REGIONAL FOCUS & CONTROVERSIES

Natural Disaster in Armed Conflict Area: The Implementation of the Doctrine of Responsibility to Protect in the ASEAN*

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In the last decade, more natural disasters have occurred than before in the world. The ASEAN regions are particularly prone to such disasters. Natural disasters can happen anytime and will be a more serious problem in an armed conflict area. In disaster management, humanitarian assistance of the international community is basically subject to the principle of state sovereignty. In a conflict area, however, the principle of sovereignty must be harmonized with the doctrine of responsibility to protect. How could the ASEAN countries accept the doctrine of the responsibility to protect during natural disaster management in an armed conflict? This paper aims to analyze the doctrine of responsibility to protect in the course of managing natural disaster of an armed conflict area in terms of lessons from the ASEAN countries such as Indonesia, Myanmar and the Philippines.

Keywords

1. Introduction

Catastrophic events would occur due to natural causes or human action.[1] Based on the Natural Disaster Data Book 2013, Asia is most prone to natural disasters.[2] From 1984 to 2013, Southeast Asia, East Asia, and South Asia were most frequently affected by natural disasters. During that period, statistics show that 2,481, or about 36 percent of all natural disasters around the world have occurred in this region.[3] In 2014, 48 percent of the world' natural disasters hit Asia.[4]

According to the International Disaster Database, in the period of 2003-2013, 8.83 percent (177,813,938 people) of the total world population was affected by natural disasters in Southeast Asia, accounting for more than 31 percent (355,365 inhabitants) of global deaths due to natural disasters.[5] *E.g.*, the Cyclone Nargis in Myanmar's Irrawaddy Delta region, which occurred May 3-4, 2008, has caused huge losses including the deaths and disappearances of more than 133,000 people, destruction of infrastructure, and left 500,000 individuals homeless.[6] In June 2008, the Typhoon Fengshen killed more than 1,000 people in the Philippines, most of whom were on a passenger ferry, *Princess of the Star*.[7] On November 9, 2013, the world was again struck by a mega-natural disaster, 'Typhoon Haiyan' which hit the province of Leyte, the Philippines and Vietnam.[8] According to the Philippine Red Cross, an estimated 1,200 people were killed and thousands fled.[9] The material damages caused by natural

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[1] Syamsul Maarif, *Harmonisasi Hukum dalam Penanggulangan Bencana* [Harmonization of Law in Disaster Management], 1:7 Jurnal Hukum Militer [Journal of Military Law], 3 (2013).

[2] ADRC, Natural Disaster Data Book 2013: An Analytical Overview (2013), *available at* http://www.adrc.asia/publications/databook/ORG/databook_2013/pdf/DataBook2013_e.pdf (last visited on Sept. 25, 2017).

[3] *Id. See also* Centre for Research on the Epidemiology of Disaster ("CRED"), The Human Cost of Natural Disasters-Global Perspective (Aug. 5, 2015), at 1, *available at* http://emdat.be/human_cost_natdis (last visited on Sept. 25, 2017).

[4] *Supra* note 2.

[5] D. Petz, Strengthening Regional and National Capacity for Disaster Risk Management-the Case of ASEAN (Brooking LSE Project on Internal Displacement, 2014), *available at* http://www.brookings.edu/~/media/research/files/reports/2014/11/05-south-east-asia-drm-petz/strengthening-regional-and-national-capacity-for-drm--case-of-asean-november-5-2014.pdf (last visited on Oct. 4, 2017).

[6] I. Supancana, *Harmonisasi Hukum Internasional dan Hukum Nasional dalam Penanganan Bencana* [Harmonization of International Law and National Law on Disaster Management], *in* Berbagai Perspektif Harmonisasi Hukum Nasional Dan Hukum Internasional [The Perspective of National and International Law Harmonization] 81 (2012).

[7] *Id.*

[8] Z. Daniel, *Typhoon Haiyan Crosses Vietnam's Coast as Millions Await Aid in Devastated Philippines*, ABC News, Nov. 11, 2013, *available at* http://www.abc.net.au/news/2013-11-11/vietnam-braces-for-typhoon-haiyan-as-thousands-feared-dead-in-p/5081990 (last visited on Sept. 25, 2017).

[9] A. Stevens & P. Hancocks, *"Worse than Hell" in Typhoon - Ravaged Philippines*, CNN, Nov. 11, 2013, *available at* http://edition.cnn.com/2013/11/10/world/asia/philippines-typhoon-haiyan/index.html (last visited on Sept. 25, 2017).

disasters in Southeast Asia averaged more than USD 4.4 billion per year in the last decade.[10] The above facts have shown that natural disasters can happen at any time beyond national boundaries. As natural disaster has caused suffering to mankind, it can be said "a threat to human security."[11]

Today, each state has overall responsibility for dealing with natural disasters occurring in its territory.[12] Under international law, humanitarian assistance by external parties is permitted by consent or upon request of the government of the country affected by the disaster as outlined in the form of an international treaty.[13] As the conditions of such governance is too strong or too weak and the victims of natural disasters are not fully cared, the international community is required to consider the process of external humanitarian assistance more seriously.

However, there is no binding rules to protect and assist the people under natural disaster, especially in the areas of armed conflict. International Disaster Response Law ("IDRL") – a guide to natural disaster management – may not be applied to the natural disaster in armed conflict. Moreover, many international disaster response operations are subject to *adhoc* rules which vary dramatically from country to country. Therefore, this confused system would impede the provision of fast and effective assistance leaving lives and dignities at risk.[14]

In order to bypass the principle of state sovereignty in natural disaster, the doctrine of "responsibility to protect" ("R2P") has been adopted as a justification to provide humanitarian assistance for the victims. Can the R2P be applied to natural disaster management in the areas of armed conflict, as well?

The primary purpose of this research is to check if the R2P doctrine can be applied to the natural disasters in armed conflict areas of the ASEAN countries such as Indonesia, the Philippines, and Myanmar. This paper is composed of five parts including a short Introduction and Conclusion. Part two will examine the natural disaster management in international law. Part three will discuss the R2P doctrine. Part four will go over the implementation of the R2P in natural disaster management

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[10]   *Supra* note 5. *See also* WORLD BANK & GFDRR, ASEAN: ADVANCING DISASTER RISK FINANCING AND INSURANCE IN ASEAN MEMBER STATES (Apr. 2012), *available at* http://www.gfdrr.org/sites/gfdrr.org/files/publication/DRFI_ ASEAN_REPORT_June12.pdf (last visited on Sept. 25, 2017).

[11]   Djauhari Oratmangun, *Human Development and Human Security: A Journey towards a Humane Global World*, 1 INDONESIAN J. INT'L L. 46-7 (2003).

[12]   P. Harvey, *The Role of National Government in International Humanitarian Response to Disaster*, *in* The 26th ALNAP Meeting in Kuala Lumpur Background Paper, at 3 (Nov. 16-17, 2010), *available at* http://www.alnap.org/pool/files/26-meeting-background-paper.pdf (last visited on Oct. 9, 2017).

[13]   *Id.*

[14]   *Supra* note 6, at 82. *See also* International Disaster Response Law ("IDRL"): In Brief, Appeal No. 01.100/2004, *available at* http://www.ifrc.org/docs/appeals/annual04/011000401.pdf (last visited on Oct. 4, 2017).

with armed conflicts in the ASEAN.

2. Natural Disaster Management in International Law

A. *What is Natural Disaster?*

A natural disaster is the result of a natural hazard (e.g., flood, tornado, volcano eruption, earthquake, or landslide). It affects the environment in a catastrophic manner leading to human, financial, and/or environmental losses.[15] The resulting loss depends on the capacity of the population to support or resist the disaster and their resilience. This understanding is concentrated on the formulation: "[Natural] disasters occur when hazards meet vulnerability."[16] The term, *natural* has consequently been controversial because the events are not simply hazards or disasters without human involvement.[17] Meanwhile, the United Nations Development Program ("UNDP") stated that a natural disaster is a serious disruption of social function, causing widespread human, material, or environmental losses which exceed the ability of the affected society to cope only with its own resources.[18]

B. *International Regulation on Disaster Management and Its Development*

1. Overview

Even now there are no comprehensive international rules, principles, or standards to handle natural and manmade disasters. However, some relevant international legal instruments are working for disaster management, among others.[19]

   (a) International Conventions: Convention Establishing an International Relief Union of 1927; Convention on Assistance in the case of Nuclear Accident or Radiological

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[15] G. Simm, *Disaster Response in Southeast Asia: the ASEAN Agreement on Disaster Reponse and Emergency Management*, 6 Asian J. Int'l L. 5 (2016), *available at* https://www.cambridge.org.ezproxy.ugm.ac.id/core/services/aop-cambridge-core/content/view/FD77A7CB07AE4F4232A69237F521C450/S2044251316000205a.pdf/disaster_response_in_southeast_asia_the_asean_agreement_on_disaster_response_and_emergency_management.pdf (last visited on Oct. 9, 2017).

[16] *Id.*

[17] *Id. See also* Natural Disaster Management, *available at* https://sites.google.com/site/disasterportal (last visited on Sept. 25, 2017). [Emphasis added]

[18] A. Susanto, Disaster Management di Negeri Rawan Bencana 2 (2006).

[19] N. Puspita, *the International (Natural) Disaster Response Law: the Role of International Law in the Frame of Disaster Management*, Paper presented to the 3rd Conference Asian Society of International Law (Aug. 27-28, 2011).

Emergency of 1986; Convention on Early Notification of a Nuclear Accident of 1986; Council of Europe Agreement on the Prevention of, Protection Against, and Organization of Relief in Major Natural and Technological Disaster of 1987; Convention on Temporary Admission of 1990 (In particular, Annex B.9 Concerning Goods Imported for Humanitarian Purposes); Anti-American Convention to Facilitate Disaster Assistance of 1991; The Tampere Convention on the Provisions of Telecommunication Resources for Disaster Mitigation and Relief Operations of 1998; The International Convention on the Simplification and Harmonization of Customs Procedures as Amended in 1999; Framework Convention on Civil Defense Assistance of 2000; The 'Seville Agreement' on the Organization of International Activities of the Components of the International Red Cross and Red Crescent Movement of 1997.[20]

(b) United Nations Conventions: Convention on the Privileges and Immunities of the United Nations 1946; UN Convention on the Privileges and Immunities of the Specialized Agencies 1947; UN Convention on the Safety of United Nations and Associated Personnel 1994; Optional Protocol to the UN Convention on the Safety of United Nations and Associated Personnel 2005.

(c) Regional Agreements: EUR-OPA Major Hazards Agreement (Partial Agreement on the Prevention of, Protection against, and Organization of Relief in Major Natural and Technological Disasters) 1987; ASEAN Agreement on Disaster Management and Emergency Assistance 2005; Inter-American Convention Disaster Assistance 1991.

(d) General Normative Guidance: UN General Assembly Resolution 46/182, 1991 "Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations"; UN General Assembly Resolution 57/150 of 2002; IASC Operational Guidelines on Human Rights and Natural Disasters (2006) and Their Manual (2008).

(e) Normative Guidance on Specific Issues: INSARAG Guidelines (Urban Search and Rescue) 2002; Guiding Principles on Internal Displacement; UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheriro Principles) 2005; Civil-Military-Relations (OSLO Guidelines, MCDA Guidelines); Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance 2007.

(f) Other Relevant Legal Documents: Charter on Cooperation to Achieve the Coordinated Use of Space Facilities in the Event of Natural or Technological Disaster of 2000; the Statutes of the International Red Cross and Red Crescent Movement as Amended in 1995; the Principles and Rules of Red Cross and Red Crescent in Disaster Relief as

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[20] I. Supancana, *International Disaster Response Law, Rules and Principles (IDRL) Programme of the International Federation of Red Cross and Red Crescent Societies (IFRC)*, Working Paper 77 (2010), *available at* http://repository. lapan.go.id/repository/627-545-2-PB.pdf (last visited on Sept. 25, 2017).

Amended in 1995; the Supplementary Measures to Enhance the Implementation of the Seville Agreement of 2005; the Measures to Expedite International Relief of 1977; the Hyogo Framework for Action of 2005.

2. The Development of the IDRL

In 2001, the International Federation of Red Cross and Red Crescent initiated guidelines for domestic facilitation and regulation of international disaster relief and initial recovery assistance or the IDRL.[21] In November 2007, the state parties to the 1949 Geneva Conventions and the International Red Cross and Red Crescent Movement adopted the "Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance" (hereinafter IDRL Guidelines).[22] In 2008, the UN General Assembly adopted three resolutions (G.A. Res. 63/139, 63/141 and 63/137) encouraging states to make use of them.[23]

The IDRL Guidelines have drawn from many existing international instruments, including the UN General Assembly Resolutions 46/182 (1991) and 57/150 (2002), the measures to Expedite International Relief of 1997, and the Hyogo Framework for Action of 2005.[24] The IDRL Guidelines can be referred to as a (soft) 'international law'[25] whose purpose is to provide guidance to states interested in improving their domestic legal, policy, and institutional frameworks concerning international disaster relief and initial recovery.[26] These Guidelines are intended neither to apply to

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[21] The International Federation of Red Cross and Red Crescent Societies, IDRL Project Report 2002-2003, *in* Proceding to the 28th International Conference of the Red Cross and Red Crescent, (Dec. 2-6, 2003), *available at* https://www.icrc.org/eng/assets/files/other/idrl_report_final_ang.pdf (last visited on Sept. 25, 2017).

[22] The International Federation of Red cross and Red Crescent Socities, IDRL Guidelines, *available at* http://www.ifrc.org/en/what-we-do/idrl/idrl-guidelines (last visited on Sept. 25, 2017).

[23] *Id. See also* U.N. Doc. A./RES/63/139 (Resolution adopted by the General Assembly on Strengthening of the Coordination of Emergency Humanitarian Assistance of the United Nations), *available at* https://www.iom.int/jahia/webdav/shared/shared/mainsite/policy_and_research/un/63/A_RES_63_139_EN.pdf; U.N. Doc. A/RES/ 63/141 (Resolution adopted by the General Assembly on International Cooperation on Humanitarian Assistance in the field of Natural Disaster from Relief to Development, *available at* http://www.ifrc.org/docs/IDRL/-%20To%20add/GAR%20 63-141%20(2008).pdf; and U.N. Doc. A/RES/63/137 (Resolution adopted by the General Assembly on Strengthening Emergeny Relief, Rehabilitation, Reconstruction and Prevention in the aftermath of the Indian Ocean Tsunami Disaster, *available at* http://www.ifrc.org/docs/IDRL/-%20To%20add/GAR%2063-137%20(2008).pdf (all last visited on Oct. 5, 2017).

[24] The International Federation of Red Cross and Red Crescent Societies, Introduction to the Guidelines 13 (2011), *available at* http://www.ifrc.org/PageFiles/41203/1205600-IDRL%20Guidelines-EN-LR%20(2).pdf (last visited on Sept. 25, 2017).

[25] G. Venturini, International Disaster Response Law in relation to Other Branches of International Law 54 (2012), *available at* https://webcache.googleusercontent.com/search?q=cache:KRjKNCkgXM4J:https://www.springer.com/cda/content/document/cda_downloaddocument/9789067048811-c2.pdf%3FSGWID%3D0-0-45-1344856-p174510608+&cd=10&hl=en&ct=clnk&gl=id (last visited on Sept. 25, 2017).

[26] *Id. See also supra* note 20, at 78.

disasters during armed conflicts, nor to imply changes in any rules governing relief in those contexts.[27]

According to the IDRL Guidelines, the parties should be the state, individuals, NGOs, international organizations, or others to assist the disaster management. However, it also aims to help the nation to enhance their legal framework, policies, and institutions related to international disaster relief and initial recovery assistance. The following are some of the basic provisions of the Guidelines:

(a) Responsibility of the parties in the frame of *disaster relief and initial recovery assistance* (affected states, assisting actors, and all states);

(b) Early warning systems and preparedness (early warning, legal, policy, institutional, international and regional support against domestic capacity);

(c) Initiation and termination of international disaster relief and initial recovery assistance (including for military assistance, the facilities which is granted to the State or those who help others);

(d) Legal facilities for entry operations (easiness of operation for the entry of personnel, goods, equipment, goods and special equipment, transportation, temporary domestic legal status, taxation, security, extension of working time, costs, etc.)[28]

3. The Principles of Natural Disaster Management

On June 17, 2003, in Stockholm, the Principles and Good Practice of Humanitarian Donorship ("GHD") was declared by Germany, Australia, Belgium, Canada, the European Commission, Denmark, the US, Finland, France, Ireland, Japan, Luxemburg, Norway, the Netherlands, the UK, Sweden and Switzerland.[29] The GHD stressed the primary responsibility of state to provide humanitarian assistance in natural disaster. The humanitarian assistance or humanitarian aid may be defined as:

The provision of commodities and materials required to prevent and alleviate human suffering, that does not include the provision of weapons, weapons systems, ammunition,

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[27] *Supra* note 25. *See also* IFRC, Annotations to the Draft Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (Oct. 26, 2007), at 5, *available at* http://www.ifrc.org/PageFiles/125652/annotations.pdf (last visited on Oct. 2, 2017).

[28] *Supra* note 21, at 7. *See also* IDRL Guidelines, *available at* https://www.cervenykriz.eu/cz/mhp_mp_katastrofy/IDRL_guidelines.pdf; Inter-Agency Standing Committee, International Humanitarian Norms & Principles Guidance Materials (Jan. 2010), at 90-4, *available at* http://webcache.googleusercontent.com/search?q=cache:http://www2.wpro.who.int/internet/files/eha/toolkit/web/Technical%2520References/Coordination/International%2520Humanitarian%2520Norms%2520and%2520Principles.pdf (all last visited on Oct. 2, 2017). [Emphasis added]

[29] Principles and Good Practice of GHD (Nov. 17, 2014), *available at* https://www.ghdinitiative.org/ghd/gns/principles-good-practice-of-ghd/principles-good-practice-ghd.html (last visited on Oct. 4, 2017).

or other equipment, vehicles, or material which can be used to inflict bodily harm or death.[30]

In the process of disaster management, there are some fundamental principles as follows:

(a) Humanity: human suffering must be addressed wherever it may be. Humanitarian action aims to protect life and health and ensure respect for the human race;

(b) Neutrality: humanitarian actors must neither take sides in a dispute, controversy, nor warfare or engage in politics, race, religion or ideology;

(c) Impartiality: humanitarian action must run on the basis of need alone, regardless of nationality, race, gender, religious beliefs, class, or political view; and

(d) Independence: humanitarian action must be autonomous from political goals, economic, military, or other objectives that may be owned by actors in the areas where humanitarian action is being implemented.[31]

3. The Doctrine of Responsibility to Protect and the State Sovereignty in International Law

Traditionally, sovereignty has been regarded as the supreme power of a state. Entering the late twentieth century, however, this absolute view started to be challenged because more states needed to work together for a common goal. Although majority of experts argue that international law is based on the wishes of the state, some of them counter-argue that the desire of the state should also be charged to certain limitations.[32] In addition, the non-intervention into domestic affairs is not an absolute principle anymore; intervention may be allowed on the basis of humanitarian grounds. The prohibition of the use of force under Article 2 (4) of the UN Charter is not unconditional, either. A state could perform military actions for the ultimate destinations of the UN unless these violate territorial integrity,

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[30] R. Hardcastle & A. Chua, *Humanitarian Assistance: Towards a Right of Access to Victims of Natural Disasters*, 325 INT'L REV. RED CROSS 12 (1998).

[31] R. Lasker (OCHA), *Respon Bencana di Asia dan Pasifik- Panduan Perangkat dan Layanan Internasional* [Disaster Response in Asia and the Pacific- International Tool and Services Guide], United Nations Office for Coordination of Humanitarian Affairs ("UN-OCHA ROAP"), *available at* https://docs.unocha.org/sites/dms/ROAP/Promotional%20 Materials/Asia_Disaster_Guide_Bahasa.pdf (last visited on Oct. 2, 2017). *See also* IDRL Guidelines.

[32] H. LAUTERPACHT, THE DEVELOPMENT OF INTERNATIONAL LAW BY INTERNATIONAL COURT 300-6 (1958).

political independence of other nations.[33] In *Military and Paramilitary Activities in and Against Nicaragua*, the International Court of Justice ("ICJ") stated that interference is prohibited if it:

> (a) impinges on matters as to which each state is permitted to make decisions by itself freely (*e.g.* choice of its own political or economic system or adoption of its own foreign policy); [or] (b) involves interference in regard to this freedom by methods of coercion, especially force (*e.g.* provision of indirect forms of support for subversive activities against the state subject of the alleged intervention).[34]

Any form of intervention out of the above two categories is not prohibited under international law. Starke added the argument that legitimate intervention is done in these terms:

> (a) collective interventions in accordance with the UN Charter;
> (b) intervene to protect the rights and interests as well as the safety of life citizens outside the state;
> (c) the self-defense, if intervention is needed to eliminate real danger of armed attack;
> (d) in matters of protectorate under its control; and
> (e) if the state were to be the subject of intervention held guilty of serious violations of international law.[35]

If referring to the above matters, humanitarian intervention can be justified under international law, because it is not in violation of a state's political freedom. It only aims to respond to humanitarian emergency in a particular state's territory. D'amato stated that humanitarian intervention is not to take the territorial sovereignty of a state permanently, but only to restore human rights [under natural or manmade disaster] in this state.[36]

In the meantime, Helen Stacy maintained that the danger of serious threats

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[33]　Y. DINSTEIN, WAR-AGGRESSION AND SELF DEFENSE 80 (3d. ed. 2001).

[34]　Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. Rep. 14, ¶ 205 (June 27), *available at* http://www.icj-cij.org/files/case-related/70/070-19860627-JUD-01-00-EN.pdf (last visited on Oct. 2, 2017). For details, *see* J. STARKE, INTERNATIONAL LAW 94 (7th ed. 1994).

[35]　STARKE, *id*. at 95.

[36]　A. D'amato, *There is no Norm of Intervention or Non-Intervention in International Law*, *in* INTERNATIONAL LEGAL THEORY (The Publication of the American Society International Law Interest Group on the Theory of International Law, vol. 7/no. 1) 18, (2001), *available at* http://law.ubalt.edu/downloads/law_downloads/ILT_07_2001.pdf; http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1079&context=facultyworkingpapers (all last visited on Oct. 9, 2017).

widespread to the survival of residents in an area of the state is a proof that sovereignty is not an absolute fortress for international intervention.[37]

The legality of humanitarian intervention boosted the development of the R2P doctrine. The R2P concept is not a new one; it has been taken from a traditional understanding on the state sovereignty. In the *Corfu Chanel* case, Judge Alejandro Alvares stated:

> by sovereignty, we understand the whole body of rights and attributes which a State possesses in its territory to exclusion of all other states… sovereignty confers rights upon States and imposes obligations on them.[38]

When the genocide cases of Rwanda,[39] Serbia and Kosovo came up, the concept of the R2P began to be discussed again.[40] The International Commission on Intervention and State Sovereignty ("ICISS") led by the Government of Canada rolled this concept back in 2001.[41] At that time, the ICISS emphasized the understanding for the concept of the 'primary responsibility' rather than the right to intervention in the course of protecting the citizens. It put forward the argument:

> Residual responsibility also lies with the broader community of states. This fallback responsibility is activated when a particular state is clearly either unwilling or unable to fulfill its responsibility to protect or is itself the actual perpetrator of crimes or atrocities, or where people living outside a particular state are directly threatened by actions taking place there. This responsibility also requires that in some circumstances action must be taken by the broader community of states to support.[42]

Following these arguments, state sovereignty would contain the principle of non-intervention as well as the concept of state responsibility towards its citizens. This

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[37] H. Stacy, *Humanitarian Intervention and Relational Sovereignty*, 7 Stan. J. Int'l Relations ¶ 2 (2006), *available at* https://web.stanford.edu/group/sjir/7.1.06_stacy.html (last visited on Oct. 4, 2017).

[38] Corfu Channel Cases (U.K. v. Alb.), Judgment, 1949 I.C.J. Rep. ¶ 43 (Apr. 9) (Individual Opinion by Judge Alvares), *available at* http://www.icj-cij.org/files/case-related/1/001-19490409-JUD-01-01-EN.pdf (last visited on Oct. 3, 2017).

[39] *See Rwanda Genocide of 1994*, Encyclopedia Britannica, *available at* https://www.britannica.com/event/Rwanda-genocide-of-1994 (last visited on Oct. 3, 2017).

[40] ICISS, The Responsibility to Protect: Report of the International Commision on Intervention and State Sovereignty vii (2001), *available at* http://responsibilitytoprotect.org/ICISS%20Report.pdf (last visited on Oct. 3, 2017).

[41] *Id. See also* Rahayu, *Eksistensi Prinsip Responsibility to Protect Dalam Hukum Internasional: The Existence of Responsibility to Protect Principles in International Law*, 41 MMH J. 129 (2012), *available at* http://download.portalgaruda.org/article.php?article=19883&val=1246 (last visited on Oct. 9, 2017).

[42] *Supra* note 40, at XI.

means that if a state reneged on its responsibility, a third party is then obliged to provide protection (secondary obligation).[43]

In practice, the implementation of the R2P concept has several limitations. First, it is performed only by recognized international organizations, namely the UN. The UN Security Council has the exclusive right to carry out R2P because it has the authority to intervene into the member State's domestic affairs in accordance with Chapter VII of the UN Charter. Second, the R2P is only implemented in situations of "large scale loss of life" such as genocide, war crimes, ethnic cleansing, and crimes against humanity. The R2P concept has three main pillars in its implementation, namely:

(a) The responsibility to prevent : to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk;

(b) The responsibility to react : to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention; and

(c) The responsibility to rebuild : to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert.[44]

The R2P concept is deeply involved in military intervention; it is not related to natural disaster management at the time of peace. There are at least three reasons for this, namely:

(a) states will not accept it politically, nor will many states endorse any treaty or customary rule that explicitly applies the R2P to natural disasters; (b) a humanitarian argument exists to the effect that the R2P with its orientation toward military intervention may be appropriate for genocide and war crimes but not for peacetime disasters; (c) concepts of sovereignty and human dignity should remain separate.[45]

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[43] J. Heath, *Disaster, Relief and Neglect: The Duty to Accept Humanitarian Assistance and the Work of the International Commission*, 24 N.Y.U. J. INT'L L. & POL. 430 (2011).

[44] *Supra* note 40, at XI.

[45] *Supra* note 43, at 432.

4. The Implementation of the R2P Doctrine in Natural Disaster Management of the ASEAN Conflict Areas

A. Overview

Natural disasters that occur during armed conflicts pose a great deal of suffering for the victims who live in the ASEAN region. Limitations of humanitarian access during the conflict are exacerbated by natural disaster. In all cases, states have a duty to respect, protect, and fulfill the human rights of the individuals in their territory. The state is obliged:

(a) to prevent violations of these rights from (re-)occurring (The responsibility to prevent);

(b) to stop them while they are happening by making sure that its organs and authorities respect the rights concerned or protect victims against violations by third parties (The responsibility to react); and

(c) to ensure reparation and full rehabilitation if violations have occurred (The responsibility to rebuild).[46]

Those affected by natural disasters have the right to request and receive protection and assistance from their governments. In armed conflict, however, this is arduous to implement because domestic authorities concerned are unable or unwilling to provide the required humanitarian assistance. In this situation, international humanitarian organizations and other appropriate actors are required to support individuals in need of humanitarian assistance for natural disasters. This is an application of the R2P doctrine.[47]

Humanitarian intervention should be carried out in accordance with the principles of humanity, impartiality, and particularly in countries with armed conflict–neutrality. Therefore, it should not be diverted. International organizations and other actors providing humanitarian intervention should coordinate their actions among themselves as well as with national and local authorities.[48]

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[46] IASC Operational Guidelines on Human Rights and Natural Disasters, Protecting Persons Affected by Natural Disasters: Final Version 4 (June 9, 2016), *available at* https://www.law.berkeley.edu/files/IASCOperational Guidelinesfinal.pdf (last visited on Oct. 3, 2017).

[47] *Supra* note 12, at 11-5.

[48] OCHA, What are Humanitarian Principle? (June 2012), *available at* https://docs.unocha.org/sites/dms/Documents/ OOM-humanitarianprinciples_eng_June12.pdf. *See also* K. Mackintosh, HPG Report: the Principles of Humanitarian Action in International Humanitarian Law (Mar. 2000), *available at* https://www.odi.org/sites/odi.

B. The ASEAN and the Disasters Management

1. ASEAN as a Regional International Organization

Regional institutions are integral facets of anarchic international system. They have goals that differ but are mostly centered around political and economic objectives.[49] The ASEAN is a noticeable example of regional integration scheme.[50]

The ASEAN was established on August 8, 1967 among five member states such as Indonesia, Malaysia, Singapore, Thailand, and the Philippines, This Association aimed to promote economic growth, social progress, cultural development, and peace at regional level.[51] Since 2008, the ASEAN has been transformed into an intergovernmental organization. This was confirmed by the implementation of the ASEAN Charter which replaced the ASEAN Declaration.

The ASEAN's main concern is 'security' in the region. Benny Teh Cheng Guan stated that the ASEAN's creation was initially for security.[52] The 1976 Treaty of Amity and Cooperation in Southeast Asia ("TAC") states:

> (a) mutual respect for the independence, sovereignty, equality, territorial integrity, and national identity of all nations; (b) the right of every State to lead its national existence free from external interference, subversion or coercion; (c) non-interference in the internal affairs of one another; (d) settlement of differences or disputes by peaceful manner; (e) renunciation of the threat or use of force; and (f) effective cooperation among themselves.[53]

The TAC has been a legal basis for the ASEAN mechanism which is known as the 'ASEAN Way.'[54] This Treaty emphasizes the principle of coordination among the ASEAN member states.[55]

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org.uk/files/odi-assets/publications-opinion-files/305.pdf (all last visited on Oct. 3, 2017).

[49] Bambang Cipto, Hubungan Internasional di Asia Tenggara: Teropong terhadap Dinamika, Realitas, dan Masa Depan [International Relations in Southeast Asia: Binoculars of Dynamics, Reality, and the Future] 1 (2007).

[50] B. Teh Cheng Guan, *ASEAN's Regional Challenge: The ASEAN Process*, 20 Copenhagen J. Asian Stud. 71 (2004).

[51] *Id.*

[52] *Id*.

[53] Treaty of Amity and Cooperation in Southeast Asia (TAC), Feb. 24, 1976, *available at* http://asean.org/treaty-amity-cooperation-southeast-asia-indonesia-24-february-1976 (last visited on Oct. 5, 2017).

[54] J. Saravanamutu, *Wither the ASEAN Security Community? Some Reflection's,* 1 IJAPS 46-7 (2005), *available at* http://ijaps.usm.my/wp-content/uploads/2012/06/johan2.pdf (last visited on Oct. 9, 2017).

[55] ASEAN Charter arts. 2 & 20.

2. The ASEAN's Disaster Management

*Natural disaster in the ASEAN's region*

In the ASEAN's region, every type of disasters would happen any time including forest fires, hurricanes, floods, earthquakes, tsunamis, droughts, volcanic eruptions, landslides, and epidemics. The natural disasters that occurred in this region during the period 1970-2009 can be seen in Table 1.

Table 1: Disaster Risk Statistics (1970-2009) in the ASEAN[56]

Disaster Type	No. of Disaster / Year	Total No. of Deaths	Deaths / Year	Ralative Vulnerability (Deaths / Year / Million)
Flood	10.85	17,800	445.00	0.75
Storm	9.65	184,063	4,601.60	7.76
Epidemic	2.28	7,294	182.40	0.31
Landslide	2.05	5,058	126.50	0.21
Forest Fire	0.45	310	7.60	0.01
Drought	0.98	1,337	33.40	0.06
Tsunami	0.15	92,021	2,300.50	3.88
Volcano	1.33	1,380	34.50	0.06
Earthquake	2.58	105,735	2,643.40	4.46

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[56] ASEAN DISASTER RISK MANAGEMENT INITIATIVE, SYNTHESIS REPORT ON TEN ASEAN COUNTRIES DISASTER RISK ASSESMENT 56 (Dec. 2010), *available at* http://www.unisdr.org/files/18872_asean.pdf (last visited on Oct. 4, 2017).

Figure 1: Distribution Ratio of Reported Disasters in the ASEAN[57]
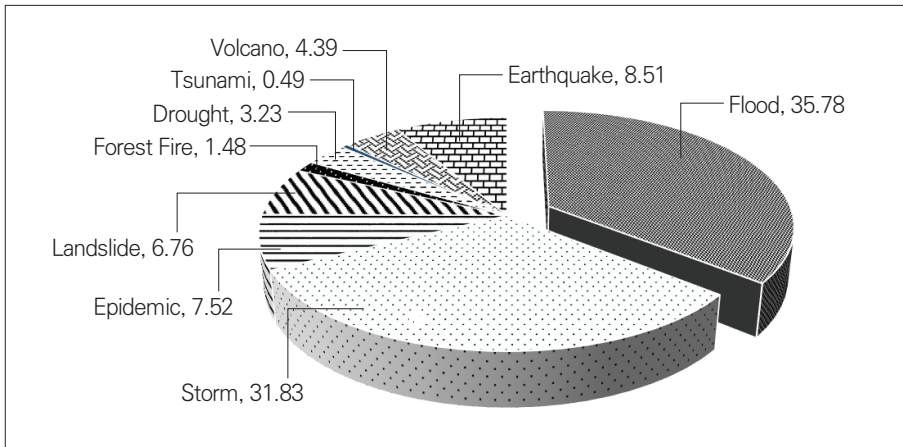
Throughout 2016, the ASEAN Disaster Information Network (ADInet) recorded the number of disasters were increasing in the ASEAN region (Table 2).[58] Back in 2014, there were 290 incidents; they decreased to 114 in 2015, but increased to 296 incidents in 2016.[59]

Table 2: Type of Disasters in the ASEAN Region (2016)[60]

Type	Number	Ratio (%)
Flood	192	65%
Earthquake	9	3%
Wind	43	15%
Drought	7	2%
Landslide	21	7%
Volcano	5	2%
Storm	19	6%

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[57] *Id.*

[58] The AHA Annual Report 2016, at 13-4, *available at* http://ahacentre.org/wp-content/uploads/2017/04/Annual-Report-2016.pdf (last version on Oct. 3, 2017).

[59] *Id.*

[60] *Id.*

Natural disasters also caused substantial losses in the economic sector. Data comparing the economic losses of ASEAN's member states can be seen in Table 3.

Table 3: Economic Losses of the ASEAN States by Natural Disasters[61]

Country	Average Annual Loss Millions (USD)	Economic Loss (USD Millions) Annual Exceedance Probability			Percent of GDP PPP Annual Exceedance Probability		
		0.50%	5%	20%	0.50%	5%	20%
Brunei							
Cambodia	23	299	112	38	1.07	0.40	0.14
Indonesia	926	10.640	3.623	1.315	1.10	0.37	0.14
Laos	30	426	133	44	2.91	0.91	0.30
Malaysia	75	1.032	327	85	0.27	0.09	0.02
Myanmar	169	3.093	873	227	5.48	1.54	0.40
Philippines	284	2.144	1.208	686	0.66	0.37	0.21
Singapore							
Thailand	272	3.220	1.216	422	0.60	0.23	0.08
Vietnam	205	1.971	907	413	0.77	0.35	0.16

The economic vulnerability of a country can be measured in terms of the likelihood of economic losses resulting from disasters. According to this categorization, Myanmar has the highest economic vulnerability in the region.

The ASEAN Regulations on Disaster Management
Disaster management means the activities prior to, during, and after the disasters designed to maintain control over disasters and to provide a framework for helping at-risk persons and/or communities to avoid, minimize, or recover from the impact of the disasters.[62] The ASEAN has divided disaster management and emergency response into the following three distinct phases:

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[61]   *Supra* note 56, at 80.

[62]   ASEAN Agreement on Disaster Management and Emergency Response, art. 1.4, *available at* http://agreement.asean. org/media/download/20140119170000.pdf (last version on Oct. 3, 2017).

1. Emergency relief, defined as the mobilization of additional resources to meet the emergency relief needs of victims in the affected countries;

2. Rehabilitation and reconstruction, defined as supporting and emphasizing the importance of national rehabilitation and reconstruction programs given the devastation of the basic infrastructures and services in the affected countries; and

3. Prevention and mitigation, defined as the development and implementation of strategies to identify, prevent and reduce risks arising from hazards, including the use of regional disaster prevention and mitigation programs.[63]

In the ASEAN region, the regulations on disaster management are as follows:

(1) ASEAN Declaration for Mutual Assistance on Natural Disasters (1976);

(2) ASEAN Political-Security Community (APSC) Blueprint;

(3) ASEAN Socio-Cultural Community (ASCC) Blueprint;

(4) Bali Declaration on ASEAN Community in a Global Community of Nations (Bali Concord III);

(5) Initiative for ASEAN Integration (IAI) Strategic Framework and IAI Work Plan 2 (2009–15);

(6) Declaration on Action to Strengthen Emergency Relief, Rehabilitation, Reconstruction and Prevention on the Aftermath of Earthquake and Tsunami Disaster of 26 December 2004; and

(7) ASEAN Agreement on Disaster Management and Emergency Response (AADMER).[64]

The ASEAN Agreement on Disaster Management and Emergency Response ("AADMER") is legally binding the ASEAN member states to promote regional cooperation and collaboration in reducing disaster losses and intensifying joint emergency response to disasters in the ASEAN region.[65] The AADMER is not only the Association's affirmation of its commitment to the Hyogo Framework for Action ("HFA"), but also the first legally-binding HFA related instrument in the world. The AADMER contains provisions on disaster risk identification, monitoring and early warning, prevention and mitigation, preparedness and response, rehabilitation, technical cooperation and research, mechanisms for coordination, and simplified

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[63] *Id.*

[64] Porntip (Ploy) Israsena na Ayudhya, Potential Policies and Areas of Cooperation on Disaster Management and Emergency Response between ASEAN and Canada, *available at* http://www.mfa.go.th/asean/contents/files/asean-media-center-20130715-161750-794058.pdf (last visited on Oct. 3, 2017).

[65] ASEAN Secretariat, ASEAN Disaster Management Agreement to Enter into Force by End of 2009, Press Release, Sept. 16, 2009, *available at* http://www.asean.org/uploads/archive/PR-AADMER-EIF-End-2009.docx (last visited on Oct. 3, 2017).

customs and immigration procedures. The AADMER has also established an ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management (hereinafter AHA Centre) to undertake operational coordination of activities under the Agreement of the HFA. It entered into force in the end of year 2009.[66]

C. Natural Disaster Management in the Armed Conflict Areas of the ASEAN Countries

Natural disaster can happen in every region, including an armed conflict area. In Southeast Asia, Indonesia, Myanmar, and the Philippines are the most disaster-prone territories. The following overviews provide data on these countries.

1. Indonesia

Indonesia is an archipelago comprising approximately 17,508 islands. It has 35 provinces with over 255 million people (world's fourth most populous country).[67] The country shares land borders with Papua New Guinea, East Timor, and Malaysia.[68] There are around 300 distinct native ethnic groups in Indonesia, and 742 different languages and dialects.[69] A sense of Indonesian nationhood exists alongside strong regional identities. Society is largely harmonious, but social, religious, and ethnic tensions would have triggered horrendous violence.[70]

Indonesia is located in a disaster prone area and can be considered as laboratory of disasters due to its geographical, geological, and demographic condition.[71] Indonesia is susceptible to various types of natural hazards. Due to its geographical location and physical environment, particularly being situated in the "Pacific Ring of Fire" between three Tectonic plates (Indo Australia, Eurasian, and Pacific) in an area encircling the Pacific Ocean, there are frequent earthquakes and volcanic activities.[72] In fact, the country experiences an average of 20 earthquakes per day (most are too weak to be felt). There are also about 500 volcanoes, 128 of which are active and have

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[66] *Id. See also* Regional EU-ASEAN Dialogue Instrument, Disaster Management, *available at* http://readi.asean.org/readi-2011-2015/activities/disaster-management (last visited on Oct. 3, 2017).

[67] Asian Disaster Reduction Center, *Indonesia's Country Report, available at* http://www.adrc.asia/countryreport/IDN/2012/IDN_CR2012B.pdf (last visited on Oct. 3, 2017).

[68] Susilastuti, *Indonesia Country Profile*, National Disaster Management Authority (BNPB), VR2016A, *available at* http://www.adrc.asia/countryreport/IDN/2016/Indonesia_CR2016A.pdf (last visited on Oct. 3, 2017).

[69] *Id.*

[70] *Id.*

[71] *Supra* note 68 .

[72] ADRC, Information on Disaster Risk Reduction of the Member Countries: Indonesia, *available at* http://www.adrc.asia/nationinformation.php?NationCode=360&Lang=en&NationNum=03 (last visited on Oct. 3, 2017).

been recorded in history to have erupted.[73] From 2000 to 2010, the average annual disaster-related direct damage ranged from USD 100 billion to 110 billion and is further increasing with indirect and secondary impact of disasters.[74] The cost of direct damages is equivalent to 5 percent of the GDP.[75] With an average of 1,002 casualties annually, flooding is the topmost disaster during the last five years.[76] Earthquake will be another major cause for disaster that have great impact on Indonesia.[77]

Table 4: Statistics of Natural Disaster Risk in Indonesia[78]

Disaster Type	No. of Disaster/Year	Total No. of Deaths	Deaths/ Year	Ralative Vulnerability (Deaths/Year /Million)
Flood	3.20	5,420	135.50	0.56
Drought	0.20	1,329	33.23	0.14
Storm	0.23	1,692	42.30	0.18
Epidemic	0.83	3,886	97.15	0.40
Tsunami	0.08	83,525	2,088.13	8.69
Earthquake	2.10	97,166	2,429.15	10.11
Landslide	1.03	1,845	46.13	0.19
Volcano	0.93	661	16.53	0.07
Wildfire	0.23	300	7.50	0.03

[73]   *Id.*
[74]   *Supra* note 67.
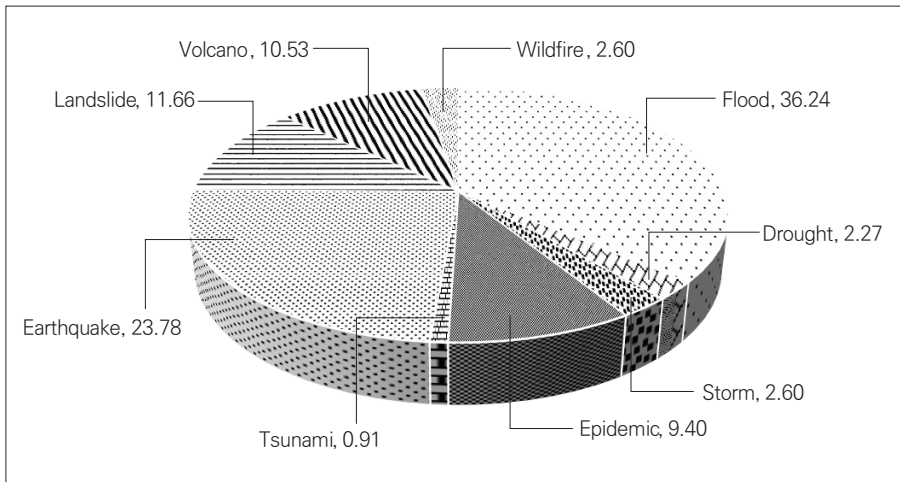[75]   *Id.*
[76]   *Id.*
[77]   *Supra* note 68.
[78]   *Supra* note 56, at 25.

Figure 2. Distribution Ratio of Reported Disasters in Indonesia[79]

Volcano, 10.53 — Wildfire, 2.60

Landslide, 11.66 — Flood, 36.24

Drought, 2.27

Earthquake, 23.78

Storm, 2.60

Tsunami, 0.91

Epidemic, 9.40

The ten deadliest disasters in Indonesia between 1980 and 2015 are shown in Table 5 as follow.

Table 5: Ten Deadliest Disasters in Indonesia (1980-2015)[80]

Disaster Type	Year	Fatalities	Descriptions
Earthquake and tsunami	2004	165,708	Indian Ocean 9,2 RS
Earthquake	2006	5,778	Yogyakarta & Central Java 6,3 RS
Earthquake	1992	2,500	Flores 7.8 RS
Earthquake	2009	1,117	West Sumatera 7,6 RS
Earthquake	2005	915	Nias 8.7 RS
Earthquake	2006	802	Tasik Malaya, West Java 7.7 SR
Epidemic	1998	777	Dengeu, Jakarta
Drought	1997	672	Central Papua
Epidemic	1998	672	Rabies, Jakarta
Epidemic	2004	658	Dengeu, Jakarta

[79]   *Id.*

[80]   *Supra* note 68.

Aside from the natural hazards, Indonesia also experiences human-induced incidents such as urban/structural fires, air, land and sea mishaps, drowning, collapsed structure, epidemic/disease outbreak, food poisoning, vehicular accidents, gas explosion, chemical poisoning, oil spillage, grenade/bomb explosion/bombings, civil disturbance, and complex emergencies such as internal conflict in Aceh, Ambon, and Papua.[81]

Aceh faces many types of disaster risks including both large- and small-scale and rapid and slow onset hazards.[82] The main hazards include tsunamis, earthquakes, volcanic eruptions, storms, tornadoes, floods, landslides, drought, and forest fires. The 2004 earthquake and tsunami triggered an unprecedented disaster, killing over 170,000 people and displacing 500,000 in Aceh alone.[83] There was massive impact on infrastructure and a change in topography along the 800km coastal belt and in some inland areas. At the time of tsunami, Aceh was in an armed conflict (internal conflict) between the Indonesian government and the separatist Free Aceh Movement ("FAM").[84]

During the conflict, Aceh was largely isolated; homes and livelihoods were destroyed and government services broke down. People who were displaced experienced and/or witnessed high levels of violence, torture, human rights abuses, and loss of livelihoods from external assistance.[85] Then, the Indonesian government finally opened itself to international assistance due to the following reasons:

(a) The tsunami in Aceh was a mega natural disaster which caused total destruction;

(b) the natural disaster occurred in a conflict area;

(c) the government did not act and / or failed to handle it due to a lack of early warning systems and inadequate preparedness and readiness;

(d) the system of national laws and regulations was too weak to manage natural disaster as Indonesia did not pass a comprehensive law on disaster management until 2007;

(e) the government was aware of the importance of international cooperation; and

(f) there was an absence of a comprehensive international legal framework as some multilateral international agreements had not even been ratified widely.

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[81] *Id.*

[82] UNDP, Disaster-Conflict Interface: Comparative Experience (2011), *available at* http://www.undp.org/content/dam/undp/library/crisis%20prevention/DisasterConflict72p.pdf (last visited on Oct. 4, 2017).

[83] *See* Aceh Public Expenditure Analysis: Spending for Reconstruction and Poverty Reduction, *available at* http://siteresources.worldbank.org/INTINDONESIA/Resources/Publication/280016-1152870963030/APEA.pdf (last visited on Oct. 4, 2017).

[84] *Supra* note 83.

[85] *Id.*

Indonesia applied the R2P doctrine as the duty of state to protect its citizen through cooperation with external parties.

2. Myanmar

Myanmar is one of the most vulnerable countries to natural hazards, including cyclonic storms, floods, earthquakes, tsunamis, forest fires, landslides, and epidemics. To make matters worse, Myanmar is stricken with internal conflict.[86] Since the military *coup d'etat* in 1962 that ended democratic rule in Burma, the Burmese people have been subjected to widespread human rights abuses[87] by the military junta. These abuses have intensified to the threshold of the R2P including the pervasive use of forced labor, forced recruitment of tens of thousands of child soldiers, rampant sexual violence, extrajudicial killings, torture, and displacement of people.[88] Part of this escalation can be attributed to the landslide victory in the 1990 elections by the National League for Democracy ("NLD"), led by Aung San Suu Kyi, which even exacerbated the military junta's harsh repression of political opposition.[89] The regime's intolerance towards diverging political opinions resulted in the detention, abuse, and torture of political dissidents. Minority ethnic groups such as the Karen and the Rohingya people have also faced persecution and been subjected to forced labor.[90]

Under such a vulnerable political system, the Cyclone Nargis hit the country in 2008, killing about 138,366 people and affecting about 2.42 million people. Its economic loss was estimated USD 4 billion.[91] This natural disaster happened during an armed conflict were paid international attention because the Myanmar government closed itself to humanitarian aid from outside the country.

The military junta's neglect of its population was proven by its unwillingness to cooperate with humanitarian aid groups after the disaster of Cyclone Nargis. Julie Belanger and Richard Horsey said that the Myanmar authorities were initially reluctant to access to international humanitarian agencies for the following four factors:

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[86]   *Id*. at 37.

[87]   International Coalition for the Responsibility to Protect (ICR2P), The Crisis in Burma, *available at* http://www. responsibilitytoprotect.org/index.php/crises/crisis-in-burma (last visited on Oct. 4, 2017).

[88]   *Id.*

[89]   *Id.*

[90]   *Id.*

[91]   *Supra* note 56, at 57.

1. Self-Reliance Doctrine. Since the 1960s, successive regimes have reinforced the view that the country and its population should take care of themselves and eschew any kind of outside assistance (whether political or economic), even if this entails hardship;
2. Limited Familiarity with International Disaster Response;
3. Domestic Political Context. The authorities have always demonstrated a willingness to subordinate socio-economic issue to their broader political and security agenda; and
4. International Environment. The senior leadership is also suspicious of the motives behind international humanitarian assistance.[92]

In this challenging context, the international community had to find the most effective way to negotiate with the military junta for humanitarian aid to cyclone-affected populations. On May 19, 2008, the ASEAN Foreign Ministers' meeting in Singapore finally proposed an ASEAN-led coordination mechanism for international assistance.[93] As this "international assistance with a regional character" was less threatening, it could provide a face-saving way for the Myanmar leadership to accept an international relief operation.[94] The ASEAN took a proactive step to both convincing the Myanmar government to cooperate with the international community and managing the response itself.[95]

The ASEAN played an important role as a 'bridge' between Myanmar as the victim state and the international community for humanitarian assistance. In this regard, the R2P doctrine was applied and accepted smoothly by the two parties. In Myanmar's case, the humanitarian assistance could be delivered through the R2P without the intervention of domestic political situation and threatening of the national sovereignty. It would be a good model for a regional organization to manage immediate response to disasters.

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[92] J. Belanger & R. Horsey, Negotiating Humanitarian Access to Cyclone-Affected Areas of Myanmar: a review, Humanitarian Practice Networks (Dec. 2008), at 2-3, *available at* https://odihpn.org/magazine/negotiating-humanitarian-access-to-cyclone-affected-areas-of-myanmar-a-review (last visited on Oct. 4, 2017).

[93] *Id. See also* Embassy of the Republic of Singapore to US, Press Statement and Speeches: chairman's Statement of the Special ASEAN Foreign Minister Meeting (on assistance to Myanmar in the aftermath of Cyclone Nargis), (May 19, 2008), *available at* https://www.mfa.gov.sg/content/mfa/overseasmission/washington/newsroom/press_statements/2008/200805/press_200805_04.html (last visited on Oct. 4, 2017).

[94] *Supra* note 92, at 4. *See also* P. Harvey, Towards Good Humanitarian Government: the Role of Affected State in Disaster Response (HPG Report) 6 (Sept. 2009), *available at* https://www.sheltercluster.org/sites/default/files/docs/The%20role%20of%20the%20affected%20state%20in%20disaster%20response.pdf (last visited on Oct. 4, 2017).

[95] Y.-K. Creach & L. Fan, ASEAN's Role in the Cyclone Nargis Response: Implications, Lessons and Opportunities, Humanitarian Practice Network (Dec. 2008), *available at* http://odihpn.org/magazine/asean%C2%92s-role-in-the-cyclone-nargis-response-implications-lessons-and-opportunities (last visited on Oct. 3, 2017).

3. The Philippines

The Philippines, located near the western edge of the Pacific Ocean, is in the direct path of seasonal typhoons and monsoon rains, which bring floods, storms, their attendant landslides, and other forms of devastation.[96] The country is also seated along the "ring of fire." In 2013, the Typhoon Haiyan hit region, bringing damage and losses of both property and lives.[97] Then in 2014, the eruption of Mayon Volcano caused thousands of people to flee and was followed by massive flooding in Manila.[98] Over the last forty years, the same region - one of the country's poorest - has been affected by an internal conflict between the New People's Army ("NPA") and the governmental forces.[99] The Philippines was unable to manage because of the magnitude of the disaster, which overwhelmed local capacity. What is worse, the armed conflict complicated natural disaster relief in the following five ways:

1. It diverts national and international financial and human resources that could be used for disaster risk reduction and prevention;
2. Measures to prepare for disasters and introduce early-warning systems may be neglected;
3. It disrupts transportation infrastructure (roads, bridges, railroad systems, electricity and communication links), reducing the ability to rapidly distribute relief);
4. It may undermine social cohesion, which is critical for a community's response to natural disaster; and
5. It can create a high level of insecurity, limiting the ability of humanitarian actors to access certain communities. Moreover, humanitarian actors can themselves become targets of violence if rebel groups see them as partial and too close to the government.[100]

Like Myanmar, the Philippines was basically unwilling to manage natural disaster in the area of armed conflict. However, it took active cooperation with many parties, including the ASEAN. In the case of Typhoon Haiyan in 2013, the ASEAN helped the Philippines respond to disaster through the AHA Center. For the ASEAN, it was the biggest test of its ability as a regional organization to assist disaster relief after

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[96] *Supra* note 56, at 41.

[97] J. Mullen, *Super Typhoon Haiyan-One of Strongest stroms ever-Hits Central Philippines*, CNN, Nov. 8, 2013, *available at* http://edition.cnn.com/2013/11/07/world/asia/philippines-typhoon-haiyan/index.html (last visited on Oct. 4, 2017).

[98] H. Regan, *The Philippines' Most Active Volcano is Now Shooting Lava and Super-Heated Boulders*, TIME, Sept. 18, 2014, *available at* http://time.com/3395152/philippines-volcano-mount-mayon-eruption (last visited on Oct. 4, 2017).

[99] C. Walch, *Typhoon Haiyan: Natural Disaster Meets Armed Conflict*, Open Democracy.net *available at* https://www.opendemocracy.net/colin-walch/typhoon-haiyan-natural-disaster-meets-armed-conflict (last visited on Oct. 5, 2017).

[100] *Id.*

the issuance of the AADMER. In practice, there is still criticism of the ability and authority of the ASEAN. Daniel Petz stated: "The fact that much of the humanitarian assistance from ASEAN countries had still [entered] the Philippines via bilateral channels, rather than through ASEAN and the coordination function of ASEAN in that respect."[101] The Philippine case shows that the R2P doctrine would have been interpreted as the duty of the state to protect its citizens, by way of international assistance directly or through the ASEAN.

5. Conclusion

Natural disasters and internal conflicts could happen at the same time. In particular, armed conflicts almost always increase the risk of disasters. The more conflicts are intractable, the greater the risk of disaster will be through more environmental degradation. This is due to distressed coping strategies and the government's decreasing capacity and/or unwillingness to reduce disaster risk.

The R2P, especially in the ASEAN region, must be interpreted as a basic doctrine under international law to protect its citizen in times of natural disaster within an armed conflicted area. It is a successful model of bypassing the traditional idea of absolute state sovereignty for the international cooperation through regional organization. This is a realization of Article 1 of the UN Charter as to "achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights."[102]

Indonesia, Myanmar, and the Philippines are the most vulnerable countries to natural disaster with internal conflict in Southeast Asia. These countries should not only maintain state sovereignty, but also recognize the humanitarian aid to the natural disaster. In order to apply the R2P doctrine to the victims of natural disaster in an armed conflict area, the role and capacity of the ASEAN should be strengthened in the local, national, regional, and international level.

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[101] *Supra* note 5, at 24.
[102] U.N. Charter art. 1(3).