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THE ROHINGYA REFUGEE CRISIS IN SOUTHEAST ASIA: ASEAN'S ROLE AND WAY FORWARD

Shazwanis Shukri

Asian Institute of International Affairs and Diplomacy (AIAD)
School of International Studies, Universiti Utara Malaysia

shazwanis@uum.edu.my

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ABSTRACT

The protracted humanitarian crisis in Rakhine state has forced millions of Rohingya to flee their homes from ethnic and religion persecution. Most headed to neighbouring countries including Malaysia, Bangladesh and Thailand by land or by sea across the Andaman Sea and Straits of Malacca. To date, nearly 1.2 million Rohingya live in Rohingya refugee camps in Cox's Bazar since the mass exodus in 2017. As the world's largest refugee influx, the Rohingya crisis has affected not only Myanmar but also the neighbouring countries and ASEAN member states. For the past 40 years, ASEAN member states particularly Malaysia and Thailand, have been a preferred destination for refugees seeking refuge from violence and human rights abuse. In light of this, ASEAN has adopted security mechanism as part of regional responses in addressing the crisis faced by the Rohingya ethnic. This article demonstrates, firstly, the mechanism and responses

adopted by ASEAN in handling the influx of Rohingya refugees in Southeast Asia. Secondly, this study scrutinizes the challenges to ASEAN's efforts and way forward to resolve the burgeoning refugee issue. By exploring these collective efforts, this paper investigates the extent to which these efforts and approaches play a functional role to suppress clandestine movement of Rohingya and subsequently protect the refugees. This article obtains its data from textual analysis including media reports, policy papers, academic articles, and official statements from ASEAN and ASEAN member states. The findings conclude that concerted efforts by ASEAN, albeit limited, are significant in providing new opportunities to strengthen national and regional protection for this vulnerable population.

Keywords: ASEAN, migration, refugees, Rohingya, Southeast Asia.

INTRODUCTION

The world is experiencing the record highest rate of forced displacement around 82.4 million at the end of 2020 (UNHCR, 2020). This number includes refugees, asylum seekers, and internally displaced individuals who were driven away from home due to violence, war, and persecution. In 2020, an estimated 1.1 million Rohingya refugees have been forced to flee violence in Myanmar, with majority heading to Malaysia and Bangladesh (Refugee Council, 2021). The Rohingya's plight has become a centre of attention for the international community for years since 1970. Similarly, the issue has become the headline for longstanding irregular movement of people in Southeast Asia since the last decade. The largest wave of Rohingya expatriation began in 2017, after the Myanmar government launched their military campaign of ethnic cleansing that forced thousands of Rohingya to flee their country (Regencia, 2021). The oppression against the minority Rohingya ethnics living in Rakhine state is due to their stateless status, in which the government of Myanmar has denied the citizenship of Rohingya people. Myanmar recognizes 135 ethnic groups, nevertheless Rohingya has never been recognized as an official ethnic group in the country (Adams, 2019). Consequently, Rohingya people have lost their right of citizenship in Myanmar under the Burmese Citizenship Law of 1982 (Mohajan, 2019). The statelessness of Rohingya people makes them vulnerable

to discrimination and denies them all of their legal rights as human beings.

The United Nations (UN) has described the violence and oppression in Myanmar including rape, arson of villages, and killing non-combatants as genocide with “genocidal intent” (Adams, 2019). Pressure on the government of Myanmar from international bodies including the UN, international human rights groups, non-governmental organisations (NGOs), and Association of Southeast Asian Nations (ASEAN) continues to rise. Malaysia and Indonesia, among others, have been the most vocal in condemning the atrocities against the Rohingya minority and have called for more holistic approach by the ASEAN members. Since forced migration of Rohingya population is transnational and has become a regional issue, ASEAN must shoulder the responsibility of resolving the crisis, instead of the Myanmar government alone. Moreover, ASEAN has an obligation to protect the Rohingya minority in accordance with the ASEAN charter, which specifically states the responsibility of the state members to guarantee human rights and protect the refugees (Pudjibudojo, 2019). The exodus of Rohingya refugees is no longer about humanitarian crisis but has escalated to become a security threat and economic burden to the receiving countries. Therefore, the challenge is how ASEAN can respond effectively and better cooperate with Myanmar government to continuously protect the rights of Rohingya people.

This study examines the efforts and mechanism implemented by ASEAN and Southeast Asian countries to address the Rohingya refugee crisis in Southeast Asia. The first part of this article concentrates on the responses of Southeast Asian countries who are also the ASEAN member states, in particular Malaysia, Indonesia and Thailand. While other ASEAN member states prefer to remain silent in the crisis, being the most affected countries among ASEAN members, these three countries are very proactive in facilitating Myanmar in handling Rohingya crisis, both bilaterally and within the ASEAN framework. Subsequently, this article shed lights on the ASEAN’s responses in dealing with Rohingya humanitarian crisis. The final part of this article discusses the challenges faced by ASEAN in their efforts to resolve the burgeoning refugee issue and the effective way forward for ASEAN. This study employed qualitative method and utilised a range of data including official policies, legislative documents, and

official reports of ASEAN in relation to protection for refugees. The next section will further elaborate on the responses of Southeast Asian countries towards the plight of Rohingya crisis.

The Responses of Southeast Asian Countries to Rohingya Refugee Crisis

The complexity of the Rohingya refugee crisis has been compounded by the response of several Southeast Asian nations. In 2015, Malaysia and Thailand turned away boats carrying thousands of desperate Rohingya in what was known as exodus of “boat people” (Missbach & Stange, 2021). Neither Thailand nor Malaysia were willing to accept the arrival of Rohingya, fearing that more refugees will flood in if they accept the migrants into their countries (Moretti, 2020). The action of pushing the Rohingya refugees back to the sea was negatively backlashed by the UNHCR and international human rights groups. They called for Southeast Asian countries to accept the refugees and provide emergency humanitarian assistance instead of leaving them stranded on the sea to die (Human Rights Watch, 2021). Due to intense international pressure and media scrutiny, Malaysia and Indonesia finally agreed to permit the refugees to come ashore on temporary basis and provided them with shelter, food and water (New Straits Times, 2015). Thailand, however, persistently refused entry to any Rohingya boats.

Recent exodus in 2017 has aggravated the crisis when almost 700,000 Rohingya fled their homes in search of safety after clashes with Arakan Rohingya Salvation Army (ARSA) broke out (Albert & Maizland, 2020). Most of the stranded Rohingya sought refuge in Bangladesh, while some were forced to take a long and perilous journey to nearby countries via the sea. Bangladesh has been the largest recipient of Rohingya refugees since the violence erupted with many live in Cox’s Bazar refugee camps (Taufiq, 2019). More than 900,000 refugees live in the crowded camp which is in dire condition due to poor sanitation, contaminated water, high risk of disease infection, as well as vulnerable to human trafficking and sexual exploitation (Rahman et al., 2021).

Neighbouring countries like Malaysia, Thailand and Indonesia have

also been major host countries for the Rohingya refugees seeking for a better life after fleeing the military-led atrocities. As of October 2021, more than 100,000 Rohingya refugees are registered with the United Nations High Commissioner for Refugees (UNHCR) in Malaysia (UNHCR Malaysia, 2021). In fact, Malaysia received large inflows of Rohingya refugees by boat between 2012 and 2015, with nearly 100,000 refugees making their journey across the Bay of Bengal and the Andaman Sea (Khairi, 2016). The number of refugees in Indonesia however remains relatively small meanwhile Thailand is increasingly becoming a preferred destination as transit point for Rohingya refugees before being relocated to the third country. Malaysia has since hosted the largest number of Rohingya refugees among the ASEAN member states.

Malaysia has a long history of providing protection and humanitarian assistance to the Rohingya refugees since early 1990s (Jeong, 2021). Malaysia is not a party to 1951 Refugee Convention and its 1967 Protocol, nevertheless Malaysia is bound to the principle of non-refoulement under the rule of customary international law. Despite the status as non-signatory for the convention, Malaysia has been historically proactive in offering relative safety and stability for Rohingya refugees fleeing their home country (Pudjibudojo, 2019). In fact, Malaysia claimed that they were doing more than what the ratifying countries have done to protect the Rohingya refugees (Nasir et al., 2019). The former Malaysian Prime Minister Dato' Sri Najib Razak was exceptionally vocal alongside Indonesia to condemn the violence against Rohingya people in what he labelled as an insult to Islam (Strangio, 2020). In 2016, a pro-Rohingya protest led by the Malaysian government reiterate its support for Rohingya refugees on the ground of Muslim solidarity and protection of human rights as enshrined in the ASEAN charter. The protest received various reactions from the international community and Myanmar government which claimed that such protest was against the ASEAN charter of non-interference (Barber & Teitt, 2020).

Despite the negative reactions from Naypyidaw, Malaysia has consistently shown its support and vocal stance slamming Myanmar of committing 'genocide' against the Rohingya minority. The tensions between the two countries escalated when President's office of Myanmar denounced Malaysian Prime Minister's comments as a

“calculated political tactic to win the support of the Malaysian public”. Myanmar later temporarily stopped sending workers to Malaysia amid the tension (Reuters, 2016). Indonesia also staged protest against the sectarian violence of Rohingya Muslims, condemning the Myanmar government for their violation of basic human rights against the Rohingya people. Indonesia offered help to tackle the crisis for humanitarian assistance and called for robust foreign intervention and support for the Rohingya (Missbach & Stange, 2021).

Malaysia has been continuously making efforts to provide support to Rohingya for years. In 2017, Malaysian government introduced the pilot scheme allowing the Rohingya refugees opportunity for legal employment in the country before relocation to third world nations (Kumar, 2017). The pilot program allowed a group of 300 Rohingya to work legally in manufacturing and plantation sector (Missbach & Stange, 2021). Despite strong support and humanitarian assistance rendered to Rohingya refugees, however Malaysia’s policies and stance towards the refugees have visibly changed. In 2020, particularly after the outbreak Covid-19 pandemic has shifted Malaysia to a country of refusal (Sukhani, 2021). During the 36th ASEAN summit in June 2020, former Malaysian Prime Minister Muhyiddin Yassin affirmed that Malaysia should not shoulder the responsibility of receiving refugees alone. He instead called for a better cooperation among the member states and insisted Myanmar to do more in order to solve the crisis (Babulal, 2020). Muhyiddin declared that the interest of Malaysians is of Malaysia’s priority with capacity and resources are dedicated to fight Covid-19 pandemic and no longer for humanitarian assistance.

Throughout 2020, Malaysia had repeatedly rejected Rohingya refugees from its shore. Until March 2020, many Rohingya boats from Bangladesh were turned away by Malaysian authority in an effort to strengthening their border control and prevent the spread of Covid-19. About 200 refugees were left stranded at sea without water and food resulted to as many as 100 deaths on board (Human Rights Watch, 2020). In April 2020, Malaysia Maritime Enforcement Agency (MMEA) intercepted and turned away boats carrying over 200 refugees in Langkawi (Kim, 2020). Two months later, Malaysia coastguard detected two boats carrying hundreds of refugees in Langkawi shore. A total of 269 refugees on the first boat was detained and believed to have been drifted at sea for weeks in poor conditions (New Straits

Times, 2020). The detainees were taken to the Nation Building Camp centre in Langkawi before they were sent back to the sea. A second boat loading an estimated 300 refugees was reported to hover at sea near Thailand's shore without approaching Langkawi shore (Human Rights Watch, 2020). According to Malaysian authorities, 22 boats of Rohingya refugees were denied entry in 2020 alone in an effort to combat the influx of refugees.

ASEAN Regional Responses to Rohingya Refugee Crisis

As the founding members of ASEAN, Malaysia and Indonesia have actively played their roles to stand up for the Rohingya Muslims to protect their basic human rights from the oppression of Myanmar government. Both the countries are not parties to 1951 Refugee Convention and its 1967 Protocol, nevertheless, continue to stand in solidarity with the Rohingya people. These efforts demonstrate their 'constructive engagement' approach within ASEAN framework to respond to Rohingya crisis. Despite the individual efforts, Malaysia and Indonesia have strongly urged for a better collective cooperation and exert pressure to the organisation to address the crisis (Morada, 2021). However, in the wake of global pandemic, Malaysia now refuses to accept Rohingya refugees at its shore, pushes the refugees back to sea, or detains them as 'illegal migrants' (Missbach & Stange, 2021). Malaysia's Immigration Act stipulates that illegal migrants who enters the country illegally are subject to fine of not less than RM10,000, up to five years' imprisonment and not more than 6 strokes of whipping sentence (Amnesty, 2020). Nevertheless, such punishments have been criticized by human rights groups who urge the Malaysian government to immediately release the detainees and call for ASEAN's support to protect their lives. In fact, ASEAN urgently needs to consolidate its efforts to combat the influx of refugees before it poses more security threats to the region. International community and human rights groups have been closely observing the efforts made by ASEAN to deal with this protracted humanitarian crisis.

ASEAN is seen as a regional organisation without extensive framework to address one of the largest refugee crises in the world (Missbach & Stange, 2021). Regardless of numerous efforts made by the members to discuss this issue, ASEAN still lack common consensus and robust mechanism to deal with Rohingya crisis (Barber & Teitt, 2021).

Nonetheless, within the organisation, Malaysia has constantly urged ASEAN to continuously exert pressure on Myanmar to protect the Rohingya population from oppression (Morada, 2021). While some members call for regional cooperation, Myanmar government in contrast insists that Rohingya is a domestic affair of Myanmar and therefore must be resolved without foreign interference. Myanmar's de-facto leader Aung San Suu Kyi denied international allegation of genocide against Rohingya in Rakhine state. The leader instead called the violence as an "internal armed conflict" caused by the Rohingya's extremist (BBC, 2020). Myanmar affirmed that any alleged war crimes in Rakhine state will be investigated and prosecuted in accordance with Myanmar's national justice system. Malaysia and Indonesia's vocal approach has resulted in Myanmar acknowledging the refugee crisis as a regional problem, allowing for ASEAN role, albeit limited (Thuzar, 2019). ASEAN also has encouraged Myanmar to utilise the Advisory Commission on Rakhine State led by the former UN Secretary-General Kofi Annan for a peaceful resolution.

With most of the ASEAN members are not parties to 1951 Refugee Convention, the regional organisation lacks political and legal framework to respond to Rohingya crisis. Only two states (Cambodia and Philippines) are signatories of the convention. Therefore, none of the remaining member states is legally compelled to recognize and protect the rights of refugees and migrants (Jeong, 2021). All members, however, are bound to international customary law of non-refoulement for the refugees. Regional cooperation must be enhanced to address the refugee issue since it has become a full-blown humanitarian crisis which has impacted not only Myanmar but also causing regional consequences (Shivakoti, 2017). Upholding the core pillar of ASEAN charter which is "non-interference of ASEAN member states' internal affairs", member states, however, consistently render their commitment and realize the importance to resolve the Rohingya issue. ASEAN holds yearly ministerial meeting participated by all 10 ASEAN Foreign Ministers to discuss various issues of political and security cooperation in the region, including the issue of violence against Rohingya minority (Jati, 2017). Despite the ASEAN member's efforts, Myanmar had been opposing the efforts and insisted that the issue of Rohingya should be excluded from the agenda in the ASEAN meetings (Thuzar, 2019). However, in recent years, Myanmar's stance has gradually shifted to be more

cooperative and accepting due to the intensified international criticism and scrutiny.

ASEAN Intergovernmental Commission on Human Rights (AICHR)

Although majority of the member states do not ratify the 1951 refugee convention, ASEAN has the obligation to guarantee human rights and freedom through its charter. One of the principles of the charter emphasizes the following points on protection of human rights (ASEAN, 2008):

“Respect for fundamental freedoms, the promotion and protection of human rights and the promotion of social justice, as well as the rule of law and good governance”

The failure of ASEAN member states to manifest the principles in their efforts to protect Rohingya people has ultimately received numerous backlash and scrutiny from international communities.

Nonetheless, ASEAN declares its commitment to further pursue the Universal Declaration of Human Rights (UDHR) and protect the basic human rights of every person in the region. Through the ASEAN Human Right Declaration (hereinafter referred to as “AHRD”), ASEAN member states are bound to the principles as enshrined in the declaration, which is the rights to move and the rights to seek and receive asylum (AHRD, 2013). Established in 2012, AHRD represents manifestation of ASEAN member states to uphold the importance of human rights for all ‘the peoples of ASEAN’. Accordingly, the rights of Rohingya people must also be protected under this framework. AHRD also stipulates the commitment of ASEAN member states to acknowledging the roles of ASEAN Intergovernmental Commission on Human Rights (hereinafter referred to as ‘AICHR’) as the principal regional body responsible for promotion and protection of human rights for the ‘people of ASEAN’ (AHRD, 2013).

AICHR serves as an overarching regional human rights institution in ASEAN with its primary mandate to promote and protect human rights of the ASEAN people under its Terms of Reference (ToR) document (Kaewjullakarn & Kovudhikulrungsri, 2015). The purpose of AICHR is twofold: asserting the responsibility of ASEAN member states to

promote and protect their citizens' human rights, and maintaining and respecting the non-interference principles as stated in the ASEAN Charter (Barber & Teitt, 2020). With AHRD and AICHR underway, these frameworks would serve as a better platform to address the Rohingya crisis. Unfortunately, AICHR is incompetent at promoting the human rights of Rohingya and the principles of non-interference have become a hindrance in finding a solution to the issue. ASEAN still appears to lack a formal framework and policy to urge its member states to take effective actions to resolve or at least provide tangible recommendations to protect the Rohingya refugees (Jati, 2017).

ASEAN Coordinating Centre for Humanitarian Assistance and Disaster Management (AHA Centre)

Myanmar has been adamant about rejecting foreign intervention in the Rohingya crisis. Assistance offered by the United Nations (UN) and other international agencies was refused by Myanmar authorities and hardly resulted in any positive outcomes (Thuzar, 2019; Jeong, 2021). Nevertheless, Myanmar's stance has changed when they agreed to welcome more participation and engagement from ASEAN member states. For instance, in 2016, Myanmar convened a special meeting for ASEAN foreign ministers in Yangon to discuss the current situation of the Rohingya crisis. Later in 2017, ASEAN member states requested cooperation from Myanmar to coordinate humanitarian assistance after the military crackdown which had forced more than 700,000 Rohingya to flee their homes (Thuzar, 2019).

ASEAN Coordinating Centre for Humanitarian Assistance and Disaster Management (AHA Centre) is a mechanism for ASEAN to coordinate repatriation and resettlement for displaced persons. It promotes coordinated emergency responses by the member states to deliver humanitarian assistance and supplies at times of natural disaster. AHA Centre has played a significant role in the Rohingya crisis since the military crackdown in 2017 by coordinating humanitarian aids from ASEAN member states for distribution to the affected people in the Rakhine state of Myanmar (Barber & Teitt, 2020). Through AHA Centre, ASEAN–Emergency Response and Assessment Team (ASEAN–ERAT) was assembled in 2019 to facilitate the repatriation process of refugees. ASEAN-ERAT joined by experts from different ASEAN countries was tasked to assess the situation in Rakhine state

and understand the needs of displaced persons before the refugees are sent back to their country (Thuzar, 2019). The report from the assessment indicated that many factors must be considered before the repatriation process began. Firstly, the basic human needs such as clean water and good sanitation shall be of the utmost importance for the refugees. Secondly, the access to medical including mental health support for returnees must be significantly improved especially for women and kids, as the refugees have been mentally and physically affected after the military suppression (Thuzar, 2019). Finally, the report recommended the Myanmar government to improve facilities for the returnees, including worship facilities and others, as well as facilitate the registration and citizenship procedure.

The assessment report was criticized by the rights group who described ASEAN as a weak regional organisation in handling the matter of Rohingya refugees. The repatriation plan was seen as a continuous violation of human rights against the Rohingya who were forced to return to the conflicting area when the clash between the Myanmar military and Arakan army in the Rakhine state was still ongoing (Barber & Teitt, 2020). Despite the critics and limitations, the engagement of AHA Centre in facilitating the repatriation process for Rohingya refugees demonstrated the ASEAN member states' endeavour in supporting Myanmar in the refugee crisis. Although the principal mandate of AHA Centre is to respond to disaster management, the attempt to include refugee crisis as one of its agenda is described as a good start by ASEAN, which however still requires further comprehensive undertakings to succeed. Cooperation from the government of Myanmar is critical; without it the concerted process of repatriation of Rohingya refugees will be hampered.

ASEAN Ministerial Meeting (AMM)

As enshrined in the ASEAN charter, members are not to interfere with the internal affairs of other member states. To this end, ASEAN has not hosted any meetings to discuss the issue of the Rohingya crisis to respect the fundamental principles of non-interference (Shivakoti, 2017). The reluctance of Myanmar to deliberate on this issue within the ASEAN framework has hampered the effort desired by other ASEAN member states. During the peak of the Rohingya crisis between 2012 until 2015, only two meetings were held by ASEAN member states

(Jati, 2017). In May 2015, the first meeting was held in Putrajaya with the involvement of three ASEAN member states, namely Malaysia, Indonesia and Thailand. The meeting took place after the three states were under international scrutiny when they pushed back the Rohingya refugees to the sea and denied entry to their shores (Moretti, 2021). The outcome of the meeting was positive when Malaysia and Indonesia agreed to allow the refugees to disembark temporarily and the refugees were provided with humanitarian needs including water, food and shelter before the repatriation process begin within one-year (Ha & Htut, 2016). Thailand, however, maintained its decision not to accept the refugees to come ashore and to turn away any Rohingya boats approaching their shores (Khairi, 2016).

In July 2015, another special ASEAN Ministerial meeting was convened to deliberate on the transnational crime issue. The meeting was called following the discovery of mass graves in Wang Kelian, which lies on Malaysia's border with Thailand (Ha & Htut, 2016). The graves were of Rohingyas who were trafficked from Bangladesh and Myanmar (Missbach & Stange, 2021). Human trafficking has since become a top priority for ASEAN and ASEAN Ministerial Meeting on Transnational Crime (AMMTC) was convened to immediately address the rise of trafficking in persons. Malaysia as the ASEAN Chair in 2015 called for cohesive cooperation and efforts from all ASEAN member states to find a collective solution of the problem (Jati, 2017). The meeting served as an apparatus for ASEAN to be more vocal and proactive in dealing with the human trafficking problem and simultaneously addressing the issue of the Rohingya refugee crisis.

These developments at the regional level provided an impetus for Myanmar to change its attitude and gradually become more welcoming and cooperative through the ASEAN framework. In 2016, Aung San Suu Kyi convened an informal meeting with ASEAN foreign ministers in Yangon after constant request and pressure from Malaysia. The purpose of the meeting was for Myanmar to brief all ASEAN member states on the recent developments of the situation in the Rakhine state (Jati, 2017; Shivokati, 2017). Positive outcomes from the meeting were Myanmar expressed their commitment to provide routine updates on the situation in Rakhine state to ASEAN member states, and to reinforce the coordination and cooperation within the

ASEAN framework. Myanmar also granted humanitarian reliefs and humanitarian access to the ASEAN member states in the Rakhine state, however, it was uncertain how ASEAN can play an active role in the conflict (Ha & Htut, 2016). The government of Myanmar also agreed to allow journalists to visit the northern Rakhine's Maungdaw, a guided tour with limited access and rigid restrictions. This visit was approved following heated debate and allegations from international agencies and rights groups on how Myanmar was manipulating the real situation in the Rakhine state. Also, the government of Myanmar intended to denounce the accusations made by the Rohingya refugees who arrived in Bangladesh, about the deliberate violence and destruction by the Myanmar military towards the Rohingya Muslims (Head, 2017).

With the fundamental principle of respect for sovereignty and non-interference as enshrined in the ASEAN charter, it is clear that the ASEAN can only play a very limited role in the Rohingya refugee crisis. The three ASEAN member states who are most affected by this crisis; Malaysia, Indonesia and Thailand have unequivocally stepped up their measures to provide temporary solutions to the crisis, if not long-term solutions. Some ASEAN members also have extended their cooperation with external partners to address the issue, such as with the United States and Australia. Despite the efforts, some observers describe that ASEAN member states are still hiding behind the insurmountable principles of non-interference. The Rohingya problem indeed presents a test for ASEAN to evaluate their effectiveness of their regional approach and cooperation. ASEAN's role in the Rohingya issue is limited at present, however, expected to be more proactive shortly.

Challenges and Way Forward in Handling Rohingya Refugee Crisis in Southeast Asia

With most of the ASEAN members are not parties to 1951 Refugee Convention, the regional organisation lacks constructive engagement and mechanism to respond to Rohingya crisis to a great extent. The ASEAN Way which serves as a core principle for ASEAN members has compounded the regional efforts for the Rohingya humanitarian crisis. Observers and rights groups have constantly urged for more humane approaches and active roles by ASEAN after Myanmar

pushed away assistance from international communities on several occasions. ASEAN has remained considerably silent on the atrocities toward the Rohingya minority and preferred to take a moderate stance against Myanmar due to its non-intervention principles (Missbach & Stange, 2021). As a result, ASEAN has been continuously criticized for its incompetency in seeking a solution for the situation in the Rakhine state and failing to put any pressure on Myanmar to end the expulsion of the Rohingya.

While the principle of non-interference has always been referred as an obstacle in coordinating functional cooperation within ASEAN framework particularly in the Rohingya problem, ASEAN's principle of decision making by consensus has also severely restricted their effective role in the Rakhine state. This is because, it requires Myanmar's agreement for any action within the ASEAN framework regarding political and legal aspects of the Rohingya issue (Morada, 2021). This so-called ASEAN Way, which accentuates on respect for sovereignty, is indeed the long-term challenge for ASEAN and is problematic as described by observers and academics (Tobing, 2018). ASEAN Way has become the limitation in which ASEAN is unable to implement effective approaches to find any tangible solution to the conflict. In 2006, the former Prime Minister of Malaysia Datuk Seri Abdullah Ahmad Badawi asserted the need to revisit the ASEAN's principle of non-interference to adapt to the changes in the regional situation (Yukawa, 2017). ASEAN Way, indeed, contributes to the limited role of ASEAN in responding to the violent attacks in the Rakhine state.

The dilemma between ASEAN's aspiration to protect the human rights of the Rohingyas and at the same time respecting the internal affairs of Myanmar has compounded the credibility of ASEAN. Myanmar's reluctance to cooperate and engage with its ASEAN neighbours has aggravated the efforts to resolve the protracted conflict. In 2019, when Myanmar requested ASEAN to facilitate with repatriation process of the refugees, it was described as an impetus towards greater cooperation in the region. This demonstrated the willingness of Myanmar to welcome ASEAN member states in finding the resolution for its humanitarian crisis. It also brushed aside the negative perception that ASEAN member states are violating the fundamental principles of non-interference as enshrined in the ASEAN

charter, particularly when the invitation and request were made by the government of Myanmar itself (Morada 2021). The repatriation plan first began with a preliminary assessment conducted by AHA Centre tasked by ASEAN. As mentioned in the earlier part of this article, the assessment intended to investigate and acquire information regarding the fundamental needs required by the refugees to facilitate the return of displaced Rohingya refugees. Some 3000 refugees were offered to return to Rakhine state facilitated by the government of Bangladesh (Thuzar, 2019). Nevertheless, the repatriation process failed when no refugees in Cox's Bazar agreed to board the buses to return to Rakhine state (Hirubalan, 2019).

It was the third attempt for repatriation by the government of Myanmar since 2017, with a bigger vision to display their commitment to facilitate the return of the displaced refugees. Myanmar expressed disappointment over the failure of the repatriation process and accused that the presence of ARSA in the refugee camp of Cox's Bazar contributed to the failure. Myanmar also blamed the government of Bangladesh for not being adequately facilitating during the whole repatriation process and deliberately stalling the process (Hirubalan, 2019). On another note, the repatriation offer was rejected by the Rohingya leader who described that the situation in Rakhine state is not safe for them to return. Additionally, the refugees also demanded that their right of citizenship, freedom of movement and safety must be guaranteed for the voluntary repatriation to take place (Palma & Jinnat, 2019). The repatriation process fell through because Rohingya refugees claimed that they were not included in any repatriation dialogue with the government of Myanmar and their demands were ignored by Myanmar authorities (Petersen & Rahman, 2019). Bangladeshi authorities demanded that Myanmar do more and play a better role in convincing the refugees for repatriation as well as providing a safe place to live for the Rohingya people in the Rakhine state. Myanmar and Bangladesh, indeed, must improve their cooperation and bilateral relations to better facilitate the voluntary repatriation of refugees from Bangladesh refugee camps to the Rakhine state.

Another challenge underlying this protracted conflict is regarding the use of the term "Rohingya". The root cause of atrocities against the Rohingya minority in the Rakhine state is due to their 'statelessness'

status. Rohingya ethnic group is not recognized by the government of Myanmar as one of the national races in the country. As a result, Rohingya people are never accepted as citizens of Myanmar. The Myanmar authorities instead claim that Rohingya is originally a Bengali irregular migrant from Bangladesh (Jati, 2017). While the international community refers to the persecuted minority in Rakhine states as Rohingya, Myanmar however refuses to recognize them and rejects using of the term “Rohingya” when referring to the minority group (Thuzar, 2019). De-facto leader of Myanmar, Aung San Suu Kyi insisted that the term “Rohingya” was never constituted in Myanmar’s Citizenship Law, hence, must not be used (Tobing, 2018). Therefore, the issue of Rohingya refugees is only recognized as an issue of people smuggling or trafficking (Moretti, 2021). This has ultimately become a challenge to the regional approach to address the Rohingya crisis as a refugee issue or persecuted people whose human rights are violated. Instead, the ASEAN approach has been concentrated under the policy of irregular migration (Ha & Htut, 2016).

The complexity of the term “Rohingya” has deteriorated the efforts to recognize the Rohingya minority as legal citizens of Myanmar. Despite the efforts rendered by the ASEAN member states, the unwillingness of the government of Myanmar itself to recognize the presence of Rohingyas will prolong the denial of citizenship for these people, which has been the core demand by the Rohingya minority in the Rakhine state. The unresolved issue of citizenship evidently will trigger more atrocities and acts of violence towards the Rohingya people, impeding numerous international and regional approaches to tackle the refugee crisis. The status of ‘statelessness’ has left the Rohingya minority vulnerable to persecution including violation of basic human rights, limited freedom of movement, forced displacement, and restricted access to education (Tobing, 2018). Therefore, the government of Myanmar must first deal with the matter of citizenship for the Rohingya minority if they wish to prove their commitment to resolve this conflict.

ASEAN must heighten its regional measures and approaches to address the refugee crisis in the Rakhine state. Some of the ASEAN member states particularly Malaysia and Indonesia have called for decisive cooperation from all their neighbours to engage closely to facilitate the persecuted Rohingya refugees. Malaysia also urged signatory

countries of 1951 Refugee Convention to share responsibility and receive incoming refugees to their countries either for resettlement or relocation to a third country. Nevertheless, the non-signatory to the convention should still adhere to customary international law and constantly render humanitarian assistance to the refugees, including health and education (Morada, 2021). A more proactive role is expected from the ratifying countries to promote and protect the human rights of the refugees while upholding the international legal obligations. ASEAN countries have been urging Myanmar to extend their efforts to expedite the repatriation process of the displaced people and to facilitate the safe return of Rohingya refugees to their country. ASEAN must also convince Myanmar to grant access for the ASEAN team to the conflicted areas, for assessment of the current security condition in Rakhine state to facilitate the repatriation process (Thuzar, 2019). In 2019, Myanmar allowed ASEAN representatives to conduct a preliminary assessment in the conflicted areas, nevertheless, it was insufficient in a way that the team failed to report the abuse of human rights and atrocities by the military (Barber & Teitt, 2021). AHA Centre denied the accusation by reaffirming that the report was produced according to its given mandate only, which is to facilitate the repatriation process (Kit, 2019). Therefore, ASEAN must persuade or pressurise Myanmar, if necessary, to allow the ASEAN team more access in the troubled areas so that comprehensive monitoring and assessment of the security situation can be properly conducted. Systematic and transparent assessment in Rakhine state will provide an impetus towards the reconciliation process.

One of the possible ways to address the Rohingya crisis within ASEAN is by adopting and promoting the principle of Responsibility to Protect (R2P). R2P is a principle that promotes human rights protection to support the 2005 World Summit Outcome Document (Morada, 2021). The principle implies the responsibility to protect the people in a state from human rights violations including, among others, genocide, regime oppression, military rebellion and war crimes (Kaewjullakarn & Kovudhikulrungsri, 2015; Morada, 2021). The principle of R2P also stipulates that the responsibility to protect is incumbent upon the international communities in a case when states are incapable of responding to serious human rights abuse within their territory (Adams, 2019). R2P is undoubtedly an enormous challenge within ASEAN as the members are strictly adhering to the traditional

norms of respecting the sovereignty and non-interference principle. Moreover, an effort to implement the principle of R2P within ASEAN is compounded by domestic factors such as the history of colonization and strong sentiment to safeguard the state's territory from international intervention (Mennecke & Stensrud, 2021; Morada 2021). Although R2P is not a principle upheld by ASEAN, some fundamental pillars of R2P are reflected in the ASEAN Charter concerning the protection of human rights. These include the responsibility of member states of ASEAN to promote and protect the human rights of ASEAN peoples and respect for fundamental freedoms (ASEAN, 2008). Therefore, this provision will epitomise the important role of ASEAN as a regional organisation to adopt a regional approach in the Rohingya crisis, in particular to adopt the principles of R2P. Even though R2P is unlikely to be materialised soon, the leaders of ASEAN need to reconsider and rethink the best way possible to adopt R2P in Myanmar to protect the vulnerable population of Rohingya from endless discrimination.

Next, ASEAN must engage collectively to enhance border management via regional cooperation to prevent radicalisation in Myanmar. The conflict and instability in the Rakhine state have spill-over effects on its neighbouring countries with profound security implications for the region. The mass influx of refugees in the refugee camp has raised security alarms to the emergence of radical groups and militants. The international community alleged that the rise of radicalism and extremism sentiments in the troubled areas could be associated with terrorist link Al-Qaeda and ISIS (Bashar, 2019). The prolonged conflict enables them to be exploited by these transnational terrorist groups, therefore urgent and effective approaches are required to contain the group (Barber & Teitt, 2021). According to Bangladeshi authorities, ARSA also appears to be a threat in the region and has exploited the conflict to recruit members among the Rohingya people, and is allegedly active in the Cox's Bazar refugee camp (Bashar, 2019). The Rohingya community are easily exploited at time of conflict when they turn to violence for survival and revenge. In order to prevent the spread of radicalism and extremism, ASEAN and Myanmar must focus on strengthening border control and enhancing better policing of the threat by international terrorist groups. Myanmar must also work closely with Bangladesh and ASEAN collectively to facilitate safe and voluntary repatriation of the refugees from Bangladesh without being exploited by extremism and terrorist groups. ASEAN member

states should accelerate their cooperation in tackling extremism through information and intelligence sharing.

CONCLUSION

The protracted Rohingya refugee crisis has been ongoing for decades and remains unresolved despite numerous regional and international approaches are underway. The immense spill-over effects affect neighbouring countries in the region, particularly Bangladesh, Malaysia and Indonesia forcing these countries to turn away the refugees and forced repatriation. Although only two ASEAN member states ratify the 1951 Refugee Convention, the remaining member states continuously render considerable support and humanitarian assistance for the Rohingya refugees. While Malaysia and Indonesia have been constantly rendering their support to Myanmar through constructive engagement as the two most affected ASEAN countries, ASEAN itself also has been making a continuous regional approach to show its commitment to tackle the refugee crisis despite Myanmar's refusal. The protracted humanitarian crisis has been the biggest challenge for ASEAN member states which requires their effective response, despite its traditional principle of non-interference.

There are considerable approaches by ASEAN in responding proactively to the Rohingya refugee crisis. The establishment of AHA Centre as an assessment body supports the ASEAN efforts to observe the condition of conflicted areas before the refugees return to their country. It also reflects the effort by ASEAN member states to fully engage in the crisis while pursuing their substantial roles as a regional centre for disaster management. The deployment of ASEAN-ERAT serves as an embodiment towards a more robust ASEAN role in Rohingya refugee crisis. The team of ASEAN-ERAT has provided a comprehensive assessment of the needs of the refugees in Rakhine state, serving as a protocol for Myanmar to set up the repatriation process. Moreover, the ASEAN response could also be strengthened through AICHR, whose primary purpose is to promote and protect the human rights of the ASEAN people. At present, the role of AICHR is still limited, bound by the principle of decision-making by consensus and non-interference. Despite all its flaws, AICHR is the manifestation of the readiness of ASEAN member states to pursue its

mandate of preserving human rights under international law without jeopardising the relations of its members. ASEAN meetings have also served as a platform to discuss various issues in the region. In the past, several attempts were initiated by the member states to discuss the Rohingya issue during the meeting, however, rejected by Myanmar. But presently, the outcome of constant pressure against Myanmar is positive, whereby Myanmar is showing more acceptance to deliberate on the refugee issue during the ASEAN ministerial meetings. Myanmar has finally acknowledged the important role of ASEAN to facilitate the reconciliation process of the Rohingya refugees.

The reputation and credibility of ASEAN are at stake due to the many criticisms and condemnations received from the international community over its failure to respond to the humanitarian crisis as well as keeping their silent stance towards the atrocities. The fundamental principle of ASEAN - respecting the sovereignty and non-interference principle in the internal affairs of member states, has become the biggest obstacle to the ASEAN's efforts in handling the refugee crisis. Myanmar's continuous reluctance to discuss the issue at the regional level hinders the regional efforts to solve the problem. Myanmar contends that the Rohingya crisis does not merit discussion at the regional level despite constant pressure from its ASEAN neighbours. The issue of Rohingya has become taboo in ASEAN contexts as their member states mainly adhere to the principle of non-interference and respecting the sovereignty of other member states. The principle of non-interference is no longer relevant to be imposed in the context of the refugee crisis as it has constrained ASEAN's effectiveness in responding to such issues.

The Rohingya refugee crisis presents a test for ASEAN in validating their ability for a proactive regional approach. Although responses from the ASEAN member states vary at the national level, nevertheless, they serve as an impetus to encourage better engagement to address the refugee crisis at the regional level. Despite the vocal stance and strong sentiments adopted by some ASEAN member states against the Myanmar government, it requires more comprehensive approaches from the organisation itself. Refugee problem and forced displacement are transnational issues - and the Rohingya crisis has become a regional issue. Therefore, the responsibility to resolve the protracted conflict must be shouldered by all the ASEAN member

states. The lack of regional commitment is the biggest challenge in solving this refugee crisis which needs to be addressed urgently so that better coordination and engagement between Myanmar and ASEAN member states can be strategised for more fruitful outcomes. The Rohingya refugee crisis can serve as a platform for ASEAN to justify that the regional organisation is still relevant and capable of resolving regional conflicts with the ultimate goal of protecting the wellbeing and human rights of the Rohingya people.

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REFERENCES

- Adams, S. (2019). The Responsibility to Protect and the Fate of the Rohingya, *Global Responsibility to Protect*, 11(4), 435-450. <https://doi.org/10.1163/1875984X-01104005>
- Albert E., & Maizland, L. (2020, January 23). The Rohingya Crisis. *Foreign Affairs*. <https://www.cfr.org/backgrounder/rohingya-crisis>
- Amnesty. (2020, July 20). Malaysia: Stop plans to cane Rohingya refugees and release those already imprisoned. *Amnesty International*. <https://www.amnesty.org/en/latest/news/2020/07/malaysia-stop-plans-to-cane-rohingya-refugees-and-release-those-already-imprisoned/>
- ASEAN. (2008). The ASEAN Charter. ASEAN. <https://asean.org/about-asean/asean-charter/translations-of-the-asean-charter/>
- ASEAN. (2013). ASEAN Human Rights Declaration. ASEAN. <https://asean.org/asean-human-rights-declaration/>
- Babulal, V. (2020, June 27). Work with ASEAN in expediting refugees' resettlement, UNHCR told. *New Straits Times*. <https://www.nst.com.my/news/nation/2020/06/603915/work-asean-expediting-refugees-resettlement-unhcr-told>
- Barber, R., & Teitt, S. (2020). The Rohingya crisis: Can ASEAN salvage its credibility?. *Survival*, 62(5), 41-54. <https://doi.org/10.1080/00396338.2020.1819642>

- Barber, R., & Teitt, S. (2021). Legitimacy and centrality under threat: The case for an ASEAN response to human rights violations against the Rohingya. *Asian Politics & Policy*, 13(4), 471-492. <https://doi.org/10.1111/aspp.12602>
- Bashar, I. (2019). Rohingya crisis and Western Myanmar's evolving threat landscape. *Counter Terrorist Trends and Analyses*, 11(6), 14-18.
- BBC. (2020, January 23). Myanmar Rohingya: Government rejects ICJ ruling. BBC. <https://www.bbc.com/news/world-asia-51229796>
- Ha, H. T., & Htut, Y. (2016). Rakhine crisis challenges ASEAN's non-interference principle. *Perspective*, 70.
- Head, J. (2017, September 11). Rohingya crisis: Seeing through the official story in Myanmar. BBC. <https://www.bbc.com/news/world-asia-41222210>
- Hirubalan, V. P. (2019, September 26). The Rohingya problem: Is there an ASEAN solution in sight? *ASEAN Today*. <https://www.aseantoday.com/2019/09/the-rohingya-problem-is-there-an-asean-solution-in-sight/>
- Human Rights Watch. (2021, June 12). Malaysia/Thailand: Allow Rohingya Refugees Ashore. Human Rights Watch. <https://www.hrw.org/news/2020/06/12/malaysia/thailand-allow-rohingya-refugees-ashore>
- Jati, I. (2017). Comparative study of the roles of ASEAN and the Organization of Islamic Cooperation in responding to the Rohingya crisis. *The Indonesian Journal of Southeast Asian Studies*, 1(1), 17-32. <https://doi.org/10.22146/ikat.v1i1.27466>
- Jeong, Y. J. (2021). Diverging response to the Rohingya refugee crisis since 2017 military crackdown: Comparative analysis of Bangladesh and Malaysia. *The Korean Journal of International Studies*, 19(1), 133-165. <https://doi.org/10.14731/kjis.2021.04.19.1.133>
- Kaewjullakarn, S., & Kovudhikulrungsri, L. (2015). What legal measures should ASEAN apply to help the Rohingya? *South East Asia Journal of Contemporary Business, Economics and Law*, 6(4), 6-14.
- Khairi, A. (2016). The dilemma of Rohingya refugees "boat people": The role of Malaysia, its neighbors and ASEAN. *International Journal of Academic Research in Business and Social Sciences*, 6(12), 481-489. <https://doi.org/10.6007/IJARBS/v6-i12/2512>

- Kim, C. H. (2021, July 10). Challenges to the Rohingya population in Malaysia. *Center for Strategic & International Studies*. <https://www.csis.org/blogs/new-perspectives-asia/challenges-rohingya-population-malaysia>
- Kit, L. W. (2019, June 10). AHA centre defends leaked report on Rohingya refugees. *Channel news Asia*. <https://www.channelnewsasia.com/asia/aha-centre-defends-leaked-report-rohingya-refugees-1322301>
- Kumar, P. (2017, February 2). Malaysia to give jobs to Rohingya Muslim refugees. *The Peninsular Qatar*. <https://thepeninsulaqatar.com/article/02/02/2017/Malaysia-to-give-jobs-to-Rohingya-Muslim-refugees>
- Mennecke, M., & Stensrud, E. E. (2021). The failure of the international community to apply R2P and atrocity prevention in Myanmar, *Global Responsibility to Protect*, 13(2-3), 111-130. <https://doi.org/10.1163/1875-984X-13020013>
- Missbach, A., & Stange, G. (2021). Muslim solidarity and the lack of effective protection for Rohingya refugees in Southeast Asia. *Social Sciences*, 10(5), 166-182. <https://doi.org/10.3390/socsci10050166>
- Mohajan, H. K. (2019). History of Rakhine state and the origin of the Rohingya. *The Indonesian Journal of Southeast Asian Studies*, 2(1), 19-46. <https://doi.org/10.22146/ikat.v2i1.37391>
- Morada, N. M. (2021). Asean and the Rakhine crisis: Balancing non-interference, accountability, and strategic interests in responding to atrocities in Myanmar. *Global Responsibility to Protect*, 13(2), 131-157. <https://doi.org/10.1163/1875-984X-13020003>
- Moretti, S. (2021). Between refugee protection and migration management: The quest for coordination between UNHCR and IOM in the Asia-Pacific region. *Third World Quarterly*, 42(1), 34-51. <https://doi.org/10.1080/01436597.2020.1780910>
- Nasir, S. M. B. Y. @ M., Salleh, M. A., & Haque, M. M. (2019). Malaysian Policy towards Refugees and Asylum Seekers: A Case Study of Rohingya Refugees. *International Journal of Academic Research in Progressive Education and Development*, 8(3), pp.110–117. <https://doi.org/10.6007/IJARPED/v8-i3/6291>
- New Straits Times. (2020, May 21). Najib orders search and rescue efforts on Rohingya boats. *New Straits Times*. <http://www.>

- nst.com.my/news/2015/09/najib-orders-search-and-rescue-efforts-rohingya-boats
- Palma, P., & Jinnat, M. A. (2019, August 22). Rohingya repatriation attempt: Doomed to fail again? The Daily Star. <https://www.thedailystar.net/frontpage/news/rohingya-repatriation-attempt-doomed-failure-again-1788742>
- Petersen, H. E., & Rahman, S. A. (2019, August 22). Rohingya refugees turn down second Myanmar repatriation effort. The Guardian. <https://www.theguardian.com/world/2019/aug/22/rohingya-refugees-turn-down-second-myanmar-repatriation-effort>
- Pudjibudojo, W. P. (2019). Criticizing the handling of Rohingya refugees in Southeast Asia by ASEAN and its members. *Politika: Jurnal Ilmu Politik*, 10(2), 229-238. <https://doi.org/10.14710/politika.10.2.2019.211-219>
- Rahman, M. M., Mohajan, H. K., & Bose, T. K. (2021). Future of Rohingyas: Dignified return to Myanmar or Restoring their rights or both. *IKAT: The Indonesian Journal of Southeast Asian Studies*, 4(2), 145-170. <https://doi.org/10.22146/ikat.v4i2.57706>
- Refugee Council. (2021, March 1). Key issues for refugees from Myanmar. Refugee Council. <https://www.refugeecouncil.org.au/myanmar-burma/>
- Regencia, T. (2021, June 18). Myanmar coup displaces thousands as global refugee numbers rise. Aljazeera. <https://www.aljazeera.com/news/2021/6/18/unhcr-urges-action-as-refugees-hit-record-high-of-82-4-million>
- Reuters. (2016, December 7). Myanmar stops migrant workers going to Malaysia after Rohingya row. Reuters. <https://www.reuters.com/article/us-myanmar-rohingya-malaysia-idUSKBN13W19X>
- Shivakoti, R. (2017). ASEAN's role in the Rohingya refugee crisis. *Forced Migration Review*, 56(3).
- Strangio, S. (2020, July 10). The shifting politics of Rohingya refugees in Malaysia. The Diplomat. <https://thediplomat.com/2020/07/the-shifting-politics-of-rohingya-refugees-in-malaysia/>
- Sukhani, P. (2020). The shifting politics of rohingya refugees in Malaysia. The Diplomat. <https://thediplomat.com/2020/07/the-shifting-politics-of-rohingya-refugees-in-malaysia/>
- Taufiq, H. A. (2019). Rohingya refugee crisis and the state of insecurity in Bangladesh. In Imtiaz, A. (Ed.), *Genocide and Mass Violence: Politics of Singularity* (pp.145-180).

- The Guardian. (2015, May 14). Malaysia and Thailand turn away hundreds on migrant boats. The Guardian. <https://www.theguardian.com/world/2015/may/14/malaysia-turns-back-migrant-boat-with-more-than-500-aboard>
- Thuzar, M. (2019). Repatriating the Rohingya: What regional cooperation can and cannot do. *ISEAS Perspective*.
- Tobing, D. H. (2018). The Limits and Possibilities of the ASEAN Way: The case of Rohingya as humanitarian issue in Southeast Asia. *KnE Social Sciences*, 148-174. <https://doi.org/10.18502/kss.v3i5.2331>
- UNHCR Malaysia (2021, October). Figures at a glance in Malaysia. UNHCR Malaysia. <https://www.unhcr.org/en-my/figures-at-a-glance-in-malaysia.html>
- Yukawa, T. (2018). The ASEAN way as a symbol: An analysis of discourses on the ASEAN Norms. *The Pacific Review*, 31(3), 298-314. <https://doi.org/10.1080/09512748.2017.1371211>