

The Principle of Responsibility to Protect: The Case of Rohingya in Myanmar

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ABSTRACT

This article discusses the plight of the Rohingya, an ethnic group in Myanmar who has been suffering an institutionalised persecution and discrimination since the administration of military junta. The paper argues that the Rohingya is facing a serious threat of genocide, ethnic cleansing and crimes against humanity, while the government of Myanmar has failed in its primary duty to protect them. Due to such failure, the responsibility to protect them falls on the international community to prevent the occurrence of mass atrocities under the principle of Responsibility to Protect (R2P). The objectives of this article are twofold. First is to provide an understanding of the plight of the Rohingya and second is to analyse the application of R2P as a solution to the crisis. This article provides recommendations to the government of Myanmar, Association of South East Asian Nations (ASEAN) and the United Nations (UN) on the role to be played through tri-partite action for the application of the principle of R2P in Rohingya crisis. To do this, the researchers conducted a qualitative analysis of plethora of literatures and official reports on Rohingya crisis and R2P.

Keywords: Responsibility to Protect, Rohingya, ASEAN, United Nations

INTRODUCTION

Under the principle of R2P, the government of Myanmar and the international

community has the responsibility to protect the Rohingya who are on the verge of genocide, ethnic cleansing and crimes against humanity. The series of violence on the Rohingya has been roundly condemned in statement, and many international government, regional bodies, human rights organisations and individuals, all call for immediate interference by the

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international community to stop the above threats against the Rohingya. In spite of the call, the government of Myanmar has persistently taken the issue of Rohingya as a communal strife between the Rohingya and Arakanese and urged the international community to stay away from its internal affairs. Although there are some efforts done by the government of Myanmar to manage the crisis, they are insufficient and only provide short-term solutions. From that account, the article argues that the government has not taken sufficient efforts to stop the violations of human rights of the Rohingya and failed in its duty to protect them; these leave the vacuum of protection to be fulfilled by the international community. In the discussion that follows, the article examines the Rohingya case through the prism of R2P and explores the way forward for tri-partite cooperation between the government of Myanmar, Association of South East Asian Nations (ASEAN) and the United Nations (UN) as a solution to protect the Rohingya.

R2P: EMERGENCE AND EVOLUTION

R2P emerged due to the alleged failure of the world community to respond accordingly to civil conflicts and humanitarian crises prevalent in the 1990s. After NATO's controversial intervention in Kosovo, which began on 24 March 1999 (Cassese, 1999), the UN was divided between those who strongly hold to the traditional notion of state sovereignty and those who insisted on the right of humanitarian intervention (Chandler,

2010). At the Millennium Summit 2000, the UN Secretary General, Kofi Annan challenged the international community to reconcile the issue of sovereignty and protection (Annan, 2000)¹. In response to the challenge, the Canadian government offered willingness to discuss and propose a new framework for humanitarian intervention aimed at reconciling the conflicts between the State sovereignty and protection of human rights. The International Commission on Intervention and State Sovereignty was established and it produced its report in 2001. The report remarks the history of R2P, and according to Stahn (2007), offers the most comprehensive explanation on the concept of R2P. In Paragraph 203 of the Report of the United Nations Secretary General on High-Level panel meeting on threats, challenges and change (HLP Report, 2004), R2P is referred as an 'emerging norm.'

The most remarkable development of R2P happened in 2005, whereby R2P was unanimously endorsed by 191 Head of States in the World Summit 2005 (United Nations, 2005). Paragraph 138 of the World Summit Outcome Document 2005 states that individual State has the responsibility to protect its populations from genocide, war crimes, ethnic

¹In his speech during the Millennium Summit 2000, Annan posed a question "how should we respond to a Rwanda, to a Srebrenica...to the gross and systematic violations of human rights that affect every precept of our humanity?" (p. 48). This question was the impetus for the establishment of International Commission on Intervention and State Sovereignty (ICISS)

cleansing and crimes against humanity, and the international community should encourage and help States to exercise this responsibility. Paragraph 139 lays down the international community's responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the UN Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. Should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from the four specific crimes of mass atrocities, the international community are prepared to take collective action through the Security Council (SC) in a timely and decisive manner. R2P also includes responsibility to prevent, in situation where it is not bravely conscience shocking but has the possibility of reaching it and responsibility to rebuild the society damaged by the mass atrocities (ICISS Report, 2001).

R2P is being criticised as lacking of substance (Hehir, 2010), preserving the interest of certain powerful States, especially the Permanent Five (P5) (Ayoob, 2002) and eroding the principle of non-interference (Bellamy & Davies, 2009). Although it has not attained the status of legal norm, R2P has a substantial normative power and will be more significant in the future. Although R2P is received with mixed feelings, it does not mean that the principle itself is wrong. This article argues that despite the critics, in reality, R2P is still relevant that it has been

affirmed in various General Assembly and the Security Council's resolutions.² It was adopted by the consensus of UN members in one of its largest gathering of Head of States in history, the World Summit 2005. Thus, R2P will not be simply fading away, especially with numerous and continuous efforts in advancing R2P.³

ROHINGYA IN MYANMAR

The Rohingya is one of the most persecuted and ignored minorities in the world (Hamling, 2014) and Myanmar is considered as one of the most at-risk countries that may experience genocide between 2011 and 2015 (Butcher, Goldsmith, Semonovich, & Sowmya, 2012). Rohingya is a controversial terminology in Myanmar. According to the majority Burmese society, Rohingya are 'illegal immigrants' from the neighbour country, Bangladesh (Al-Adawy, 2013). On the other hand, Rohingya activists claim that the Rohingya are descendants of the Muslims settlers who had settled in Arakan long before the British's annexation of Myanmar and Arakan (AFK Jilani, 1999;

²Among other; Res. 1674, Res. 1894, Res. 1706, Res. 1970, Res. 1973, Res. 1970, Res. 1975, Res. 1996, Res. 2014, Res. 2149 and Res. 2150.

³Jennifer Welsh was appointed the Special Adviser to the UN Secretary-General for the Responsibility to Protect on July 2013 replacing Edward C Luck. Asia Pacific Centre for the Responsibility to Protect and The Coalition for the Responsibility to Protect are among initiatives to promote R2P.

Htut, 2003), and which is supported by the historical document by Francis Buchanan in 1799, whereby 'Rooinga' (today's Rohingya) is referred as *Muhammedans*, the Muslim settlers in Arakan State (Buchanan, 1799, p. 55). Maung Zarni, a Burmese actively advocating the rights of the Rohingya, collected mounting evidences which include government-printed books, official radio broadcast, government-issued licenses and public statements, suggesting the recognition of Rohingya during the administration of U Nu and the early years of the military regime Ne Win's (Zarni, 2012). With the enforcement of Citizenship Act 1982, the Rohingya are excluded from 135 ethnics recognised in Burma, thus rendering them stateless (Kyaw, 2008). Unlike the majority of Burmese, the majority of Rohingya are Muslims who speak Bengali, and thus appear to be distinguished from the majority of Burmese population and are more similar to their neighbours, the Bangladeshi. However, this physical appearance does not make them less Burmese than others.

The Rohingya face a long history of persecution and are persistently denied various rights including the right of rights of citizenship which render them stateless.⁴ They also suffer deprivation of the rights to education and health services (Childs Right Forum of Burma, 2011), property

⁴Under the Citizenship Act 1982, the Rohingya was not included among the 135 recognised ethnic groups.

and ownership, (Amnesty International, 2004) and even the right to marry and procreate (Lewa, 2012).

In a series of attacks beginning on June 2012, villages where the Rohingya reside were targeted by the Arakanese mobs (Atkinson & Richard, 2013). Due to the violence, thousands of Rohingya have been fleeing to other countries, especially to Bangladesh, Thailand and Malaysia. As of end of April 2104, a total of 144,300 Myanmar refugees and asylum seekers have been registered with UNHCR in Malaysia, with 36,290 of them are Rohingya (UNHCR Malaysia, 2014).

The first wave of violence erupted at the beginning of June 2012. Prior to the violence, pamphlets on allegation of a rape of an Arakanese woman by three Muslim men were publicly distributed (Burma Campaign UK, 2013). In retaliation to the alleged rape and murder, 10 Muslim men were murdered by Buddhists mob and riots broke out in Sittway, Maungdaw and Buthidaung (Human Rights Watch, 2012). The government reported that 77 people were killed and 109 were injured (Ministry of Foreign Affairs, 2012). In term of the number of casualties, the Rohingya were more affected than the Arakanese. In the June and October 2012 series of violence, 134 Rohingya were reportedly died while 117 suffered injuries (Inquiry Commission, 2013).

State of emergency was declared on 10 June 2012 and the Ministry of Foreign Affairs issued a statement that the violence was not one-sided, not a pogrom or genocide

of Rohingya committed by the Arakanese. (Ministry of Foreign Affairs the Union of Myanmar, 2012); witnesses interviewed however said that the police officers were present in the vicinity of the area where the armed gangs massacred the unarmed Muslims and acted as mere spectators (Human Rights Watch, 2012; Atkinson & Richard, 2013). This statement suggested the involvement of State's agencies in the violence. The Human Rights Watch (HRW) released satellite images showing 35 acres area of destruction including hundreds of buildings and house-boats, all raged by fire showing the widespread attack targeting the areas with Rohingya population (HRW, 2012).

The violence that occurred in October 2012, March and June 2013 respectively were more organised and directed towards Muslims in general, not only the Rohingya. The October attacks resulted in 88 deaths, while 129 people were injured including children (Kipgen, 2013). The violence that broke out in June 2013 was sparked by a murder of a Buddhist woman at a gas station in Lashio, where mobs gathered demanded the assailant to be handed over to them. Upon refusal, the gang attacked the Muslims in Lashio (Inkey, 2013). In January 2014, the UN High Commissioner for Human Rights, Navi Pillay, received credible information of the killing of 48 Rohingya in two incidents on 9 and 13 January 2014 and demanded the government to investigate (UN News Centre, 2014). Earlier in 2012, Pillay expressed concerns over reports of human rights violations

committed by security forces in Arakan state against the Rohingya, and demanded a prompt and independent investigation and she also called upon national leaders to speak out against discrimination, the exclusion of minorities and racist attitudes (UN News Centre, 2012). The government of Myanmar established a panel to investigate the January 2014 incident and reported that there was no evidence to prove Pillay's claim. Burmese Rohingya Organisation United Kingdom (BROUK) however produced briefing paper in which its findings are consistent with the reports by Associated Press, The Irrawady, Arakan Project, Fortify Rights and Medicins Sans Frontier (BROUK, 2014).

The aid workers complained that there were wide spread animosity against them and the local aid workers were threatened with attack if they helped the Rohingya. In February 2014, the NGO, Doctors without Borders was banned from Myanmar (Hume, 2014), while in February 2014, Maltesar International was not allowed into Myanmar to resume aid operations (Bookbinder, 2014). On 27 and 28 March 2014, the Arakanese mobs attacked Maltesar International office, which forced the police to fire warning shots and evacuated the organisation's staff after their private residences were attacked (Armstrong, 2014).

Rakhine Inquiry Commission was established on August 2012 to violent incidents and released its report in July 2013 (Inquiry Commission on Sectarian Violence in Rakhine State, 2013). The

Asian Legal Resource Centre in its written submission to the Human Rights Council expressed doubt on the reliability of the Commission's report on the conflict (Asian Legal Resource Centre, 2013). On 28 March 2013, President Thein Sein declared that he would begin using force to stop religious conflicts and rioting in Myanmar (The Associated Press, 2013) but the situation was getting worse with almost one million Rohingya living in apartheid-like conditions (Reynolds, 2014). The government also established temporary camps with access to clean water and sanitation, food, health and education services but Nicholas Kristof, in his documentary tells a different story and calls the shelter as 'concentration camp' (Kristof, 2014). The HRW in its 2014 report expressed disappointment with the government's response to violence by the Buddhist extremists and the lack of initiative to bring the perpetrators to justice (HRW, 2014).

The government of Myanmar holds responsibility to protect its population from the four crimes of mass atrocity but the government treatment for the Rohingya is far from meeting the international standard. Thus, the above evidences draw a conclusion that despite the government promise to control the crisis, violence and discrimination against the Rohingya still increase. This article argues that the government's efforts are insufficient to provide long-term solution to protect the Rohingya.

MASS ATROCITIES IN MYANMAR

In order to invoke R2P in Myanmar, it is crucial to prove two elements that there occur or likely to occur all or any one of the four atrocities, ethnic cleansing, crimes against humanity, war crimes or genocide, and the government of Myanmar has manifestly failed or is unwilling to protect its population from such mass atrocities. Since the Arakan State is not in a situation of armed conflict, war crimes are clearly not an issue.

Genocide is defined in Article 2 (a) to (e) of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide 1948.⁵ Physicians for Human Rights (PHR) conducted a field research in March, April and May 2013 to analyse and assess the patterns of extreme violence from various sites in Myanmar and reported the government's failure to manage the Rohingya crisis (Gittleman *et al.*, 2013). PHR also concluded that the dissemination of hate speech, impunity for most perpetrators and the government's inaction pose a serious threat of genocide (Gittleman *et al.*, August 2013). The Rohingya are regularly called '*kalar*' (a derogatory term means black skinned) and

⁵any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such; killing members of the group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life, calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within the group, and forcibly transferring children of the group to another group.

dog when they walked down the streets (Gittleman *et al.*, August 2013). Genocide Watch in its 2012 report categorised Myanmar as one of the countries that is at extremely high risk of genocide as violence and other crimes committed against the Rohingya are widespread and systematic, and thus, she called for genocide emergency to be declared in Myanmar (The Sentinel Project, 2013). Zarni and Cowley (2014) described the human rights abuses of the Rohingya as a 'slow-burning genocide', the process which has taken place since 1978 that includes assault on Rohingya's identity.

Burma Campaign UK has collected evidences including pamphlets inciting anti-Muslim sentiment in Myanmar; among others, alleging Muslims agenda to wipe out the Burmese nationality and religion (Burma Campaign UK, 2013). The 969 movement, led by an ultra-nationalist monk, U Wirathu carried out a campaign of hate speech inciting the Buddhists to oust the Rohingya. Wirathu travelled across Myanmar delivering hate speeches and circulate its recording to the public. The Time magazine in its July 2013 edition ran a cover story of Wirathu entitled, 'The Face of Buddhist Terror' (Beech, 2013). Some of Wirathu's sermon included; "[Muslims] are breeding so fast, and they are stealing our women, raping them...they would like to occupy our country, but I won't let them. We must keep Burma Buddhist" (Beech, 2013).

William Schabas, an international law expert, warned against the possibility of

genocide of the Rohingya. In Al Jazeera's documentary entitled, "The Hidden Genocide" (Jazeera, 2012), Schabas commented that it is not frivolous to use the term genocide to refer to the government's treatment of the Rohingya. Schabas's opinion is consistent with his prior findings in 2010 which suggested that crimes against humanity are being committed against the Rohingya (Schabas *et al.*, 2010).

Welsh and Sharma (2009) elaborated that the preventive strategies of R2P aimed at attacks directed at any population, committed in a widespread and by a systematic manner in furtherance of a state or organisational policy, irrespective the existence of discriminatory intent. The genocidal intention is necessary in case of prosecution for genocide but not in the case of R2P. The requirement of proof of discriminatory intent will make it impossible to prove genocide, especially one that involves the State such as the case of Rohingya. Moreover, R2P also includes responsibility to prevent which suggest that it covers situation where there is likelihood for the crimes of mass atrocities to occur.

The government denied that it was engaged in genocide (Ministry of Foreign Affairs, 2014) but the characters of genocide stipulated by international law are present in the government's treatment of the Rohingya. Violent attacks, biased state's security forces and army, hate groups spreading hate speeches, religious extremists and inefficient government's response are all present. In Rwanda, the killings were so widespread and cost

the life of almost 800,000 of Tutsis and Hutus (Scheffer, 2004); in Myanmar, the government seems to allow genocide to happen slowly to avoid international condemnation and international prosecution. However, there is increasing number of institutions calling for international community's intervention in the Rohingya crisis. In London, organisations and global individuals call for the end of genocide in Myanmar including the UN Special Rapporteur on Human Rights in Myanmar, Tomás Ojea Quintana, who personally stressed on the need to discuss the possibility of genocide with respect to the Rohingya (London School of Economics, 2014).

Crimes against humanity occur when the offences listed in Art. 7 of the Statute of the International Criminal Court (Rome Statute)⁶ are committed in a widespread or systematic attack against a civilian

⁶ i.e.; murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity, persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, as defined in paragraph 3, or in other grounds that are universally recognised as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the court, enforced disappearance of person, the crime of apartheid, other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

population. Widespread refers to the number of incidences that take place or the scale of the acts while systematic means a pattern or methodical plan. For example, when rape is used as part of a widespread or systematic attack against a civilian population, then it is a crime against humanity under the jurisdiction of the international criminal law.

The Irish Centre of Human Rights (ICHR) conducted an investigation on the situation of the Rohingya and concluded that they are victims of crimes against humanity (Schabas *et al.*, 2010). Based on the interviews conducted by ICHR with refugees in the refugee camps in Bangladesh, some of the Rohingya women were found to have been raped so many times by State officials and the soldiers. The statement is corroborated by other refugees and testimonies saying that they are direct witnesses of rape. Some of the victims were brutally beaten for resisting rape and died, while survivors suffered psychological oppression. Due to their lack of status, they are unable to seek redress, thus rendering the perpetrators free from criminal liability. The investigation concluded that the crimes of rape were not committed randomly but rather there were common similarities between all the acts reported. The research further indicated that unsafe abortions are regularly performed in Arakan following the incidences of rape (Schabas *et al.*, 2010).

The United Nations Commission of Experts, in its report to the Security Council, defines ethnic cleansing as

'rendering an area ethnically homogenous by using force or intimidation to remove persons of given groups from the area' (Security Council, 1994). The HRW, in its in-depth 2013 (Human Rights Watch, 2013) and 2014 (Human Rights Watch, 2014) reports, accused the government of carrying out a campaign of ethnic cleansing in Myanmar. This claim was supported by evidences of killings, mass arrest and tortures of detainees, destruction of houses, mosques and Islamic schools, large scale of forcible displacement; all believe to be systematically structured by the State-sponsored security forces. Prior to the attacks, leaflets were distributed demonising the Rohingya and calling for their removal from the Myanmar (Burma Campaign UK, 2013). In similar vein, the Sentinel Project concluded that the conflicts between the Arakanese and Rohingya are part of a state-sponsored campaign of ethnic cleansing with the government being apathetic to the cause of Rohingya and actively involved in efforts to ethnically cleanse Myanmar of Muslims (Sentinel Project, 2013). Based on the evidences of participation of government's agencies, late prevention of violence and the restriction of humanitarian aids to the Rohingya indirectly suggest the government's role in the event.

The Myanmar's Ministry of Foreign Affairs issued a statement claiming that the series of violence was a clash between two communities of different faiths and warned against any efforts to politically regionalising or internationalising the

matter (Ministry of Foreign Affairs, 2012). Nonetheless, the Rakhine Inquiry Commission Report does not mention of discrimination against the Rohingya (Rakhine Inquiry Commission, 2012), which contradicts with extensive reports on Human Rights by HRW alleging crime against humanity supported with extensive evidence of the involvement of monks, political parties and government forces in the violence against the Rohingya (HRW, 2013). The anti-Rohingya and biased stand of the government of Myanmar is not new but it is a process that has taken place during the administration of military junta. Zarni and Cowley (2014), in their seminal piece on the genocide of Rohingya, concluded that the government of Myanmar has subjected the Rohingya to persecution and discrimination as a matter of state policy. Rohingya refugees related that even though they sometimes do not feel safe in the refugee camp in Bangladesh, it is safer than Myanmar (Medecins Sans Frontiers, 2002).

Many institutions warned against a serious threat of genocide, ethnic cleansing and crimes against humanity committed by the government (Schabas *et al.*, 2010; HRW, 2013; Human Rights Watch, 2014) and called for the immediate interference by the international community. Despite the government's rejection of genocide, all crimes against humanity and ethnic cleansing, well-documented reports, testimony based on investigation and research by numerous institutions concluded that the threat of

mass atrocities in Myanmar is real. It is not sufficient for the government to deny the claims through its media without presenting cogent evidence to rebut the findings and reports by various international institutions. Even further, President Thein Sein defended the armed forces and Buddhist extremists such as U Wirathu and praised him as 'a son of Buddha' and a 'noble person' (Hindstrom, 2013). Due to such response from the government, it is very critical for the international community to interfere timely and appropriately to prevent more serious threat to humanity.

APPLICATION OF R2P IN THE CASE OF ROHINGYA

The above discussion draws a conclusion that the Rohingya crisis is one situation relevant to R2P. The next crucial issue is to decide who are the appropriate actors to act?

The WS 2005 Outcome Document implies that UN action is privileged over unilateralism and peaceful means are privileged over violent means. An individual State or any regional or sub-regional mechanism must explore all avenues through the UN before acting unilaterally. R2P emphasises on the important role of the UN partners, the regional arrangements. UN must not act alone and should move with regional organisation (ASEAN) and the private actors within the UN system. It must be a tri-partite action involving the government of Myanmar, ASEAN and UN.

According to the principle of R2P, the government of Myanmar carries the primary responsibility to provide security to each and everyone in the country, and disregard their creed, ethnicity or religion. Despite the government's stern policy denying the Rohingya with the right of citizenship, they are living within territorial jurisdiction of Myanmar, thus entitles them for protection from mass atrocities. The government must uphold the rule of law and hold accountable those who incite and complicit in the violence, identify the precursors of mass killing and prevent it from ever occurring.

As part of the establishment of rule of law, an independent inquiry must be held to identify and bring perpetrators to justice. The mobs should not be allowed to take law at their own hand. The security forces involved directly and indirectly in the violence must be brought to justice. In the context of Myanmar, as a country moving towards democracy, it should embrace the rule of law as the most fundamental principle. The government must work on independent and properly functioning judiciary which is a prerequisite of rule of law. The United Nations' Development Programme identified four keys areas crucial for the establishment of rule of law in crises-affected and fragile situations. They are: (i) dealing with a legacy of violence, (ii) increasing safety and security for all, (iii) building confidence through accessible and effective justice and security institutions, and (iv) improving the delivery of justice and security for women (United

Nations Development Programme, 2014). The government must embrace the multi-ethnic character of the country and should seriously develop plan of reforms towards national reconciliation and democracy.

The most pivotal step is for the government to review some provisions in the Citizenship Act 1982, which are discriminatory against the Rohingya and contrary to the standard of international human rights law. The Rohingya has a significant historical and legal nexus with the country and should be accorded with rights due to them - the most important of all is the right of citizenship.

Smith deliberates the advantages of the working of regional mechanism as it involves fewer States, thus the political consensus is easier to be achieved. Besides, States in the same region are relatively close with respect to tradition and culture (Smith, 2012). ASEAN is in the perfect position to act critically on Myanmar; however, it has so far failed to take a strong political stand in the Rohingya crisis. R2P is being adopted by ASEAN member States but its application in the case of Rohingya has not been seriously considered. The doctrine of non-intervention in domestic affairs is the practical consequences of the principle of State sovereignty and it is considered by Keling *et al.* (2011) as the original core foundation that shapes the regional relations between the ASEAN member-states.

Jones however claimed that ASEAN's strict adherence to the principle of non-interference is not true (Jones, 2009).

In support of his view, he studied three cases that he considered as ASEAN's act of intervention, such as: (i) Thailand sponsored insurgencies within Myanmar, after the Cold-War; (ii) Indonesia annexed the Democratic Republic of East Timor in 1975, which ASEAN endorsed and even justified in the UN, (iii) in 1978, ASEAN entered in de facto alliance with China to rebuild Khmer Rouge remnants in Thailand and keep the civil Cambodian war running, helped arm a coalition government in exile, lobbied for the UN to retain Cambodia seat, and initiated peace plan which brought UN state-building mission to Cambodia.

Goh made comparison between the conflict management by Organisation of United States in the Haitian conflict and ASEAN's in the Vietnam's conflict and stated that the 'ASEAN Way' means more than just non-interference but is a viable strategy in global conflict resolution (Goh, 2003). Goh further emphasised that ASEAN Way is a set of working guidelines that set out procedures by which a conflict would be managed by the region (Goh, 2003). This set of norms describes the means of carrying out action, not the end. ASEAN should work on finding harmony between the ASEAN Way and the principle of R2P to exert diplomatic pressure on Myanmar so as to manage the conflict according to the standard of international law. The Rohingya crisis affects Myanmar's transition to democracy and also creates problem to Bangladesh, Thailand, Indonesia and Malaysia, which have to cater for the flooding of Rohingya

refugees over their borders, and hence require ASEAN's involvement more than ever.

The newly formed ASEAN Intergovernmental Commission on Human Rights (AICHR) provides a regional forum through which ASEAN can increase pressure on the government of Myanmar and it is expected to provide tangible steps for the resolution of cases of human rights violations in Myanmar. However, AICHR does not have any significant effect in upholding human rights because it does not have a means of support for human rights and the power to punish violators of human rights in ASEAN. Despite this weakness, the establishment of AICHR signals that human rights considerations are legitimate for ASEAN members. Even though its application in various countries may be different and far from meeting the standard, it nevertheless has been accepted in principle. ASEAN should seriously work on building strong collaboration with the AICHR to create a right boundary between the ASEAN Way and the principle of non-intervention and human rights.

Myanmar has continuously undermined ASEAN's credibility and competency as a dynamic regional body, and unless ASEAN acknowledges its responsibility, Myanmar will continue to drag down its ability to work for regional security and prosperity. ASEAN must draw international attention to the issue of Rohingya and strongly condemn the blocking of humanitarian aids and the rampant violations of human rights

committed by the police, army, security forces, monks and the laymen.

ASEAN's former Secretary-General, Surin Pitsuwan criticised the government of Myanmar's refusal to issue citizenship to Rohingya, saying that this issue is one that requires international concern and warned of the possibility of the crisis to destabilise the entire region (Sittamparam & Arbee, 2012). Rohingya refugees have produced conflict, dilemma and insecurity to Bangladesh (Rahman, 2010). Indonesian anti-terror policed shot dead seven men and arrested another 13 for suspected involvement in a plot to bomb Burmese Embassy in Jakarta due to the government's bad treatment of the Rohingya (Coates, 2013).

Medecins Sans Frontiers at present there exist a few mechanisms linked with protection of human right in South East Asian region; one which includes the newly formed ASEAN Intergovernmental Commission on Human Rights (AICHR). AICHR provides a new regional forum through which ASEAN can increase pressure on the government of Myanmar. AICHR is expected to provide tangible steps for the resolution of cases of human rights violations in Myanmar. However, AICHR does not have a significant effect in upholding human rights because it does not have a means of support for human rights and power to punish violators of human rights in ASEAN. Despite this weakness, the establishment of AICHR signals that human rights considerations are legitimate for ASEAN members. Even

though its application in various countries may be different and far from meeting the standard, it has been accepted in principle. ASEAN should seriously work on building strong collaboration with AICHR to create a right boundary between the ASEAN Way and the principle of non-intervention and human rights. It is very important for the ASEAN members to draw a boundary that where there are violations of human rights, the 'non-interference in other's domestic affairs' should not remain. The duty to uphold the protection of human rights enshrined in the UN Charter and in this issue, ASEAN is not an exception. Non-interference can no longer be used as an excuse for inaction on Myanmar. Myanmar has continually undermined ASEAN's credibility and competency as a dynamic regional body, and unless ASEAN acknowledges its responsibility, Myanmar will continue to drag down its ability to work for regional security and prosperity. ASEAN must draw international attention to the issue of Rohingya and strongly condemn the blocking of humanitarian aids and the rampant violations and abuses of human rights committed by the police, army, security forces, monks and the laymen.

Above all, the most crucial step is that members-States must be able to discuss sensitive issues more openly during the ASEAN summit meetings. The government of Myanmar has clearly shown its unwillingness to discuss the Rohingya issue, emphasising that the conflict is purely an internal affairs of the State. According

to the spokesman for Myanmar President, the Bengali [Rohingya] issue is Myanmar's internal affairs and it will not be discussed in the ASEAN meetings even if member countries ask for it (Deusthce Presse Agentur, 2014). Meanwhile, Thein Sein expressed the government's willingness to take advice on the issue from other countries (PRESSTV, 2014), but how far this is true is highly questionable.

It can be concluded that in South East Asia, there are norms that may be considered as having linked with R2P, which has not been accepted as language by ASEAN. ASEAN already has mechanisms promoting the protection of human rights which should be effectively utilised to promote R2P. Rather than expressing concern and appeal for the government of Myanmar to take necessary measures to handle the conflict, ASEAN must take one bold step forward, i.e., to bring the issue to the UN General Assembly. Reference to R2P made at international level will increase pressure on the government to become more responsive to international concern. At the same time, ASEAN members must discuss the issue openly at ASEAN forum since the effect of Rohingya issue has spilled out to other neighbouring countries, which is a strong indication that the case is not solely a domestic affair of Myanmar.

ASEAN member States must realise they need each other and have to stand united. The civil societies in South East Asia countries in particular must continuously highlight the plight of Rohingya and

pressure their government take lead on the issue. ASEAN should review its way in managing conflict, form using indirect means, delivering nice statements to a solid and strong action. They should solve the Rohingya issue with cooperation from the international community, to be specific the UN. Nordin Sopiie reminded ASEAN to be idealistic; “we have to be idealistic to live in this imperfect world. ASEAN and United Nations are all we’ve got. We must make the best of them” (Khoo, 1992).

The UN has been pursuing engagement approach in Myanmar for many years. The UN Secretary-General appointed Vijay Nambiar as the Special Adviser on Myanmar to mainly focus on the progress towards democracy, whereas Tomàs Ojea Quintana as a Special Rapporteur on human rights. Quintana addressed concern over the claims of government’s failure to take action against State officials in connection with the violence (2013). Quintana calls for an independent investigation into the allegations of human rights abuses and excessive use of force by security and police. On April 2014, Quintana and two other experts on minority issues and internally displaced persons, Chaloka Beyani and Rita Izsak, released a statement expressing deep concerns over continuing inter-communal violence in Arakan State and reminding the government of its obligation to protect those affected by the violence (Office of the High Commissioner for Human Rights, 2014).

The UN Secretary General Ban Ki-moon in his speech to diplomats urged

the government of Myanmar to address the issue of Rohingya including the citizenship demands (UN News Centre, 2013). It is crucial that there must be partnership between UN and ASEAN human right machinery to work with the government to build-up the State capacity and provide humanitarian assistance. In conflict prevention, UN and ASEAN must find avenue to open up opportunities for interfaith and inter communal dialogues. The most critical and challenging task is to promote tolerance and respect in this most ethnically diverse country. Elimination of prejudice and nurturing respects to each other is an arduous work that requires long-term commitment. ASEAN and UN must collaborate with the NGOs and private institutions within Myanmar to build state capacity, manage resentments among the public and establish the rule of law.

CONCLUSION

The Rohingya have suffered egregious violation of human rights and are in dire need of immediate attention and assistance by the international community. Despite the government’s persistent denial of threats of genocide, ethnic cleansing and crimes against humanity, evidences available strongly indicate that the prospect of atrocity is high and the government has failed in its duty to protect the population, a duty it has acknowledged and accepted in the World Summit 2005 and in the General Assembly Interactive Dialogue in 2009. The Rohingya have been subjected to discriminatory treatments by the previous

military reign and the situation does not seem to improve with the current quasi-military democratic administration. Due to the government's failure and lack of capacity, the responsibility to protect the Rohingya falls on the international community to assist the government to fulfil such duty to prevent the escalation of conflict into mass atrocity. Thus, it is crucial that ASEAN reacts on the issue and it has in some occasions in the past interfered with other members' internal affairs. The effects of the Rohingya crisis transcend beyond borders and have caused problems to other countries; hence, it requires the involvement of ASEAN more than ever. It is time for the government to seriously treat its population in accordance with the standard of international human rights law and prove its commitment to move forward for better Myanmar. A long-term resolution of the Rohingya crisis can be achieved with the combined efforts of the government of Myanmar, ASEAN and the UN.

REFERENCES

- Al-Adawy, H. (2013). Persecution of the Rohingya -The Dark Side of Development in Myanmar. *SPOTLIGHT on Regional Studies*, 32(10), 43-65.
- Amnesty International. (2004, May). Myanmar, The Rohingya Mnority: Fundamental Rights Denied. *Amnesty International*. United Kingdom, UK: London.
- Armstrong, P. (2014). *Concern as Buddhist mobs target foreign aid groups in Myanmar*. Retrieved March 25, 2014, from <http://edition.cnn.com/2014/03/28/world/asia/myanmar-rakhine-ngos-violence/>
- Asian Legal Resource Centre. (2013). Myanmar: Official Report on Rakhine State Conflict Gravely Flawed. *Asian Human Rights Commission*. Retrieved May 18, 2014, from <http://www.humanrights.asia/news/alrc-news/human-rights-council/hrc23/ALRC-CWS-23-06-2013>
- Atkinson, H., & Richard, S. (2013, May 26). Massacre in Central Burma: Muslim Students Terrorized and Killed in Meiktila. *Physicians for Human Rights*.
- Ayoob, M. (2002) Humanitarian Intervention and State Sovereignty. *The International Journal of Human Rights*, 6(1), 81-102.
- Beech, H. (2013, July). The Face of Buddhist Terror: When Buddhists Go Bad. *TIME*, July 2013 Edition.
- Bellamy, A. J., & Davies, S. E. (2009) The Responsibility to Protect in the Asia-Pacific Region. *Security Dialogue*, 40(6), 547-574.
- Bookbinder, A. (2014). *Aid workers negotiate terms in Arakan*. Retrieved from <https://www.dvb.no/news/aid-return-arakan-burma-myanmar/40259>.
- Buchanan, F. (1799). A Comparative Vocabulary of some of the Languages Spoken in Burma Empire. *Asiatic Researchers*, 5(0), 219-240.
- Burma Campaign UK. (2013). Examples of Anti-Muslim Propaganda. *Burma Briefing* (21st Ed.). Burma Campaign UK.
- Butcher, C. R., Goldsmith, B. E., Semonovich, D., & Sowmya, A. (2012). *Understanding and Forecasting Political Instability, Mass Atrocities and Genocide: Combining Social Science and Machine Learning Approaches*. Asia Pacific Centre for the Responsibility to Protect.
- Cassese, A. (1999). Ex Inuria Ius Oritur: Are We Moving towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community? *European Journal of International Relations*, 10(1), 23-30.

- Childs Rights Forum of Burma. (April 29, 2011). *CRC Shadow Report Burma: The Plight of Children under Military Rule in Burma*. Childs Rights Forum, United Nations Human Rights Council, Universal Periodic Review.
- Coates, E. (2013). *Inter-religious violence in Myanmar: A Security Threat to Southeast Asia*. Nanyang Technological University. Retrieved November 20, 2014 from <http://dr.ntu.edu.sg/handle/10220/20070>
- Deusthce Presse Agentur. (2014). *Rohingya Topic off limits for ASEAN Talk*. Retrived from <https://www.dvb.no/uncategorized/myanmar-keeps-rohingya-issue-off-the-agenda-for-regional-meeting-burma-myanmar/36118>
- Gittleman, A., Brodney, M., & Atkinson, H. (2013, August). Patterns of Anti-Muslim Violence in Burma: A Call for Accountability and Prevention. *Physicians for Human Rights*. United States of America, USA: Washington.
- Goh, G. (2003). The 'ASEAN Way'. *Stanford Journal of International Affairs*, 3(1), 113-118.
- Hamling, A. (2014). *Rohingya: The Most Persecuted Refugees in the World*. Amnesty Australia.
- Hehir, A. (2010). The Responsibility to Protect: 'Sound and Fury Signifying Nothing'? *International Relations*, 24(2), 218-239.
- Hindstorm, H. (2013). *Burma President Backs Anti-Muslims 'hate Preacher' Wirathu*. Retrieved November 28, 2013, from <http://www.dvb.no/news/politics-news/burma-president-backs-anti-muslim>
- Htut, Z. M. (2003). *Human Rights Abuses and Discriminations on Rohingya*. Tokyo: Burmese Rohingya Japan Association.
- Human Rights Watch. (2012). *Burma: Satellites Images Show Widespread Attacks on Rohingya*. Retrieved December 26, 2013, 2014, from <http://www.hrw.org/news/2012/11/17/burma-satellite-images-show-widespread-attacks-rohingya>.
- Human Rights Watch. (2013). *All You Can Do is Pray: Crimes against Humanity and Ethnic Cleansing of the Rohingya Muslims in Burma's Arakan State*. United States of America: Human Rights Watch.
- Human Righst Watch. (2012, August 1). *The Government Could Have Stopped This. Sectarian Violence and Ensuing Abuses in Burma's Arakan State*. Human Righst Watch, Bangladesh, Myanmar.
- Human Rights Watch. (2013). *Burma: Ethnic Cleansing in Arakan State*. Human Rights Watch. Retrieved from www.hrw.org/features/burma-ethnic-cleansing-arakan-state.
- Human Rights Watch. (2014). *World Report 2014 Events of 2013*. United States of America: Human Rights Watch.
- Hume, T. (2014). *Medecins Sans Frontieres banned in Myanmar state for alleged 'Rohingya bias*. Retrieved April 18, 2014, from <http://edition.cnn.com/2014/03/03/world/asia/myanmar-rakhine-doctors-without-borders>
- Inkey, M. (2014, January 1). 2003: A year of religious intolerance in Burma. *Asian Correspondent. Asia's leading independent news*. Retrieved from <http://asiancorrespondent.com/117816/2013-a-year-of-religious-intolerance-in-burma/>
- Inquiry Commission on Sectarian Violence in Rakhine State. (2013). *Final Report of Inquiry Commission on Sectarian Violence in Rakhine State*. Republic of the Union of Myanmar, Yangon: Inquiry Commission on Sectarian Violence in Rakhine State.
- Jazeera, A. (2013). *The Hidden Genocide*. Al Jazeera Investigates. Retrieved from <http://www.aljazeera.com/programmes/aljazeerainvestigates/2012/12/2012125122215836351.html>.
- Jilani, A. F. K. (1999). *The Rohingya of Arakan: Their Quest for Jutsice*. The University Press: Dhaka, Bangladesh.

- Jones, L. (2009). *ASEAN and the Norm of non-interference in Southeast Asia: A Quest for Social Order*. Nuffield College Politics Group Working Paper Retrieved from, <http://www.nuffield.ox.ac.uk/politics/papers/2009/Jones.March2009.pdf>
- Keling, M. F., Som, H. M., Saludin, M. N., Shuib, M. S., & Ajis, M. N. E. (2011). The Development of ASEAN from Strategic Approach. *Asian Social Science*, 7(7), 169-189.
- Khoo, R. (1992, February 6). Asean Way to New World Order. *New Straits Times*. Retrieved from <https://news.google.com/newspapers?nid=1309&dat=19920206&id=h1kmAAAAIBAJ&sjid=e5ADAAAAIBAJ&pg=5999,1226929&hl=en>
- Kristof, N. (2014). 21st Century Concentration Camps. *The New York Times*. Retrieved from http://wn.com/21st_century_concentration_camps_%7C_nicholas_kristof_%7C_the_new_york_times
- Kyaw, N. N. (2008). Myanmar's Forgotten People. *Forced Migration Review*, 30.
- Lewa, C. (2012). *The Arakan Project: Issues to be Raised Concerning the Situation of Stateless Rohingya Children in Myanmar (Burma)*. Geneva.
- London School of Economics. (2014). *London School of Economics Conference on Decades of State-sponsored Destruction of Myanmar's Rohingya*. London School of Economics.
- Medecins Sans Frontiers. (2002). 10 Years for the Rohingya Refugees in Bangladesh: Past, Present and Future. *Medecins Sans Frontiers-Holland*.
- Ministry of Foreign Affairs. (2012). *Summary of list of destruction during the violence in Rakhine State as of 26 July 2012*. Yangon: Ministry of Foreign Affairs, the Union of the Republic of Myanmar.
- Office of the High Commissioner for Human Rights. (2014). *Myanmar: UN expert raises alarm on Rakhine State*. Retrieved May 18, 2014, from <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx>.
- PRESSTV. (2014). *Myanmar not to include Rohingya issue in ASEAN confab 2014*. Retrieved May 23, 2014, from <http://www.presstv.com/detail/2014/01/16/345913/myanmar-keeps-ignoring-rohingya-issue/>
- Quintana, T. O. (2013). Situations of Human Rights Situation In Myanmar Note by the Secretary General. In *Sixty-Eighth Session Agenda item 69(c)*. New York: General Assembly.
- Rahman, U. (2010) The Rohingya Refugee: A Security Dilemma for Bangladesh. *Journal of Immigrant & Refugee Studies*, 8(2), 233-239.
- Schabas, W. A., Prudhomme, N., & Powderly, J. (2010). *Crimes against Humanity in Western Burma: The situation of the Rohingyas*. Dublin: Irish Centre for Human Rights.
- Scheffer, D. (2004). Lessons from the Rwandan Genocide. *Georgetown Journal of International Affairs*, 5(3).
- Security Council. (1994, May 27). *Letter Dated 24 May 1994 From The Secretary-General to The President of The Security Council*. New York: UN.
- Smith, R. K. M. (2012). *Textbook on International Human Rights* (5th ed.). New York: Oxford University Press.
- Taw, N. P. (2012). *The incidents in the Rakhine State are sectarian conflicts which are purely internal affairs of a sovereign State: They are not relating to any kind of religious persecution or religious discrimination*. Ministry of Foreign Affairs the Union of Myanmar.
- The Sentinel Project. (2013). *The Sentinel Project for the Prevention of Genocide - Burma*. Canada: The Sentinel Project.

- UN News Centre. (2012, July 27). *Myanmar: UN official concerned over rights violations in Rakhine State*. Retrieved January 18, 2014, from <http://www.un.org/apps/news/story.asp?NewsID=42575#.VILTqnYrKUK>
- UN News Centre. (2013). *Continued support vital as Myanmar proceeds with transition process, says Ban*. Retrieved March 25, 2014, from <http://www.un.org/apps/news/story>.
- UN News Centre. (2014). *Top UN officials call for probe into latest violence in Myanmar's Rakhine state*. Retrieved March 15, 2014, from <http://www.un.org/apps/news/story>.
- United Nations Development Programme. (2014). *Strengthening The Rule of Law in Crisis-Affected and Fragile Institutions UNDP Global Programme Annual Report 2013. UNDP Global Programme Annual Report*. New York: United Nations.
- United Nations General Assembly. (2005). *2005 World Summit Outcome Document*. Resolution A/RES/60/1.
- Welsh, J., & Sharma, S.K. (2009). *Policy Brief: Operationalizing the Responsibility to Prevent*. UK: Oxford Institute for Ethics, Law and Armed Conflict.
- Zarni, M. (2012). The official evidence of the Rohingya ethnic ID and citizenship which the Burmese ethno- and genocidists don't want you to see. Retrieved from <http://www.rohingyablogger.com/2013/05/the-official-evidence-of-rohingya.html>
- Zarni, M., & Cowley, A. (2014). The Slow-Burning Genocide of Myanmar's Rohingya. *Pacific Rim Law & Policy Journal*, 23(3).
- Zawacki, Benjamin. Defining Myanmar "Rohingya Problem." (2012-2013) *Human Rights Brief*, 20(18)