of living. These camps were also reputed to offer better protection from hunger, sexual abuse and discrimination.

### **Civil Society**

A prevalent problem in transit or receiving countries was the lack of engagement and communication between government authorities (who dominated the procedure of offering protection to displaced persons) and local civil society and communities of displaced persons. Without the assessment and participation of civil society, government and local authorities risk being irrelevant. It also leads to a waste of resources. For example, in Aceh, houses built by the Indonesian government to serve as accommodation for the displaced have had low occupancy. One reason for this was the indifference of the authorities to the social dynamics between host

communities in the area and displaced persons. Their interactions were based on suspicion and general discomfort, making occupancy of the houses difficult.

Civil society can be demarcated into ‘organised’ and ‘not organised’. The former refers to the informed masses involved in educating and mobilising sections of the country’s population, and the latter to local communities and people at the grassroots level. Communication with local civil society is important to generate acceptance of the concept of hosting displaced persons, whether temporarily or permanently, and to the successful local integration of such persons. Most migrants tend to be concentrated at the borders of nation-states, and the wider community lacks awareness of the situation due to the lack of contact. They depend on mass media reports to form their views.

### **International Organisations**

Promptness was recognised as a key requirement for intervening agencies. It was expressed that governments needed external help to achieve this, especially in terms of resource funding and technical field expertise in handling a high volume of people. It was also observed that international organisations specialising in the issue such as the International Organization for Migration (IOM) would, due to their better engagement with displaced populations, have greater insight into appropriate measures at the provincial and central governance levels.

International organisations felt local governments could play a greater and more effective role in the implementation of initiatives by humanitarian agencies. For example, in Sri Lanka, the government and its ministries, led by the UNHCR, were able to coordinate various agencies in the distribution of assistance. This initiative by the UNHCR, known as the ‘Cluster Approach’, is useful in ensuring equity in allocation of resources and the appropriateness of resources for the targeted area. It is also effective in making sure that efforts are not concentrated in any one particular area. In addition, the approach allows for better assessments of host community sentiments. In this instance, it was expressed that local governments can be more pro-active in minimising the occurrence of organisations working outside of coordinated efforts and different organisations being granted access to different

areas. It was felt that international organisations with their expertise on international norms and standards and the practical aspects of implementation were effective in supporting local governments in balancing the protection needs of displaced persons with those of host communities.

However, international organisations keen on assisting are often barricaded by issues of access to civilians with protection needs. This may be due to uncertainty over the operational methods and standards of international organisations such as the UNHCR, an issue brought up by participants. It was observed that organisations backed by the support and involvement of governments in the region were more successful. In particular, the role of Malaysia in the success of the International Monitoring Group sent to Mindanao, Philippines to monitor the ceasefire agreement was highlighted. That success led to the group's mandate being expanded to include POC as part of its peacekeeping efforts (which incorporated principles of non-violence). In contrast, in some instances, Asian governments had the perception that international organisations had ulterior motives when engaging in assistance efforts. It was suggested that international organisations engage in educational efforts at the local level to change these perceptions. In other instances, it was noted that international organisations

are strategic partners to local civil society organisations in lobbying governments to intervene in countries hosting persons displaced.

### ***Regional Mechanism – ASEAN***

ASEAN continues to advocate the principle of non-interference in the domestic affairs of member states. The point was raised that identifying asylum-seekers or stateless persons as 'refugees' is an act of endorsing the political 'persecution' of the person by the country to which he is unable and unwilling to return. Hence, ASEAN states steer away from making such declarations or are unwilling to utilise the Refugee Convention 1951, as any such actions would have indirect implications on the domestic political affairs of countries of origin. There is great importance attached to maintenance of state-state diplomatic ties within ASEAN.

It was suggested that it would be apt for ASEAN, as a regional mechanism, to advocate the development of the RtoP doctrine, and norms associated with it. In suggesting this, the following caveats were raised: that all initiatives be localised, that is, made relevant to the region; and that prior to embracing RtoP, structural defects in current international law be addressed. The ASEAN mechanism should begin by collecting data on persons who have been displaced.

## Developing a Culture of Protection – Asian Perspectives

In the late 1990s, trends moved towards human security, and non-traditional security started to draw mainstream attention away from ‘comprehensive and cooperative security’. With the World Trade Centre bombings in the US on 11 September 2001, attention reverted to counter-terrorism, but sufficient time has since elapsed for states to reconsider non-traditional security issues. The relevant questions include: what issues need to be secured, how they should be secured, and what arrangements and mechanisms would be required. It was considered regrettable that no Asia-wide mechanism exists to address these issues and to enable a civil society-led agenda to be presented to states. The initiative taken by the Workshop to link Southeast, East and South Asia represents an effort to begin this process.

### Increase Track Two Dialogue

The way forward, particularly in relation to the potential contribution of track two dialogue, is to develop awareness of the protection needs of civilians and improve ratification of relevant treaties in the region. Track two institutions and organisations have a definite responsibility to contribute to norm-building. The rightful manner of engaging with governments is through practical initiatives which are implemented without any government being backed into a corner. Track two in Southeast Asia has evolved slowly since the 1980s and has made an important contribution over the years. One role of track two is to contribute to track one in a timely manner. Track two can contribute to norm-building by supporting, informing and guiding track one, including at the track 1.5 level in light of the need to engage government officials from the outset. The ASEAN Institutes of Strategic and International Studies (ASEAN-ISIS) was successful in influencing the ASEAN policy agenda due to many factors: its members were not concerned with career advancement but were dedicated to improving regional issues, through their connections to personnel in ASEAN forums and institutes. These factors contributed to the development of trust between governments and members of the ASEAN-ISIS, thus allowing sensitive issues to be addressed. Through such

confidence-building, support from connections within the government could be lobbied to assist in pushing agendas forward. A significant aspect requiring reconsideration is the way issues are packaged. Issues relayed by the international community must be accompanied with effective solutions and prospective benefits to all parties – the government, the country and the population.

‘Human security’ is embraced in the ASEAN Community’s three Blueprints. The Blueprints are at times deemed nebulous, but they represent the commitment of governments to protecting the security of their citizens. The POC concept could be linked to ongoing track two activities, for example, the new CSCAP study group on the RtoP doctrine.

### Increase Representation of Asian States at UN Decision-making Level

POC is a topic of interest to peacekeeping missions on a practical level. However, few states in the region except Australia make significant contributions to policy despite the fact that the region is home to a number of major troop-contributing nations. The UN Security Council struggles with accusations of its representativeness of the world today. In the mission area and if the peacekeeping mission needs to use force, ‘robust peacekeeping’ is the major responsibility of the commanders and troops. These kinds of mandate formulations should not be done without consultation with troop-contributing countries. However, current mechanisms are not considered satisfactory in this respect. The statement that states need to be prepared to receive and inflict casualties is perhaps an easy one to make in New York, but less so in developing countries. Attention was drawn to the Ministerial Meeting (to be held parallel to the UN General Assembly) on RtoP in September 2010. Participants were urged to mobilise representation from their countries to that Meeting – representation would allow countries to put forward their positions. Track two needs to encourage state participation in such events and such avenues have to be continually sought.

## Closing Remarks

*Mr Tobias Epprecht*

*Head*

*International Committee of the Red Cross (ICRC)*

*Regional Delegation in Kuala Lumpur*

*Malaysia*

Mr Epprecht acknowledged that the topic considered at the Workshop is extremely vast but was pleased at the nature of the in-depth discussions which took place and the outcomes of the discussions. These made the Workshop significantly useful for the ICRC, and encouraged the commitment of the ICRC to continue discussions on these issues at both bilateral and multilateral levels.

*Associate Professor Mely Caballero-Anthony*

*Head*

*Centre for Non-Traditional Security (NTS) Studies*

*S. Rajaratnam School of International Studies (RSIS)*

*Nanyang Technological University*

*Singapore*

Associate Professor Caballero-Anthony thanked all present. She stated that the mission of the RSIS Centre for NTS Studies is to examine issues of importance to the security and well-being of people in the region. The topic of protection of civilians (POC) is one of significance to region. It is also a new topic, and a substantial one. Hence, the Centre eagerly sought the opportunity to work with the ICRC.

The discussions were potentially unwieldy, but the Workshop has contributed positively toward increasing understanding on various aspects of civilian protection – the protection of women, children, refugees and displaced persons, and irregular and forced migration, among others – despite the disagreements on terminology. With the region facing these issues, the sharing of on-site experiences by participants proved valuable.

It is important to continue such discussions, as increasing global interconnectivity means that insecurity for one has the potential to quickly become insecurity for all. The importance of building networks was stressed, because networks facilitate growth through education and increased awareness, and help fulfil the shared need and desire to do more to protect people, and particularly civilians.

## Programme

**15 July 2010 (Thursday)**

08:30 – 09:00 **Registration**

09:00 – 09:45 **Opening Session**

09:00 – 09:20 **Opening Remarks**

Associate Professor Mely Caballero-Anthony  
Head, Centre for Non-Traditional Security (NTS) Studies,  
S. Rajaratnam School of International Studies (RSIS),  
Nanyang Technological University,  
Singapore, and Mr Tobias Epprecht  
Head, International Committee of the Red Cross (ICRC),  
Regional Delegation in Kuala Lumpur,  
Malaysia

09:20 – 09:45 **Keynote Address**

09:45 – 10:15 **Photo Opportunity and Coffee Break**

10:15 – 12:15 **Session 1: Protection of Civilians: What Does It Mean? Overview and Discussion of Frameworks, Norms and Actors**

This session aims to create a better understanding on what protection means, be it from a legal, political, security or humanitarian perspective. Questions to be raised include:

- What is the legal, political, security and humanitarian framework on the protection of civilians?
- What is the current conducive humanitarian operating environment in asia? What are the roles different actors and stakeholders have?

- What are the gaps and challenges in protecting civilians? What kinds of processes have been implemented to overcome these gaps and challenges?

12:15 – 13:30 **Lunch**

13:30 – 15:30 **Session 2: Recent Trends in the Protection of Civilians**

This session aims to discuss recent trends in the protection of civilians, including the 'Responsibility to Protect', the 'Whole of Government Approach' and the 'Human Security' framework. Questions to be raised include:

What has been the development and impact of the above-mentioned trends in Asia?

15:30 – 15:45 **Coffee Break**

15:45 – 17:30 **Session 3: Concurrent Thematic Sessions**

Participants will be divided into three groups. Each group will be assigned a different thematic discussion. On day two of the Workshop, groups will rotate to focus on another thematic area.

**Thematic Discussion A – Protection of Women in Asia**

This discussion aims to deal with protection mechanisms for women in the region. Key questions include:

- What are the protection concerns of women? What are the humanitarian concerns of women caught in armed violence?
- How are international mechanisms such as UN Security Council resolution (UNSCR) 1325 and regional mechanisms such as the ASEAN Commission for the

Promotion and Protection of the Rights of Women and Children (ACWC) contributing to protection?

- Does the institutional and decision-making ‘architecture’ for gender equality have positioning, authority and resources to support better implementation and accountability for gender equality programmes, especially for the most excluded and marginalised women?
- What examples are there in the region to illustrate the ways in which advocates within and outside the regional ‘architecture’ are building alliances to strengthen calls for greater accountability to advance women’s rights?

**Thematic Discussion B – Protection of Children in Asia**

This discussion aims to deal with protection mechanisms for children in the region. Key questions include:

- What are the protection concerns for children? What are the humanitarian concerns for children caught in armed violence?
- What practical experiences can best illustrate how international, national and regional mechanisms and processes can be applied to improve the protection of children?
- Have these processes produced day-to-day results in the lives of children?

**Thematic Discussion C – Protection of IDPs, Refugees and Migrants**

This session aims to deal with the protection concerns of persons who have left their place of origin. Some key questions include:

- How has the increasing engagement between states, international organisations and civil society developed, particularly in regard to protection of IDPs?
- What are the emerging lessons from stakeholder engagement in international protection and mixed migration in Asia?
- How is an effective balance achieved between the protection needs of people who have left their place of origin and those of host communities? What protection implications do such situations pose?

**End of Day One of Workshop**

**16 July 2010 (Friday)**

08:45 – 09:00	<b>Registration</b>
09:00 – 10:45	<b>Session 4: Continuation of Thematic Discussions</b>
10:45 – 11:00	<b>Coffee Break</b>
11:00 – 12:45	<b>Session 5: Continuation of Thematic Discussions</b>
12:45 – 14:00	<b>Lunch</b>
14:00 – 16:00	<b>Session 6: Developing a Culture of Protection: Asian Perspectives on Protection of Civilians</b> This final group discussion aims to focus on finding a common understanding on the protection of civilians and processes to address its gaps and challenges.
16:00 – 16:10	<b>Closing Remarks</b>

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

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

To fulfil this mission, the Centre aims to:

- Advance the understanding of NTS issues and challenges in the Asia-Pacific by highlighting gaps in knowledge and policy, and identifying best practices among state and non-state actors in responding to these challenges
- Provide a platform for scholars and policymakers within and outside Asia to discuss and analyse NTS issues in the region
- Network with institutions and organisations worldwide to exchange information, insights and experiences in the area of NTS
- Engage policymakers on the importance of NTS in guiding political responses to NTS emergencies and develop strategies to mitigate the risks to state and human security
- Contribute to building the institutional capacity of governments, and regional and international organisations to respond to NTS challenges

### Our Research

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

- 1) Internal and Cross-Border Conflict Programme
  - Dynamics of Internal Conflicts
  - Multi-level and Multilateral Approaches to Internal Conflict
  - Responsibility to Protect (RtoP) in Asia
  - Peacebuilding
- 2) Climate Change, Environmental Security and Natural Disasters Programme
  - Mitigation and Adaptation Policy Studies
  - The Politics and Diplomacy of Climate Change
- 3) Energy and Human Security Programme
  - Security and Safety of Energy Infrastructure
  - Stability of Energy Markets
  - Energy Sustainability
  - Nuclear Energy and Security
- 4) Health and Human Security Programme
  - Health and Human Security
  - Global Health Governance
  - Pandemic Preparedness and Global Response Networks
- 5) Food Security Programme
  - Regional Cooperation
  - Food Security Indicators
  - Food Production and Human Security

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

## Our Output

### ***Policy Relevant Publications***

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

### ***Training***

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

### ***Networking and Outreach***

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

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

More information on our Centre is available at [www.rsis.edu.sg/nts](http://www.rsis.edu.sg/nts)



*\* The Asia Security Initiative was launched by the John D. and Catherine T. MacArthur Foundation in January 2009, through which approximately US\$68 million in grants will be made to policy research institutions over seven years to help raise the effectiveness of international cooperation in preventing conflict and promoting peace and security in Asia.*

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

The S. Rajaratnam School of International Studies (RSIS) was inaugurated on 1 January 2007 as an autonomous School within the Nanyang Technological University (NTU), upgraded from its previous incarnation as the Institute of Defence and Strategic Studies (IDSS), which was established in 1996.

The School exists to develop a community of scholars and policy analysts at the forefront of Asia-Pacific security studies and international affairs. Its three core functions are research, graduate teaching and networking activities in the Asia-Pacific region. It produces cutting-edge security related research in Asia-Pacific Security, Conflict and Non-Traditional Security, International Political Economy, and Country and Area Studies.

The School's activities are aimed at assisting policymakers to develop comprehensive approaches to strategic thinking on issues related to security and stability in the Asia-Pacific and their implications for Singapore.

For more information about RSIS, please visit [www.rsis.edu.sg](http://www.rsis.edu.sg)



## About the International Committee of the Red Cross

### Who We Are

The **International Committee of the Red Cross (ICRC)** is a Swiss-based humanitarian organisation and founding member of the International Red Cross and Red Crescent Movement (1863). This Movement is composed of the ICRC, National Red Cross and Red Crescent Societies and the International Federation of Red Cross and Red Crescent Societies.

The ICRC is mandated by the international community to be the guardian and promoter of international humanitarian law.

We work around the world providing assistance to people affected by armed conflict and other situations of violence. The Red Cross and Red Crescent Fundamental Principles of impartiality, neutrality and independence guide our work and enable us to fulfil our humanitarian mission: to protect the lives and dignity of victims of war and internal violence and to provide them with assistance. In order to assist people affected by armed conflict, we speak with all parties. We support the efforts of arms carriers to respect international humanitarian law or other fundamental rules protecting persons in situations of violence.

### What We Do

- Try to ensure civilians not taking part in hostilities are spared and protected
- Visit prisoners of war and security detainees
- Transmit messages to and reunite family members separated by armed conflict
- Help to find missing persons
- Offer or facilitate access to basic health-care services
- Provide urgently needed food, safe drinking water, sanitation and shelter
- Promote respect for international humanitarian law
- Monitor compliance with and contribute to further development of international humanitarian law
- Help reduce the impact of mines and explosive remnants of war on people
- Support National Red Cross and Red Crescent Societies to prepare for and respond to armed conflict and other situations of violence

### How We Work

The Red Cross and Red Crescent Fundamental Principles of impartiality, neutrality and independence guide our work and enable us to fulfil our humanitarian mission: to protect the lives and dignity of victims of war and internal violence and to provide them with assistance. In order to assist people affected by armed conflict, we speak with all parties. We support the efforts of arms carriers to respect international humanitarian law or other fundamental rules protecting persons in situations of violence.

We visit prisoners of war and security detainees and register them to prevent disappearances. We work with the authorities to ensure that people deprived of their liberty are treated humanely and according to recognised international standards, which forbid torture and other forms of abuse.

### Where We Work

Our global presence is adjusted to respond to armed conflicts and other situations of violence. Currently, we have offices in 80 countries with over 12,000 staff worldwide.

### Find Out More

Visit our website at [www.icrc.org](http://www.icrc.org).

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