Myanmar, the Responsibility to Protect, and the Need for Practical Assistance

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Abstract
This paper is concerned with the invocation of the responsibility to protect (RtoP) in the face of the Myanmar authorities’ problematic response to Cyclone Nargis. It is animated by four main questions: (1) What were the dynamics leading to calls for the application of the responsibility to protect? (2) In what ways did the invocation of the RtoP affect the provision of humanitarian assistance to cyclone survivors? (3) How has the international response to Cyclone Nargis compared to the way in which Western powers in particular have responded to Myanmar’s armed ethnic conflict? (4) What implications and conclusions follow from the Myanmar case for putting RtoP into practice? The article argues that while the applicability of RtoP was much in doubt with respect to the aftermath of Cyclone Nargis, its principles nevertheless served as a rhetorical device for Western countries to influence both Naypyidaw and ASEAN as regards the practical need of facilitating humanitarian relief. Noting the available diplomatic support Myanmar enjoys in the UNSC, the paper suggests that the variation characterizing the international response to Myanmar’s practices in the Ayeyawady delta and in the ethnic areas is also partly due to the different scale of fatalities and insufficient independent verification of claims regarding atrocity crimes. Generally, the Myanmar case has nevertheless accentuated the need for considering further what practical assistance regional and international actors can render to protect those that are or may become caught up in atrocities.

Keywords
Association of Southeast Asian Nations (ASEAN), Myanmar, Cyclone Nargis, Ayeyawady delta, responsibility to protect (RtoP), Kayin State, 2005 World Summit Outcome Document, humanitarian intervention, France, Bernard Kouchner, ‘malign neglect’ UN office for the Coordination Humanitarian of Affairs (OCHA), armed conflict

Introduction
On 2 and 3 May 2008 a devastating cyclone struck Myanmar, which – as became clear only later - left more than 138,000 dead and missing in its wake.

1 Acknowledgements: I am grateful to Paul D. Williams for comments on an earlier version of this paper.
The cyclone also displaced an estimated 800,000 people. As the full extent of the natural catastrophe emerged, United Nations officials and the wider community of international relief workers feared that in the absence of immediate international assistance the affected population of 2.4 million might face a second tidal wave of death, stemming from starvation and disease. In this situation, Myanmar’s military government, beyond lacking the capacity to effectively respond to the humanitarian disaster, exacerbated the suffering of cyclone survivors by stymieing in general the international relief effort and by rejecting in particular the use of available foreign military assets to deliver aid directly to the Ayeyawady delta. What was termed the ruling State, Peace and Development Council’s (SPDC) ‘malign neglect’ stood at significant variance with Indonesia’s decision to accept assistance from foreign militaries following the 2004 tsunami, and in several Western countries quickly provoked calls for humanitarian intervention, with specific reference to the responsibility to protect (RtoP). In the event, no disbursement of aid without Myanmar’s consent was undertaken, let alone a humanitarian intervention.

Myanmar is the first country within Southeast Asia that has become a target for explicit discussions about applying the responsibility to protect principle. This principle aims to protect vulnerable populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In Myanmar’s case, the responsibility to protect was invoked as frustration and anger over the SPDC’s initial response to Cyclone Nargis mounted among UN actors, governments, humanitarians and observers and apprehensions about the circumstances of survivors multiplied. By comparison, Myanmar’s continuing armed ethnic

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2 For an overview of the human toll and economic damage, not least agricultural losses, see Post-Nargis Joint Assessment Report, July 2008.
3 Also known as Irrawaddy. Ayeyawady is the new transliteration.
5 The term humanitarian intervention is often used rather loosely. In the academic literature one of the most frequently cited definitions of humanitarian intervention is that of ‘coercive action by one or more states involving the use of armed force in another state without the consent of its authorities, and with the purpose of preventing widespread suffering or death among the inhabitants.’ See Adam Roberts, ‘The So-Called “Right” of Humanitarian Intervention’, Yearbook of International Humanitarian Law Vol. 3 (The Hague: T.M.C. Asser Press, 2002).
6 Previously there was some ambiguity about whether the international community intervened in East Timor in so far as Jakarta was coerced into consenting to INTERFET. See Michael G. Smith, Peacekeeping in East Timor: The Path to Independence (Boulder, CO and London: Lynne Rienner, 2003). The most prominent discussions in relation to RtoP have focused on Sudan and the crisis in Darfur. See Paul D. Williams and Alex J. Bellamy, ‘The Responsibility to Protect and the Crisis in Darfur’, Security Dialogue, vol. 36, no. 1 (2005), pp. 27-47.
conflict, which is alleged to involve atrocity crimes, has yet to engender explicit
discussions about the responsibility to protect despite debates on whether the
country poses a threat to international peace and security according to Article
39 of the UN Charter.7 These points raise a number of important questions:
(1) What were the dynamics of the post-cyclone situation that led to calls for
the application of the responsibility to protect? (2) In what ways did the invo-
cation of the RtoP principle affect the response to Cyclone Nargis? (3) How
does the international reaction to Cyclone Nargis compare to the response to
Myanmar’s armed ethnic conflict, particularly as regards the invocation of the
responsibility to protect? (4) What implications and conclusions follow from
the Myanmar case in relation to RtoP more generally?

To answer these questions, the paper is organised into five sections. The
first section briefly outlines the international consensus on the responsibility
to protect. The second describes the response to Cyclone Nargis by Myanmar
as well as the invocation by Western countries of the responsibility to protect
in view of the ruling regime’s so-called ‘malign neglect’. The third sketches
the debate about the applicability of RtoP in relation to Cyclone Nargis. The
fourth then examines how reference to the RtoP principle was useful in
addressing the precarious situation for the cyclone survivors. This section also
briefly notes the emerging discussions regarding other frameworks to justify
practical humanitarian assistance. To extend the discussion about Myanmar
and the responsibility to protect, the fifth section explores how close the inter-
national community has come to invoking the responsibility to protect in
response to abuses endured by civilians caught up in Myanmar’s long-running
conflict between the military government and armed ethnic groups. Finally,
the article draws some conclusions both specifically with regard to the
Myanmar case and the wider debate on the responsibility to protect.

The Responsibility to Protect and Humanitarian Intervention
in Southeast Asia

Against the background of the international community’s chequered record in
responding to humanitarian crises in the context of intrastate atrocities in the

7 See Burma UN Service Office, National Coalition Government of the Union of Burma &
The Burma Fund, The Crisis in Burma: An Agenda for the United Nations Security Council,
October 2003; also see Threat to the Peace: A Call for the UN Security Council to Act in Burma,
report commissioned by Vaclav Havel and Desmond M. Tutu, prepared by DLA Piper Rudnick
1990s and there being no consensus on a right to humanitarian intervention, the final Outcome Document of the 2005 UN World Summit explicitly endorsed the responsibility to protect concept. According to Paragraph 138, UN members accept that each individual state has the primary responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. Paragraph 138 also gives the international community a role in encouraging and helping states to exercise this responsibility. Paragraph 139 clarifies that the international community, through the United Nations, has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. It also submits that UN members states are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organisations as appropriate should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

The Summit Outcome Document took on board core ideas developed by former UN Secretary-General Kofi Annan and the International Commission on Intervention and State Sovereignty (ICISS), which published its report The Responsibility to Protect in 2001. At its core stands the re-conceptualization of sovereignty as responsibility, the origins of which go back to efforts focused on addressing the problem of internal displacement. Both the Outcome Document...
Document and the ICISS report emphasize a possible range of measures for human protection short of military action. Both also highlight the importance of Security Council authorisation of any military intervention for human protection purposes. However, the key differences between the ICISS report and the World Summit Outcome Document are all too apparent. The former builds on the idea of human protection in situations of civil wars, insurgencies, state repression and state collapse, whereas the Outcome Document explicitly limits the responsibility to protect to instances of genocide, war crimes, ethnic cleansing and crimes against humanity. Also, while *The Responsibility to Protect* identified a set of criteria to initiate military intervention for human protection (just cause thresholds and precautionary principles), the Outcome Document does not. Indeed, the latter leaves the further consideration of RtoP in the hands of the General Assembly. The implication is that within international society there is no explicit normative consensus on the applicability of the responsibility to protect and the criteria for putting the doctrine into practice. That said, explicit references to RtoP are for instance found in Security Council Resolution 1674, adopted in April 2006, pertaining to the protection of civilians in armed conflict. The RtoP concept has also featured in several other UN Security Council debates, as well as in its authorisation of UN peacekeepers for Darfur. Drawing on the RtoP concept in practice has remained difficult, however.

According to Thomas Weiss, at least three problems have complicated the practical implementation of the RtoP concept: a) developing countries tend to regard the concept as a ‘Trojan horse’ that allows Western powers to pursue interventions under the pretext of humanitarian motives; important here is the absence of decision-making power on the part of developing states in the UN Security Council; b) the ex-post facto rationalisation of the war against Iraq as a necessary exercise in humanitarianism has damaged the RtoP idea; and c) in the context of 9/11 and the war in Iraq the US, its formidable capabilities notwithstanding, has lacked both political will and operational capacity.
to undertake human protection. Alex Bellamy has demonstrated the impact of these factors on international engagement with the humanitarian situation in Darfur.

UN Secretary-General Ban Ki-moon remains keen to advance the normative consensus achieved in 2005. To him the responsibility to protect expresses a profound moral imperative in today’s world. In February 2008, he appointed Edward Luck as his Special Adviser to focus on the conceptual development and consensus building with reference to RtoP, as set out by the General Assembly in paragraphs 138 and 139 of the 2005 Summit Outcome Document. This follows the creation of the Office of the Special Adviser for the Prevention of Genocide (SAPG) in July 2004, a post currently held by Francis Deng.

In Southeast Asia, states have largely remained suspicious of the RtoP concept. This is not surprising given the overwhelming focus of governments on state and regime security as opposed to human security and the associated general emphasis on the principles of sovereignty and non-interference to forestall external involvement. While the Philippines has favoured intervention in Sudan with reference to the responsibility to protect, support for RtoP in Southeast Asia has otherwise been largely limited to certain think tanks and civil society groups, even as regards Myanmar. As Noel Morada found, when examining the possibilities for drawing up a roadmap for RtoP in Southeast Asia, ASEAN countries have been more likely to involve themselves in the domestic politics of Myanmar because of the negative image created by the latter’s membership in the grouping rather than because of actual concern for human protection. That said, ASEAN governments have called on Naypyidaw to work towards a peaceful transition to democracy in the near future and to this end to embrace a meaningful dialogue with all groups concerned.

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14 Alex J. Bellamy, ‘Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq’, Ethics & International Affairs, vol. 19, no. 2 (2005), pp. 31-54.
17 See Joint Communique of the 41st ASEAN Ministerial Meeting, Singapore, 21 July 2008; also see Jürgen Haacke, ‘ASEAN and Political Change in Myanmar: Towards a Regional Initiative?’, Contemporary Southeast Asia, vol. 30, no. 3 (2008), pp. 351-78.
Cyclone Nargis and Myanmar’s ‘Malign Neglect’

When Cyclone Nargis hit the Ayeyawady delta, the authorities were overwhelmed by the devastation it wreaked. Initial assumptions spoke of 350 and then 4,000 people dead with 3,000 people missing, but these numbers greatly underestimated the impact of the storm surge that swept tens of thousands to their death and left townships such as Labutta, Bogale, Ngaputaw, Mawlamyineyun, Pyapon, Dedaye and Kyaikblatt and the fertile areas of Myanmar’s rice-bowl destroyed. Regional governments, Western countries and the UN quickly offered assistance, but Myanmar’s leadership initially relied on its own relief activities under the guidance of the National Natural Disaster Preparedness Central Committee led by Prime Minister Thein Sein, which included the establishment of relief camps in the delta.\(^{18}\) However, given the scale of the natural disaster the regime already indicated in a briefing to resident diplomats in Yangon on 5 May that it would welcome relief supplies by the international community, such as tents and medicines.\(^{19}\) Despite requesting international assistance, the Myanmar authorities nevertheless obstructed international organizations and aid agencies from rapidly accessing and bringing relief to thousands of survivors in the delta without drinking water and shelter. By 6 May, the official death toll had climbed to more than 22,000 and the full extent of the losses became clear.\(^{20}\) However, even as the World Food Programme (WFP) began to distribute aid locally in Yangon, most parts of the Ayeyawady delta remained effectively cut off, leading aid agencies to warn of hundreds of thousands of survivors facing disease and hunger in view of expected outbreaks of malaria, dengue fever; cholera and dysentery; with children particularly vulnerable given the lack of food, water, and shelter.\(^{21}\)

In this context, Ban Ki-moon suggested to Myanmar’s leadership that the situation was at a critical moment, and emphasized the importance of providing as much assistance as possible in the vital first few days following

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\(^{18}\) See *Post-Nargis Joint Assessment*, pp. 38-40. The Myanmar government has acknowledged the very significant contribution made by individuals from within and outside Myanmar.


\(^{20}\) ‘Aid arrives in Myanmar as death toll passes 22,000, but worst-hit area still cut off’, *International Herald Tribune*, 6 May 2008.

\(^{21}\) See, for instance, ‘Aid groups frustrated as Myanmar junta blocks access’, *Agence France Press*, 7 May 2008; and the Cyclone Nargis OCHA Situation Reports; for a compilation of relevant updates, see www.reliefweb.int
the cyclone’s impact. Sir John Holmes, the UN’s Humanitarian Relief Coordinator, also urged Myanmar’s authorities to ‘respond to the outpouring of international support and solidarity by facilitating the arrival of aid workers, and the clearance of relief supplies in every way possible’. Notwithstanding such pleas, delays in issuing visas and gaining appropriate access continued. The US strongly urged China, Thailand, Indonesia and India to use their leverage to influence Myanmar into allowing foreign assistance, and put personnel and airplanes into a holding position. It also pointed to the potential contribution to humanitarian assistance that US airlift capacity could make available via naval assets deployed at the time in the Gulf of Thailand as a consequence of the Cobra Gold 2008 exercises, including the USS Essex (an amphibious assault ship with 23 helicopters and 1,500 marines), the USS Juneau and the USS Harper’s Ferry. The SPDC was not minded to accept this particular offer, notwithstanding international debate about whether to intervene in Myanmar to save lives.

**Invoking the Responsibility to Protect**

On 7 May, French Foreign Minister Bernard Kouchner, founder of Médecins sans Frontières, suggested that it was time for the UN to assist the cyclone survivors under the responsibility to protect principle. France called for the UN to become seized of problems concerning the delivery of humanitarian assistance, access to victims, and cooperation between the authorities in Myanmar and international agencies. As France’s ambassador to the UN argued, the ‘primary responsibility is with the government of Myanmar, but if it fails or if it cannot, we have to do something. If we do not do anything, people will continue to die, epidemics will spread out, and it will be a disaster’.

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23 UN News Centre, UN calls on Myanmar to facilitate aid delivery to cyclone victims, 7 May 2008.

24 Pauline Jelinek, ‘Pentagon readies people, planes for Myanmar aid’, *AP*, 7 May 2008. US air assets ultimately available included six C-130 aircraft at a staging area at Utapao air base, about a half-dozen CH-53 Super Stallion heavy-lift helicopters and several CH-46 Sea Knight medium-lift helicopters. Also as part of Joint Task Force Caring Response the USS Essex group, protected by the guided missile destroyer USS Mustin, was positioned 50 nautical miles off the mouth of the delta from 13 May to 5 June, carrying 10 more CH-46s, four to six CH-53s and more than 14,000 5-gallon plastic bladders filled with fresh water. See Luis Ramirez, ‘US ships in frustrating wait off Burma’s coast to deliver aid’, *Voice of America*, 17 May 2008.

Understood to be considering a military intervention, France unsuccessfully
called for the UN Security Council to issue a presidential statement, but
secured a briefing by Sir John Holmes instead. While Sir John cautioned
against embarking on ‘what could at least be seen by some people as a confron-
tation’, Hervé Morin, France’s Minister of Defence, ordered the amphibious
landing ship Le Mistral, then on exercise in the Red Sea, to set sail for Myanmar,
loading humanitarian assistance in Chennai. The vessel was reportedly in
place off the coast of Myanmar on 17 May.

Strong rhetoric also emerged from Australia and the United States. As
Australia’s Prime Minister Kevin Rudd put it, ‘[f]orget politics . . . forget the
military dictatorship. Let’s just get aid and assistance through to people who
are suffering and dying as we speak, through a lack of support on the ground’. In
the words of Zalmay Khalilzad, US Permanent Representative at the UN,
‘a government has responsibility to protect its own people, to provide for its
people. And since it’s not able to, you would expect the government to
welcome assistance from others’. He therefore concluded: ‘It should be a
no-brainer to accept the offer made by the international community, by states,
by organizations, by international organizations’. He also reiterated that U.S.
Navy ships in the Gulf of Thailand were ready to provide support to relief
efforts and that a Disaster Assistance Response Team positioned in Bangkok
was awaiting permission to enter Myanmar.

Notably, in a meeting on 9 May with the US Chargé d’Affaires, Shari
Villarosa, the Myanmar authorities formally agreed to US military flights
delivering assistance to Yangon. This followed Thai mediation on the issue and

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26 Ibid.
29 ‘The vessel had, inter alia, loaded medicines, water purification tablets, rice, tents, mosquito nets, sufficient to feed and supply drinking water for a fortnight to 100,000 people and provide shelter for 60,000 disaster victims, as well as medical support. It was later unloaded at Phuket, Thailand; the supplies were transported to Myanmar’s disaster areas by the World Food Programme for distribution by the UN agencies and NGOs.
32 Ibid.
was in line with both the principled stand of the Myanmar government to accept assistance without strings attached from all quarters and its request for such assistance put to the resident diplomatic community. On 12 May, Henrietta Fore, Administrator of the US Agency for International Development (USAID) and Director of US Foreign Assistance, Admiral Timothy Keating, the Commander of U.S. Pacific Command, and Scott Marciel, US Ambassador for ASEAN Affairs, accompanied the first C-130 carrying U.S. relief supplies into Myanmar.\(^{33}\) While the SPDC was happy to allow for many more such flights in subsequent days and weeks, the regime considered the ‘strings attached to the relief supplies carried by use of warships and military helicopters’ as unacceptable to the Myanmar people.\(^{34}\) Consequently, when the USS Essex group positioned itself off Myanmar’s coast to deliver large-scale relief and medical supplies, Myanmar refused to draw on these military assets, even though this assistance would have allowed the relief effort to be speeded up significantly. Assistance to the delta thus initially remained in short supply, presumably aggravating the human toll of Cyclone Nargis.

The limited impact of the Myanmar relief effort in the Ayeyawady delta and the restrictions imposed on external assistance resulted in discussions about whether to offer direct aid to cyclone survivors, not least in Europe and particularly in the UK. While recognising that Naypyidaw lacked the capacity to distribute a significant amount of aid, some cabinet ministers in the Brown government had initially clarified that Britain would work with Myanmar in the first instance and also expressed reservations regarding both the invocation of RtoP and the practical utility of dropping assistance by air. A frigate, the HMS Westminster, was nevertheless deployed towards Myanmar on 12 May as a contingency measure at the request of the Department of International Development (DFID). Not ruling out any options, especially in the light of suggestions that the refusal by Myanmar’s government to let aid through quickly constituted a crime against humanity, Prime Minister Gordon Brown then argued that the UK government was ‘determined to make sure that even with the lack of cooperation of the Burmese authorities, they are pressured now into the unfettered access that should be available for all humanitarian operations’.\(^{35}\) Pointing to US and French warships in Myanmar’s vicinity, the leader of the Conservative Party, David Cameron, suggested that if by the end


of 13 May the situation had not radically changed, thought should be given to offer ‘direct aid’.\textsuperscript{36} Not least because of Britain’s position, the Council of the European Union (EU) broadly agreed, arguing that without the co-operation of the authorities in ‘Burma/Myanmar’, an even greater tragedy was threatening. Sharing the deep concern expressed by the UN Secretary-General, the Council vowed to support any initiative, including in the UN bodies, which would help to meet the humanitarian needs of the Burmese people.\textsuperscript{37} The EU thus rhetorically subscribed to the possibility of humanitarian intervention.

Notably, the British Foreign Secretary now also suggested publicly that RtoP could be considered in cases of natural disasters. He added that all instruments, including military intervention, were on the table to deal with the potential consequences of ‘malign neglect’.\textsuperscript{38} On 16 May, France’s UN Ambassador, Jean-Maurice Ripert, warned that the junta’s refusal to allow aid to be delivered to people in need or in danger ‘could lead to a true crime against humanity’.\textsuperscript{39} Significantly, however, no coercive delivery of humanitarian supplies materialised. Also, while US, British and French naval assets gathered off the Myanmar coastline ready to assist in the unfolding relief effort, they took no direct part in it before returning to normal duties.

**Applicability of RtoP in Myanmar’s Case**

Although the responsibility to protect principle was explicitly invoked by Bernard Kouchner in response to the initial reluctance of Myanmar’s generals to immediately open their country to comprehensive international relief, it was also France’s Foreign Minister who later argued that the post-cyclone situation in Myanmar did not qualify under the UN’s agreement on the responsibility to protect because the post-Nargis situation was not an armed conflict.\textsuperscript{40}

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Given such prevarication it is not surprising that the question of whether or not RtoP was applicable to Cyclone Nargis should indeed have been an issue of some debate.

Ambivalence about its applicability rested on a number of factors. It built, first, on the formulations of the aforementioned Paragraphs 138 and 139 of the World Summit Outcome Document because these provisions do not refer to natural disasters and only deal with genocide, war crimes, ethnic cleansing and crimes against humanity. As such, the Outcome Document was different from the ICISS report, which held that the threshold criteria regarding military intervention for human protection, namely large scale loss of life, could also be met in cases of ‘overwhelming natural or environmental catastrophes, where the state concerned is either unwilling or unable to cope, or call for assistance, and significant loss of life is occurring or threatened’.  

It might, of course, have been that by refusing to allow significant access to the Ayeyawady delta, Myanmar was at least on the verge of committing crimes against humanity, as suggested by some Western policy-makers. The definition of crimes against humanity includes ‘other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health’.  

Gareth Evans, former ICISS co-chair and now Chief Executive of the International Crisis Group (ICG), consequently argued that the RtoP might indeed be applied in the case of Myanmar’s response to Cyclone Nargis. The argument would be that the military junta’s apparent ‘reckless indifference’ was close enough to the equivalent of intentionally causing great suffering.  

As Evans further put it, ‘when a government default is as grave as the course on which the Burmese generals now seem to be set, there is at least a prima facie case to answer for their intransigence being a crime against humanity—of a kind which would attract the responsibility to protect principle’.  

Roberta Cohen has similarly argued that Myanmar ‘could well have been an R2P case because the disaster may have begun as a natural disaster but it quickly turned into a human-made disaster in which crimes—that could well constitute crimes against humanity—were committed, with many needless deaths resulting’.  

In her view, this need not have led to military

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41 ICISS, *The Responsibility to Protect*, p. 33.
42 See Rome Statute of the International Criminal Court, Art 7 (1) (k).
44 Ibid.
intervention but rather should have led to a debate about the issue among members of the UN Security Council.

There was, however, significant opposition among some members to the UN Security Council taking up the issue. Also, reservations about applying RtoP to Myanmar were widespread. For instance, even Gareth Evans warned that applying the RtoP doctrine in the Myanmar case might be counterproductive for three reasons: (1) it would increase the paranoia of the junta; (2) it could diminish the doctrine in future; and (3) in practical terms, intervention in the form of air drops would probably be ineffective. Ramesh Thakur, another ICISS commissioner, said he could think of ‘no better way to damage R2P beyond repair in Asia…than have humanitarian assistance delivered into Burma backed by Western soldiers fighting in the jungles of South-East Asia again’.46

Edward Luck, the Secretary-General’s Special Adviser on RtoP, considered the attempted application of RtoP criteria vis-à-vis Myanmar following the cyclone a ‘misapplication of responsibility to protect principles’.47 In his view, their application should be strictly limited to the four listed crimes and violations, while leaving open for further scholarly and legal debate the question whether the junta’s partial response amounted to a crime against humanity.48 Notably, Sir John Holmes similarly asserted that the Myanmar crisis was not a test of the RtoP doctrine. So did Ban Ki-moon. As he put it: ‘This is purely, genuinely, a humanitarian crisis; therefore it should be addressed in such a way’.49 Clearly, then, the senior UN officials sought to maintain the existing

48 Later he argued that for the junta’s action to have amounted to a crime against humanity, crimes such as murder or extermination would have to be committed as part of ‘a widespread or systematic attack’ against the civilian population. See Edward Luck, Briefing on ‘International Disaster Assistance: Policy Options’, Subcommittee on International Development, Foreign Assistance, Economic Affairs and International Environmental Protection, Committee on Foreign Relations of the United States Senate, 17 June 2008, p. 4.
fragile consensus on a narrow understanding of the applicability of RtoP. That said, they were obviously irritated about the unresponsiveness of the junta. His calls and even a letter addressed to the Senior General having remained unanswered, Ban Ki-moon did not mince his words when, on 12 May, he registered his ‘deep concern – and immense frustration – at the unacceptably slow response to this grave humanitarian crisis’. At that time, only about 270,000 of an estimated 2.4 million people in need had received some assistance.

**Achieving a Diplomatic Solution to the Crisis**

Though the RtoP norm was perhaps not applicable to Myanmar’s grossly inadequate way of dealing with Cyclone Nargis, its invocation nevertheless played an important part in addressing the crisis more effectively, namely as a rhetorical device. From a Western perspective, reference to RtoP increased the political pressure on Naypyidaw to become more responsive to international concerns. Above all, invoking the responsibility to protect left open the possibility of military intervention by the Western powers. To be sure, Washington was not really interested in providing humanitarian relief at the point of a gun. US policy-makers quickly appreciated the need to avoid perceptions in Asia according to which Washington was taking advantage of a desperate humanitarian situation to finally unseat the military government. Indeed, the evident political undertone underpinning the accusation by First Lady Laura Bush two days after Cyclone Nargis struck that the military regime had failed to warn citizens ahead of the cyclone and was blocking assessment teams had raised eyebrows in Southeast Asia and elsewhere. Having also made the initial offer of assistance almost in the same breath as signing legislation awarding the Congressional Gold Medal to Daw Aung San Suu Kyi, the administration consequently opted to temporarily freeze its overt regime change agenda, while hoping perhaps that the medium of humanitarian relief would still work

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53 ‘Myanmar’s generals shun US aid, see risk to political power’, Channelnewsasia, 7 May 2008.
towards this very end given the US ability to make a sizeable and highly visible contribution to the provision of emergency assistance. Nevertheless, the possibility of Western intervention remained for as long as talk about the possible invocation of RtoP continued, especially with naval capabilities in place just outside Myanmar’s territorial waters.

In spite of the lack of unambiguous evidence that the invocation of the RtoP norm and the associated specter of Western intervention was a major factor in achieving greater receptivity on the part of the SPDC to demands of the international community regarding access to cyclone survivors, it would be fair to assume that Western references to RtoP played a role in a whole gamut of decisions taken by Myanmar’s military leadership. These include the belated issue of visas to international staff working for the UN and humanitarian agencies and granting of access to more remote parts of the delta; the agreement to receive an emergency assessment team from the Association of South-East Asian Nations (ASEAN); the hosting of EU Commissioner for Development and Humanitarian Aid, Louis Michel; and the organization of a visit to the delta for a large group of resident diplomats. Also, the UN Office for the Coordination of Humanitarian Affairs (OCHA) had called for an air and sea corridor to channel aid in large quantities as quickly as possible.

Against the backdrop of threatening noises focusing on RtoP, the regime ultimately agreed on the World Food Programme (WFP) using ten helicopters to ferry supplies from warehouse facilities in Yangon directly to remote locations the delta. This quelled calls for the use of Western naval and other military assets in the delivery of international assistance.

Importantly, the invocation of the RtoP norm also seems to have proved crucial in propelling ASEAN into assuming the role of facilitative between Naypyidaw and the West. For instance, on 8 May Thailand’s then Supreme Commander, Boonsrang Niumpradit helped broker Myanmar’s acceptance of US military planes being used for the relief effort. To him, there was a gulf of mistrust between Naypyidaw and Western capitals over the use of American

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54 The US organised 185 USAID flights, representing more than one third of all estimated relief flights. See Post-Nargis Joint Assessment report, p. 52.


57 ‘British minister predicts “dramatic steps” by Myanmar to open up to foreign aid’, IHT, 18 May 2008.
military assets. More generally, ASEAN governments noted that in the face of discussions about the possible application of the RtoP to Myanmar, the perceived threat of foreign intervention prompted the SPDC to deploy the military defensively rather than ensure that it assist all-out in addressing the humanitarian situation. Looking back, Singapore Foreign Minister George Yeo described the stand-off between Myanmar and the international community as follows:

…there was great enthusiasm to help. But some might have hoped that this would help topple the government. Then on the other side, we had the Myanmar government which was paranoid and worried that the warships anchored outside were there not just to deliver aid but to give assistance to rebel forces.  

In the event, ASEAN established for itself a role as regional facilitator, but merely with regard to addressing Myanmar’s humanitarian crisis in the wake of Cyclone Nargis. Singapore, as ASEAN Chair, convened an informal session of ASEAN senior officials to discuss how ASEAN could respond to the situation. This produced an offer by Singapore Prime Minister Lee to host a meeting of the ASEAN Foreign Ministers to discuss possible collective relief and recovery efforts. Notably, up to this point, ASEAN member states had offered Myanmar assistance on a bilateral basis only, not least because the grouping had not fully ratified their agreement in July 2005 on an ASEAN Disaster Management and Emergency Response mechanism.

Meanwhile, the Secretary-General of ASEAN, Surin Pitsuwan, wrote to Myanmar ministers urging them to consider the quick admission of ASEAN relief and rescue teams to assist in Myanmar’s ongoing relief efforts. This led to the first ever deployment of the ASEAN Emergency Rapid Assessment Team (ERAT) assembled by the ASEAN Secretariat in coordination with the ASEAN Committee on Disaster Management (ACDM) and the Government of Myanmar. Based on ERAT’s assessment, ASEAN country teams were to provide targeted assistance in support of the military government’s aid distribution to the affected population. ASEAN-ERAT concluded that there was the possibility of a potential second wave of deaths and morbidity due to

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59 George Yeo, Transcript of Interview of Minister of Foreign Affairs George Yeo with the local media on the ASEAN Ministerial Meetings, 16 July 2008, www.mfa.gov.sg.
diseases and nutritional deficiency, which could be avoided through a more coordinated effort between the international community and the Government of Myanmar. ERAT proposed that ASEAN be at the forefront of the coalition to forge strong partnerships with neighboring countries as well as organizations that have expertise and experience in managing major disasters, through all phases of relief, recovery, rehabilitation and risk reduction. Above all, this implied that ASEAN would lead a combined effort with the United Nations.

On 12 May 2008, representatives of the ASEAN Secretariat, the World Bank and OCHA met to discuss both the relief effort, and medium and long-term measures for the victims of Cyclone Nargis. Secretary-General Surin Pitsuwan, the Chair of the ASEAN Humanitarian Task Force, called ASEAN’s response to the cyclone a ‘defining moment’ for the grouping. As he also put it:

We have worked 24/7 to raise a level of trust and to allow our rapid assessment team in. We are trying to get around a lot of suspicion and sensitivities and mistrust. Our utmost concern is for the 1.5 million victims of Cyclone Nargis who are awaiting assistance in all forms from the outside world now.

Surin justified ASEAN’s role with reference to disease and illness potentially spreading from Myanmar to other countries of Southeast Asia. This decision was clearly taken in the context of talk about the possibility of intervention. As Singapore’s foreign minister, George Yeo, argued: ‘Many western countries feel that much more should be done and perhaps it should be forced on them, but I don’t see how this can be done, because if you try to do that, you make the situation worse and (this) will only increase the suffering of the people in Myanmar’. Significantly, Myanmar took some convincing that ASEAN should play the role as facilitator and coordinator that Surin and some member states had begun to carve out. After all, it was only in November 2007 that Myanmar refused an ASEAN role in facilitating a regional dialogue, albeit as regards the country’s further political development.

As international discussion about the applicability of RtoP intensified, ASEAN governments became increasingly concerned that Naypyidaw’s

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64 Quoted in ‘Countries must accept autonomy of Myanmar, China when extending help’, Channel News Asia, 17 May 2008.
recalcitrance regarding humanitarian relief would seriously if not irreparably damage ASEAN. There was, however, also considerable concern about the likely implications of applying the RtoP to Myanmar. In the words of the ASEAN Secretary-General, when addressing the Council on Foreign Relations, ‘it won’t work, and you are condemning ASEAN. You are giving ASEAN a kiss of death’. In the event, however, only a few days later ASEAN foreign ministers agreed on the establishment of an ASEAN-led coordinating mechanism to address the effects of Cyclone Nargis.

The extraordinary meeting of ASEAN Foreign Ministers on 19 May proved a watershed for attaining this outcome. Amid continuing Western diplomatic pressure Indonesia, in particular, forced Myanmar’s Foreign Minister Nyan Win to consider what ASEAN meant to Myanmar, and others to consider what Myanmar meant to the grouping. As Singapore’s Prime Minister later said, ‘[j]ust as we could not ignore political developments in Myanmar, neither could we stand aside from this humanitarian crisis when so many lives had been lost and many more remained at risk’. In the event, Naypyidaw accepted ASEAN’s assistance on the condition that it would not be politicised. This paved the way for the deployment of medical teams and the establishment of a humanitarian task force. More importantly, it was decided to set up an ASEAN-led coordinating mechanism, which was to be headed by ASEAN Secretary-General Surin Pitsuwan, and to work closely with the UN as well as a central coordinating body to be set up by Myanmar. The mechanism was to facilitate the effective distribution and utilisation of assistance from the international community, including the expeditious and effective deployment of relief workers, especially health and medical personnel.

The outcome of the ASEAN foreign ministers meeting not only proved crucial in arresting talk about intervention based on the RtoP, but also paved the way for a visit to Myanmar by Sir John Holmes, which in turn was followed by a visit from Secretary-General Ban Ki-moon, who came to Myanmar just before Naypyidaw held the second part of its constitutional referendum in the areas affected by the cyclone. According to some observers, receiving senior officials...

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67 Special ASEAN Foreign Ministers Meeting Chairman’s Statement, Singapore, 19 May 2008.
UN officials was not easy for the junta. As Thant Myint-U argued, ‘the generals think the UN is deeper in the US pocket than ever before. They are fearful that UN aid agencies are there in camouflage for the regime-change agenda’.68 Significantly, Senior General Than Shwe used the occasion of Ban’s visit to Myanmar to grant relief workers immediate, full and unhindered access, which allowed the UN to go ahead with a pledging conference on 25 May, organized in Yangon.69 Here participants welcomed the creation of the Yangon-based Tripartite Core Group comprising representatives from the government of Myanmar, ASEAN and the UN as a working mechanism for coordinating and facilitating, as well as monitoring the flow of international assistance into Myanmar. By July 2008, as John Holmes noted, the relief effort and even reconstruction had advanced well.70 Contrary to initial fears, no outbreak of epidemics and no mass starvation occurred in the delta.

While the responsibility to protect served as a useful tool to exert diplomatic pressure on Myanmar, its invocation also proved useful in allowing European governments in particular to position their countries as caring and politically progressive and in addressing the outrage expressed by the media and voters over the humanitarian drama unfolding in Myanmar. As one British columnist had complained, ‘[t]he Burmese must die because we are too busy pretending to save Afghans and Iraqis. To such cynicism has liberal intervention sunk’.71 Similarly, talk about RtoP addressed the anger of Burmese intellectuals abroad, who were ultimately not terribly impressed with Western ambivalence, but having been left appalled by Naypyidaw’s response to Cyclone Nargis, they welcomed more diplomatic pressure on the regime anyway.72 That said, the impact of the invocation of RtoP within ASEAN and Myanmar is considered the more important aspect here.

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71 Simon Jenkins, ‘Silence from our sabre rattlers as Burma’s dying cry out to be saved’, The Sunday Times, 11 May 2008.
Implications

The developments about RtoP and Myanmar have already had four important implications. First, there has been a call for further discussion about whether the neglect and obstruction perceived to have underpinned Myanmar government’s response to Cyclone Nargis did in fact constitute a crime against humanity. Such a debate would require further careful and detailed analysis of the regime’s decision-making and its humanitarian relief efforts in the wake of the cyclone. Second, the fact that France ultimately reassessed its position about the applicability of RtoP in the case of Cyclone Nargis has focused attention on what General Assembly resolutions would justify a ‘vigorous response’ to large-scale loss of life in the event of a state’s indifference or incapacity in the event of a natural disaster causing displacement. In this regard, Luck has pointed to the guiding principles for humanitarian assistance as spelled out in 1991 and the 1998 Guiding Principles on Internal Displacement. Both were reaffirmed by the General Assembly in late 2007. While the former clarifies that states whose populations are in need of humanitarian assistance are called upon to facilitate the work of aid organisations in implementing humanitarian assistance, in particular the supply of food, medicines, shelter and health care, for which access to victims is essential, the latter specify that international humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. By comparison, Bernard Kouchner has focused on the principle of free access to victims of natural catastrophes and other similar emergency situations, as originally outlined in UNGA resolutions 43/131 and 45/100 of 8 December 1988 and 14 December 1990. Third, the practical difficulties encountered in responding to Cyclone Nargis have compelled ASEAN

members in particular to revisit their existing agreements on disaster relief, as well as to return to the question of the use of foreign military assets for that purpose. Significantly, Malaysian Defence Minister Datuk Seri Najib Tun Razak has suggested that militaries represent a critical component in humanitarian and disaster relief.\textsuperscript{77} ASEAN members have called for the full ratification of the ASEAN Agreement on Disaster Management and Emergency Response and await the operationalisation of the ASEAN Standby Arrangements and standard operating procedures as well as a fully functional ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management.\textsuperscript{78} When in place, these developments may also add momentum to develop joint practical responses and build interoperability among ASEAN Regional Forum countries in disaster relief situations. There is now an emerging normative consensus among Asia-Pacific countries. On the sidelines of the Seventh ASEAN Security Summit (Shangri-La Dialogue) defence ministers and senior officials from 27 countries agreed on guiding principles for multilateral cooperation in the provision of disaster relief. The three guiding principles agreed stress (1) the responsibility of disaster-hit countries to quickly and effectively bring humanitarian relief to people in their territories, (2) the expectation that, where necessary, countries concerned should facilitate the entry of humanitarian aid from other countries and international organizations, and (3) the importance that external help shall have the consent of the affected countries and come under their overall control and supervision.\textsuperscript{79} The question to be addressed in the next section is how much of a parallel there is between the response to Cyclone Nargis and how the international community has responded to the armed conflict along Myanmar’s eastern border.

\textbf{Myanmar’s Armed Conflict}

That Myanmar has not already been subject to wide international debate about the applicability of the responsibility to protect may surprise those taking a casual look at the apparent abuses and violations allegedly perpetrated by the \textit{tatmadaw} (Myanmar’s armed forces) against some of the country’s ethnic minorities. Drawing on a variety of sources, Nobel Prize laureates Desmond Tutu and Vaclav Havel and their researchers published in 2005 a detailed

\textsuperscript{77} Zakaria Adbul Wahab, ‘Military has greater role in disaster relief operations, says Najib’, \textit{New Straits Times}, 1 June 2008.

\textsuperscript{78} Joint Communiqué of the 41st ASEAN Ministerial Meeting, Singapore, 21 July 2008.

\textsuperscript{79} ‘Defence ministers establish protocols for disaster relief’, \textit{The Nation}, 1 June 2008.
paper outlining why Myanmar could be considered a threat to the peace, warranting scrutiny by the UN Security Council.\(^8\) Looking at factors deemed to have resulted in Security Council intervention in the past, they argued that these were evident in Myanmar in greater measure, including armed conflict between the central government and ethnic groups, widespread internal humanitarian/human rights violations, and the outflow of refugees. More specifically, the report claims destabilizing effects by dint of the following factors: destruction of villages, forced labour, systematic rape, illegal drug trade, unchecked HIV/AIDS, and child soldiers. Tutu and Havel moreover claimed that members of the tatmadaw use rape as part of a campaign of ‘Burmanization’, ‘evidencing a policy of ethnic cleansing’.\(^8\)

Myanmar indeed lacks both democracy and peace. Given that no single issue or cause underpins conflict in Myanmar, the country is said to remain caught in a conflict trap.\(^8\) The armed ethnic conflict, which is heading into its seventh decade, arguably remains the major obstacle to peace. While several ethnic insurgent groups have reached ceasefire arrangements with the military (and retained their arms), some non-ceasefire groups in eastern Myanmar remain lodged in continued armed conflict with the ruling regime, primarily the Karen National Union (KNU), the Karenni National Progressive Party (KNPP), and the Shan State Army-South (SSA-S).\(^8\) In the context of ongoing insurgency and counter-insurgency activity about 2,500 villages were reportedly destroyed, relocated or abandoned between 1996 and 2002.\(^8\) The army again stepped up operations against non-ceasefire groups in 2005, following the political ouster of former Prime Minister Khin Nyunt the year before.

The armed conflict has over the years generated substantial internal displacement in Myanmar, although development projects increasingly have done too.\(^8\) Myanmar is considered to have a higher number of internally displaced persons than any other country.\(^8\)


\(^8\) Ibid., p. 24.


\(^8\) For overviews of ethnic organisations, see Ibid., Appendix.


\(^8\) Internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border; Deng, Francis, ‘The guiding principles on internal displacement’, E/CN.4/1998/53/Add.1, February 11. New York, United Nations.
displaced persons (IDPs) than any other country in Southeast Asia. In 2007, IDPs in hiding apparently numbered 99,000, those in SPDC relocation sites 109,000, and those living in ceasefire areas 295,000. Although IDPs are spread out over several states (Shan State, Karenni State, Kayin (Karen) State, Mon State, Bago (Pegu) Division, Tenasserim Division), more than 50 per cent of IDPs in hiding are believed to be Karen. According to Thomas Weiss, the average ratio of IDPs to refugees was generally about 2.5:1 by 2006. In Myanmar, the ratio is closer to 4:1 based on an assumed figure of 500,000 IDPs and the roughly 130,000 refugees registered in Thailand. Ethnic groups in eastern Myanmar are not the only ones to have suffered displacement, however. What the SPDC refers to as ‘Bengali Muslims’ have for some also been affected by government policy.

Notably, much of the violence perpetrated by the military in Kayin State and Bago Division since 2005 is alleged to have been directed at civilians. As Amnesty International put it: ‘It is far from clear … that the current offensive is being fought in the counter-insurgency context at all, as civilians have been the offensive’s primary targets - rather than just collateral damage - while the KNLA [Karen National Liberation Army] has often been overtly avoided by the tatmadaw’. Seeing these practices as stemming from government and tatmadaw policy, Amnesty has labeled them crimes against humanity.

Human protection in Myanmar’s eastern region has for long been an issue of growing importance for the international community. The UN General Assembly, the UN Human Rights Council, and the Secretary-General’s Special Advisor have all called for the cessation of hostilities in the conflict areas. Yet the military government has routinely dismissed such calls. Notably, the military regime for years also disputed the occurrence of internal displacement. Consequently, the UN Secretary-General’s Special Representative on IDPs,
Francis Deng, saw no real possibility for engaging the military regime on the Guiding Principles on Internal Displacement as he had done in other states, including Indonesia and the Philippines. Myanmar’s military leadership has also severely limited access to the border areas concerned.

In the late 1990s, the then Special Rapporteur on the situation of human rights in Myanmar placed his hopes on the International Committee of the Red Cross (ICRC) to conduct independent monitoring in relation to displaced persons and the violence in the border areas. His successor, Sérgio Paulo Pinheiro, proposed that the SPDC consider allowing an adequate ICRC presence in all conflict areas of the country to assess the situation on an ongoing basis, report confidentially to the authorities and work out with them appropriate measures to ensure the security and protection of the civilian population, wherever needed. While the ICRC subsequently indeed opened some field offices across the country, the organization has found it difficult in practice to operate in Myanmar, particularly after the political ouster of Khin Nyunt in 2004. Indeed, the ICRC has in recent years been prevented from conducting independent field operations in sensitive border areas and has felt obliged to close two field offices.

Considering - in 2006- the humanitarian situation to be the worst since the government’s 1996-7 military campaign, Pinheiro renewed calls for a fact-finding mission regarding reported cases of extrajudicial killings, attacks on civilians and forced displacement following military offensives in Kayin State. No UN fact-finding mission could be organised, however. But the extent of human rights and humanitarian problems was highlighted by the ICRC in June 2007, when its president made a rare comment in public about abuses against detainees (especially their use as porters) and civilians (including the large-scale destruction of food supplies and means of production). In his last report as Special Rapporteur, Pinheiro lamented that:

[C]ulture of impunity remains the main obstacle to securing respect for human rights in Myanmar and to creating a favourable environment for their realization. Throughout his mandate, the Special Rapporteur has received reports of widespread and systematic human rights violations, including summary executions,

torture, forced labour practices, sexual violence and the recruitment of child soldiers. These violations have not been investigated and their authors have not been prosecuted.  

While the situation on Myanmar’s eastern border has thus been depicted in very serious terms not least by the UN, efforts to invoke the responsibility to protect idea to deal with the situation in the borderlands have remained the exception. Indeed, Louise Arbour, then High Commissioner for Human Rights, explicitly invoked the RtoP principle with reference to Myanmar only after the September 2007 protests, in which the ethnic minorities played no part. Notably, while also harshly decrying systematic and severe human rights violations, Myanmar’s ongoing humanitarian crisis, and cross-border threats, Western governments have arguably proved at least equally reluctant to explicitly invoke the RtoP principle in response to the tatmadaw’s practices, even when at their most critical.

Myanmar on the UN Security Council Agenda

Calling for a briefing by Ibrahim Gambari on the situation in Myanmar and an update on the longstanding good offices mission conducted by the UNSG, Washington argued in September 2006 that Myanmar should be put on the Security Council’s agenda because the situation in Myanmar was likely to endanger the maintenance of international peace and stability. It substantiated the argument by pointing to the ‘grave human rights and humanitarian conditions in Burma, including the detention of over 1,100 political prisoners, as well as the outflow from Burma of refugees, drugs, HIV-AIDS and other diseases’. The procedural vote was won despite the objections of Russia, China, Congo and Qatar. China’s UN ambassador, Wang Guangya, had called the US depiction of the situation in Myanmar ‘a far cry from reality’.

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97 The severe abuses of human rights noted by the United States include persecution, torture, disappearances, extrajudicial executions, demolition of places of worship, forced relocation, rape and forced labour. See U.S. Department of State, Conditions in Burma and U.S. Policy Toward Burma for Period 28/9/05-27/03/06, www.state.gov/p/eap/rls/rpt/66449.htm
The US and the UK made the violence in Myanmar’s eastern border region a more explicit issue in their final draft resolution in January 2007. In its preamble, the draft resolution recalled several other resolutions, including 1265 (1999) and 1296 (2000) on the protection of civilians in armed conflict. More specifically, it called on Myanmar to cease military attacks against civilians in ethnic minority regions and in particular to end the associated human rights and humanitarian law violations against persons belonging to ethnic nationalities, including widespread rape and other forms of sexual violence carried out by members of the armed forces. It also called upon Myanmar to permit international humanitarian organisations to operate without restrictions to address the humanitarian needs of the people of Myanmar. In the event, China and Russia both vetoed this draft resolution essentially on the grounds that Myanmar did not pose a threat to international peace and security, and that the issues raised were thus outside the Council’s purview.

Subsequent discussions of the situation in Myanmar by the Security Council have mostly focused on recent political developments - the protests in urban Myanmar in September-and the good offices role of the Secretary-General. The same is true for the first ever Security Council Presidential Statement on Myanmar adopted in October 2007, although reference was also made here to ‘the political, economic, humanitarian, and human rights issues that are the concern of its people’. The short Presidential Statement of 2 May 2008 made no explicit reference to violence in the ethnic minority areas, indicating that British and American concerns about the ongoing abuses are not really shared within the Council. Even if the issue is raised again, there is little likelihood of the invocation of the responsibility to protect, unlike in the case of Cyclone Nargis.

First, the existing consensus among states expressed in the 2005 Summit Outcome Document links the responsibility to protect to genocide, war crimes, ethnic cleansing and crimes against humanity. Conceiving of the tatmadaw’s practices as involving mass atrocity crimes is not straightforward, particularly when concepts are narrowly defined and the issue is intent (e.g. genocide). While several of the reported abuses against civilians in eastern

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Myanmar might be subsumed under crimes against humanity if they were part of a widespread and systematic attack, the evidence to support such allegations has been difficult to verify independently, although high-resolution satellite imaging has recently been used to monitor the situation on the ground.\textsuperscript{103} A UN fact-finding mission seems quite unlikely however. Interestingly, in his initial report the incoming Special Rapporteur on Human Rights was focused on improving the human rights and the humanitarian situation in Myanmar more generally rather than focusing on the abuses along the eastern border.\textsuperscript{104} Second, due to the relatively low number of fatalities (particularly when compared with figures for southern Thailand) and the lack of access to eastern Myanmar, the scale of the problem is difficult to present. In addition, some of the claims by non-state organisations have not been substantiated. Third, China retains its principled opposition to the UNSC focusing on Myanmar’s domestic situation, which it still does not see as a threat to international peace and security.\textsuperscript{105} In addition, for economic and geopolitical reasons, Beijing would want to extend diplomatic protection to Naypyidaw. Russia’s position has also been that Myanmar’s domestic problems are already dealt with in other UN fora. That these countries also objected to the UNSC discussing whether the response by the Myanmar government to Cyclone Nargis merited intervention on the basis of RtoP is thus not a surprise. Notably, Indonesia, while merely abstaining on the January 2007 draft resolution on Myanmar, has nevertheless been inclined to adopt a view similar to that of China and Russia, ‘especially when compared with situations elsewhere’.\textsuperscript{106}

Conclusions

This article offers five conclusions. First, the international response to Cyclone Nargis has reinforced the consensual position agreed in the Outcome Document of the 2005 World Summit, which does not list natural or environmental catastrophes among the instances in which to apply the RtoP doctrine.

\textsuperscript{105} UN Security Council, 5619th meeting, S/PV.5619, 12 January 2007.
\textsuperscript{106} Ibid.
Though the consensus on RtoP thus remains narrow, the underlying idea of sovereignty as responsibility is widely accepted, even if emphasis is first and foremost placed on the primary responsibility of the affected state. Second, although the responsibility to protect was ultimately seen as not being applicable in the case of Cyclone Nargis, it served as a rhetorical device to influence Myanmar’s response to the natural disaster. Significantly, its invocation also played a role in ASEAN’s decision to lead a distinct effort to build a bridge between Naypyidaw and the international community regarding the provision of humanitarian assistance for cyclone survivors. The Myanmar case shows, third, that Washington is careful about building on the RtoP doctrine to further its regime change agenda. While having military assets in place when pressuring Naypyidaw for full access to the Ayeyawady delta, Washington did not employ these for the disbursement of aid without Naypyidaw’s consent. The Bush administration has also been reluctant to explicitly invoke the RtoP principle in relation to abuses experienced by some of Myanmar’s ethnic minorities. This is not to suggest that no diplomatic attention has been given to Myanmar’s ethnic conflict, but overall the issue has for both Washington (and London) arguably played second fiddle to the question of the junta’s relations with Aung San Suu Kyi and the National League for Democracy. For those who are concerned about alleged atrocity crimes in eastern Myanmar, Western countries will not have played enough of a role as norm carriers.

Fourth, the Myanmar case illustrates Southeast Asia’s continued wariness regarding the invocation of RtoP. Clearly, ASEAN countries have also been reluctant to dispense with the need for consent regarding the provision of humanitarian assistance and they reject in principle the forcible disbursement of humanitarian relief. ASEAN’s response to Cyclone Nargis shows that member countries are nevertheless prepared to use collective diplomatic strength both to save lives and to prevent a humanitarian crisis facing one of its members from damaging the association’s image. Whether the acceptance of the practical need for assistance is recognised as part of the grouping’s perceived responsibility to act will in future lead to the reliance on regional militaries to deal with humanitarian crises remains to be seen.

Finally, the Myanmar case underscores the importance of thinking about the responsibility to protect in terms of a responsibility to prevent and a responsibility to react. A range of measures short of the use of military force can serve the purpose of practical assistance for the purpose of human

107 Washington continues to call for a tripartite dialogue, involving the regime, the democratic opposition and the ethnic groups.
protection. As regards Myanmar, finding new ways of shaping the leadership’s policy and the military’s behaviour on the ground thus seems crucial. After all, the fact that Myanmar ultimately permitted international relief workers to access even remote parts of the devastated Ayeyawady delta does not necessarily signal any preparedness on the junta’s part to desist from expecting its Ayeyawady armed forces to ruthlessly overcome remnant resistance in ethnic minority areas.