

THE ROLE OF NON-DOMESTIC FACTORS IN THE PERPETUATION OF THE ROHINGYA CRISIS

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Much of the international attention about Myanmar's human rights violation has and continues to revolve around the country's treatment of her most prominent human rights activist, Aung San Suu Kyi. Comparatively, little attention has been devoted to Myanmar's abysmal treatment of its ethnic minorities, in particular, the Rohingya people in the Rakhine State, who have been collectively denied basic rights as citizens of Myanmar and as human beings since Myanmar gained independence in 1948. While the multiple Rohingya crises in 2012, 2014–15, and again in 2016–17 have revived some global interest about the mistreatment of the Rohingya people, there remains woefully insufficient action taken to alleviate the abuses the Rohingya people are suffering. This paper seeks to explore three non-domestic factors: (1) inherent inability of the Rohingya people to self-organize, (2) a paper tiger ASEAN with no bite, and (3) the strategic ignorance of the international community—which has contributed to the perpetuation of the Rohingya crisis into the twenty-first century. This paper argues that the latter two factors are intrinsic to the endurance of the issue, especially by enabling actions tantamount to genocide undertaken by the Burmese government to go unchecked.

The opening of Myanmar to the world in 2010 after decades of authoritarian military rule has earned Myanmar greater access to international society and garnered much enthusiasm about its eventual democratization. Most of the international attention on Myanmar's human rights abuse was focused on their long-term imprisonment of the prominent opposition leader and Nobel Peace Prize winner, Aung San Suu Kyi. Her release after the November elections in 2010 and subsequent participation in the 2015 general election has led to newfound optimism that the lives of the 60 million people living there are improving. The international community soaked up Myanmar's

progress while choosing to remain inconspicuously silent and ignore the plight of their ethnic minorities, especially that of the Rohingyas, who have been subjected to systemic and institutional discrimination for over three decades. Despite knowing that the discrimination against the Rohingyas—which experts have found to be tantamount to genocide—is ongoing, the international community seems to have little intent to go beyond its current sporadic verbal castigation. The Burmese government’s abysmal treatment of the Rohingya people has continued into the twenty-first century with little signs of resolution on the horizon.

This paper seeks to explore the non-domestic factors that contribute to the perpetuation of violence and discrimination against the Rohingya people, a Muslim minority who mostly live in Myanmar’s western state of Rakhine. The three non-domestic factors which will be identified and discussed in this paper are: (1) how the Rohingya’s lack of organization and armed forces led to their being unrepresented internationally, (2) how ASEAN’s doctrine of non-interference and policy of consensus paralyzed the regional organization’s ability to pressure Myanmar into ending its discriminatory policies against the Rohingya, and (3) the international community’s strategic choice to not publicly shame Myanmar’s blatant abuse of human rights that constitutes a long, drawn out process of genocide against the Rohingyas as well as the UN’s overstretched resources in helping.

History: The Rohingya Problem

Who Are They?

The Rohingya are a predominantly Sunni Muslim minority group who live in the Rakhine State of Myanmar. The Rakhine State, formerly known as Arakan, is located on Myanmar’s west coast. It borders Bangladesh to the northwest, the Bay of Bengal lies to its west, and a mountain range to the east divides Rakhine from the rest of Myanmar.

Figure 1 Map of Rakhine State

Source: "Rakhine State" [map], Visual Scale, Radio Free Asia, 2015.

The Rohingya Muslims first migrated to Myanmar in the fifteenth century as part of strengthening the links between the rulers of Arakan and Bengal, and conflict between them and the Buddhist Rakhine majority has persisted ever since.¹ Today, an estimated one million Rohingya² live in Rakhine State. The Rohingya account for most of the population in Rakhine's three northernmost townships of Maungdaw, Buthidaung, and Rathedaung.

Much of the Burmese government's refusal to treat Rohingyas as legitimate Burmese citizens post-independence stems from the lack of a distinctive difference in physical features between the Rohingya people and the Bangladeshi people living in southeast Bangladesh (near the border of the Rakhine State, where most of the Rohingya people currently live). The key characteristic that differentiates them from Bangladeshis living in the

1 "Rohingya Refugees in Bangladesh and Thailand," *Danish Immigration Service* 1 (2011): 7.

2 Maung Zari and Alice Cowley, "The Slow Burning Genocide of Myanmar's Rohingya," *Pacific Rim Law & Policy Journal* 23, no. 3 (2014): 683.

same region is their spoken language.³ The Rohingya speak a language similar to the Chittagonian dialect of Bangla spoken by Bangladeshis living in the same geographical area, only with a minor difference. The Rohingya language is not a written language, and many of the Rohingya population today are illiterate after three decades of systemic persecution.

During the British colonization of Myanmar (1824–1948) and throughout the Japanese occupation (1942–45), the Rohingyas remained staunchly loyal to the British. They thus found themselves on the opposite side of the pro-independence Rakhine. The British promised the Rohingyas an independent Muslim state in the northern part of the Rakhine State in exchange for their loyalty, but the promise was never fulfilled.⁴ Instead, the Rohingyas found themselves stateless in a country where they have been born, raised, and are currently still living.

Three Decades of Systematic Repression

The Rohingyas face systematic and endemic discrimination in their home country of Myanmar. This discrimination is framed by the Burmese government as a disputed immigration problem and leads to the Rohingyas being denied basic and fundamental human rights. There was little effort to assimilate the Rohingyas throughout Myanmar's independent history, and Burmese leaders continue today to deny the existence of the Rohingya people.

Efforts to deprive Rohingya of citizenship began shortly after Myanmar's independence and have continued relentlessly. The 1948 Union Citizenship Act identified specific ethnicities—the “indigenous races of Burma”—to gain citizenship.⁵ However, Rohingyas were not on the list. In 1974, Myanmar began to require all citizens to obtain National Registration Cards. Yet, the Rohingya people were only allowed to obtain Foreign Registration Cards (FRC). This severely limited educational and employment opportunities for the Rohingyas, as many schools and employers did not recognize FRC holders.

3 “Rohingya Refugees in Bangladesh and Thailand,” 11.

4 “Burma: The Rohingya Muslims: Ending a Cycle of Exodus?” *Human Rights Watch Asia* 8, no. 9 (1996): 9.

5 The Union Citizenship Act 1948 (Act No. LXVI of 1948), Union of Burma, http://www.ibiblio.org/obl/docs/UNION_CITIZENSHIP_ACT-1948.htm.

The 1978 military operation “Naga Min” (Dragon King) was undertaken by the national army to find and take action against illegal immigrants.⁶ This nationwide program degenerated into abusive attacks in the Rakhine State on Rohingyas by both the army and local Rakhine people. The Rohingyas were deemed by the Burmese government to be illegal Bangladeshi immigrants instead of an ethnic minority. Operation Dragon King—employing mass murder, rape, and desecration of Muslim religious landmarks—was thus aimed at Rohingya civilians. This resulted in an exodus of more than 200,000 Rohingyas to Bangladesh, many of whom were later repatriated after Myanmar faced international condemnations for the military operation. The repatriated faced persecution in Myanmar due to a national law which declared that the Burmese government owned all lands in the country and that only citizens had the right to live on and use the land.⁷ The stateless Rohingyas had no rights to the land they lived on and were vulnerable to land confiscation by the government.

In 1982, General Ne Win instituted a new citizenship law that again prohibited the Rohingya people from qualifying for full Burmese citizenship, effectively rendering a majority of the Rohingya people stateless.⁸ The citizenship law required a person’s family’s proof of residence in Myanmar since before 1948. Many Rohingya lacked the required documentation despite their families having lived for centuries in present-day Myanmar. They were not issued any form of state identity cards and were also designated as illegal residents in Myanmar with little or no access to education, health care, social security, and employment opportunities. Even if a Rohingya person met the citizenship law criteria, “the Central Body still had the discretion to deny citizenship.”⁹

The Burmese government instituted discriminatory laws that paralyzed the everyday lives of the Rohingyas. The government imposed marriage laws on the “non-citizen” Rohingya people that required government authorization for marriage and imposed a two-child limit on the Rohingya community.¹⁰ Children were used as “evidence” of unregistered marriages,

6 Amanda Crews, Slezak alia Roussos Singer, and Rupa Ramadurai, “Stateless and Fleeing Persecution: The Situation of the Rohingya in Thailand,” *Children’s Legal Rights Journal* 35, no. 1 (2015): 47.

7 Scott Leckie and Ezekiel Simperingham, *Housing, Land, and Property Rights in Burma: The Current Legal Framework* (Geneva: Displacement Solutions & The HLP Institute, 2009), 506.

8 Burma Citizenship Law 1982, Union of Burma, <http://www.refworld.org/docid/3ae6b4f71b.html>.

9 Crews, Singer, and Ramadurai, “Stateless and Fleeing Persecution,” 47.

10 Jason Szep and Andrew R.C. Marshall, “Myanmar Minister Backs Two-Child Policy for Rohingya Minority,” *Reuters*, June 11, 2013, accessed June 1, 2016, <http://www.reuters.com/article/us-myanmar-rohingya-idUSBRE95A04B20130611>.

an act punishable with up to ten years in prison, and third and fourth children who were unregistered were “blacklisted” for life—unable to travel, attend school, or marry.¹¹ The State Law and Order Restoration Council (SLORC) also began to forcibly relocate villages to bring the Rohingya community more directly under government control in the 1990s. The relocations of the Rohingyas between 1995 and 2010 concentrated the Rohingya community in the northern part of the Rakhine State.

There was also a military buildup due to the military campaign “Pyi Thaya” (Prosperous Country) after the 1991 elections in the Rohingya majority town of Maungdaw and Buthidaung. SLORC justified the buildup by citing concerns about Rohingya insurgents, painting them as Islamic extremists who stirred trouble within the local Muslim population.¹²

All the above constitutes a well thought-out state policy that subjected the Rohingya to systematic abuses and persecution over decades. A growing body of evidence reveals that the centrally planned large-scale death and destruction of the Rohingya people has been achieved over a time frame of several decades. Prominent scholars, such as David Simon, Director of the Genocide Studies Program at Yale University, as well as researchers from the International State Crime Initiative (ISCI) have concluded that these actions by the Burmese government and anti-Muslim ultra-nationalists (Buddhist Rakhines) are tantamount to genocide.¹³

Article 2 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide defines genocide:

[A]ny of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group.

In a landmark paper, scholars Zari and Cowley demonstrate how there was

11 “40,000 Rohingya Children in Myanmar Unregistered,” *IRIN*, January 19, 2012, accessed June 1, 2016, <http://www.irinnews.org/news/2012/01/19/40000-rohingya-children-myanmar-unregistered>.

12 “Burma: The Rohingya Muslims: Ending a Cycle of Exodus,” 12.

13 Zari and Cowley, “The Slow Burning Genocide of Myanmar’s Rohingya,” 684.

intent from state and non-state actors in Burmese society who sought the complete destruction of the Rohingya people as an ethno-religious group. Their study of the state policies against the Rohingya found that it satisfied four out of the five criteria defined in the Convention. Regardless of whether these acts constitute genocide or the government was incompetent in preventing “communal violence” against the Rohingyas, the Rohingya people are still victims of serious human rights abuses and violations.¹⁴ Unfortunately, the world has not done enough to alleviate the suffering of the Rohingya.

A Three-Decade-Long Refugee Crisis in the Making

The systematic discrimination deployed by the Burmese government against the Rohingya people has resulted in a massive refugee flow to neighboring countries. Unfortunately, the first two exoduses have only prompted international verbal castigation of the Burmese government’s actions and resulted in a forced repatriation of the Rohingya back to Rakhine. Little action has been taken beyond the monitoring of the plight of the Rohingyas by human rights advocacy groups and various UN organizations.

Following the 1978 Operation Dragon King, the first massive exodus of more than 200,000 Rohingya refugees arrived in Bangladesh. About 10,000 died from starvation in the squalid refugee camps, while many of the remaining were repatriated to Myanmar and continued to live in destitution. Between 1991 and 1992, the Burmese “Pyi Thaya” military campaign started with a buildup of military forces and formation of a border task force, called Nay-Sat Kut-kwey Ye (or Nasaka), and led to a second exodus of over 250,000 Rohingyas to Bangladesh and over 15,000 to Malaysia.¹⁵ A subsequent bilateral repatriation agreement signed between Bangladesh and Myanmar saw the repatriation of most of the Rohingya refugees by the year 2000, with only 28,000 left in the Bangladeshi refugee camps. A steady outflow of Rohingyas to Malaysia and Bangladesh to flee persecution continued in the years that followed. Unfortunately, the UN could only document Rohingyas in refugee camps and had no resources

14 International Crisis Group, “The Dark Side of Transition: Violence Against Muslims in Myanmar,” *Asia Report* 251 (2013): 4.

15 Samuel Cheng, “Migration Control and the Solutions Impasse in South and Southeast Asia: Implications from the Rohingya Experience,” *Journal of Refugee Studies* 25, no. 1 (2011): 52.

to engage with the huge population residing outside of the camps.¹⁶ As a result, many unregistered refugees were left without access to food rations or employment due to lack of a refugee identity card.

The third exodus was sparked by the rape and murder of a Buddhist woman by Muslim men in May 2012. It caused the long-simmering tensions between the Buddhist and Muslim communities to boil over in the Rakhine State. The tensions intensified in June 2012 with the murders in Toungup township of ten Muslim pilgrims, who were not Rohingya, after the anonymous distribution of inflammatory leaflets attacking followers of Islam. Revenge attacks followed in October, resulting in the displacement of 140,000 in 2012 alone. In the years since then, another 120,000 Rohingyas have been estimated to have fled Myanmar.¹⁷

Renewed International Interest: 2012 - Present

The Rohingya crisis was catapulted into the international spotlight in 2012 when a boat carrying Rohingya refugees fleeing the violence in Rakhine and travelling illegally from Myanmar to Malaysia sank off the coast of Bangladesh, resulting in more than 100 deaths.¹⁸ In 2013, several boats carrying up to 150 Rohingya refugees capsized near the western coast of Myanmar after trying to evacuate from the path of a cyclone.¹⁹ This incident drew short-lived attention to the vulnerable Rohingyas, who suffered from both man-made and natural disasters.

The discovery of mass graves containing hundreds of Rohingyas in both Thailand and Malaysia in May and August of 2015 led once again to world outrage and attention to the plight of the Rohingya.²⁰ The graves were found near trafficking camps in the border areas, prompting UN investigations into whether the deceased were victims of human trafficking. The resulting

16 International Crisis Group, "The Dark Side of Transition," 8.

17 Andrew R.C. Marshall, "Exclusive: Poor and Besieged, Myanmar's Rakhine Join Rohingya Exodus," *Reuters*, November 26, 2014, accessed June 2, 2016, <http://www.reuters.com/article/us-myanmar-economy-rakhine-idUSKCN0JA27020141127>.

18 Hannah Osborne, "100 Rohingya Muslims Drown After Myanmar Refugee Boat Sinks off Bangladesh Coast," *International Business Times*, November 7, 2012, accessed June 1, 2016, <http://www.ibtimes.co.uk/muslim-rohingya-refugees-drowned-boat-sank-myanmar-402405>.

19 Jethro Mullen and Brian Walker, "Boats Carrying Scores of Rohingya Capsize in Myanmar, UN says," *CNN*, May 14, 2013, accessed June 1, 2016, <http://edition.cnn.com/2013/05/14/world/asia/myanmar-boats-capsize/>.

20 "Asia Migrant Crisis: New Mass Graves on Malaysia-Thai Border," *BBC News Asia*, August 23, 2015, accessed June 2, 2016, <http://www.bbc.com/news/world-asia-34033474>.

pressure forced the Thai government to crack down on human trafficking routes on land. Traffickers in turn abandoned boatloads of Rohingya in the Andaman Sea. Despite these terrible circumstances, Thailand, Malaysia, and Indonesia refused to let the Rohingya go ashore. Instead government officials merely replenished their boats with food and water before sending them back into international waters.²¹ This maritime ping-pong drew much criticism from the international community, eventually pressuring Malaysia and Indonesia to take in Rohingya refugees on the condition that they would be relocated elsewhere after a year.

Time and again, the world did not care enough to take action. The Rohingya refugee crisis of the past three decades has only intensified in the twenty-first century, with seemingly no future signs of improvement. The following sections will analyze three non-domestic factors which have contributed to the continuation and deepening of the Rohingya crisis and the difficulty in achieving a solution.

Rohingyas: Putting up a Weak Fight

The first factor is the inherent weakness and lack of a unifying force among the Rohingya people. Unlike other oppressed minorities who either have a visionary leader as their spokesperson (e.g. the Dalai Lama) or a strong military force (such as the Liberation Tigers of Tamil Eelam that fought for the rights of Tamils in Sri Lanka), the Rohingya people have neither. The absence of an outspoken leader meant little representation for the Rohingyas abroad and at home, hence contributing to much obliviousness about their plight. The inability of an outspoken leader to emerge might be attributed to the multi-generational discrimination and vicious cycle of abuse the Rohingya people face in Myanmar. Generations have grown up illiterate and in poverty, unable to leave due to the lack of access to any form of documentation. The government fronted efforts to eliminate their existence in theory is unmatched by many other marginalized groups (Tamils, Kurds, Tibetans, etc.) across the world. Coupled with the crippling lack of a decent military force, it was next to impossible for the Rohingyas to put up an effective resistance against the Burmese government when acts of violence were carried out against them.

21. Aubrey Belford and Reza Munawir, "Migrants in 'Maritime Ping-Pong' as Asian Nations Turn Them Back," *Reuters*, May 16, 2015, accessed June 2, 2016, <http://www.reuters.com/article/us-asia-migrants-idUSKBN00105H20150516>.

Scholars who have studied Rohingya resistance have concluded that while Rohingya insurgencies have a long history, they do not appear to have much support from the local Rohingya people they claim to represent.²² None of these insurgencies have grown from within the Rohingya population living in Myanmar, and many are supported by hardline Muslim organizations in other countries, hence having little appeal to the Rohingya people. Not only is there little support, the actual size of these groups are very small (no more than a few hundred fighters) when considering the one million Rohingyas who live in the Rakhine State, and none of them operate from within Myanmar, where most of the Rohingya people live.

Rohingya Armed Forces

The Rohingya Independent Force (RIF) was formed in April 1964, in the hopes of creating an autonomous Rohingya state within the Union of Burma (then named Myanmar). In 1969, the RIF changed its name to the Rohingya Independent Army (AIR), which later became known as the Rohingya Patriotic Front (RPF) in 1973.²³ The RPF faced serious factionalism and disunity, leading to much infighting and eventually resulting in two breakaway groups—the Arakan Rohingya Islamic Front (ARIF) and the Rohingya Solidarity Organization (RSO).

The buildup of the RSO along the Bangladesh-Myanmar border earned the RSO much media coverage, especially in South Asia, in the 1990s. Due to its religious stances, it has gained the backing of other like-minded religious groups in the Muslim world. However, an investigation showed that it was not purely Rohingyas who were undergoing training in its camps.²⁴ Many of the trainees were members of the Islami Chhatra Shibir (ICS), the youth organization of Bangladesh's Jamaat-e-Islami from the University of Chittagong, where a campus war was being fought between Islamist militants and more moderate student groups. The RSO, unlike what its name suggests, fought little for the rights of Rohingyas living in Myanmar.

22 "Burma: The Rohingya Muslims: Ending a Cycle of Exodus," 11.

23 Bilveer Singh, *The Talibanization of Southeast Asia: Losing the War on Terror to Islamist Extremists* (Westport, CT: Greenwood Publishing Group, 2007), 42–43.

24 Bertil Lintner, "Bangladesh: Breeding Ground for Muslim Terror," *Asia Times*, September 21, 2002, accessed June 1, 2016, http://www.atimes.com/atimes/South_Asia/DI21Df06.html.

The two factions of the RSO eventually chose to join hands with the ARIF into a single representative organization called the Arakan Rohingya National Organization (ARNO). ARNO is an armed self-determination movement whose recruits are mostly Rohingyas living in the refugee camps. ARNO sought to protect the rights of the Rohingya minority and to push for an autonomous Rohingya state within Myanmar. However, the growing radicalization of both ARNO members and other Rohingyas living in Bangladesh meant that much of the Rohingya fighters were fighting for terrorist organizations in the Middle East instead of for their own people's right to self-determination in Myanmar.²⁵

ARNO members were found to have had established ties with radicals from the Taliban and al-Qaeda, while other Rohingyas were also found to be involved with Bangladesh's Islamic militants, Hakrat-ul-Jihad-al-Islami (HuJI).²⁶ HuJI was founded in 1992 and has since been labeled by the United States as a terrorist organization with ties to Islamist militants in Pakistan. Rohingya recruits in HuJI were sent to Afghanistan to fight for the Taliban and al-Qaeda and not within Myanmar.

The Rohingyas have gained little traction in establishing a well-trained and centralized armed force to fight for their rights. While various groups have sprouted up claiming to represent the interests of Rohingyas, such as the new umbrella organization formed in 2002 called the Bangladesh Islamic Manch and the Muslim Liberation Tigers of Assam (MULTA)—a small group operating in India's northeast—none have any track record of having fought for Rohingya rights from within or outside Myanmar. While the emergence of ARNO in the late 1990s was widely regarded as a symbol of hope for the Rohingya people, the two decades since then have been remarkably devoid of progress.

Rohingya Non-Military Organizations

Unlike the Rohingya military forces, the Rohingya non-military organizations seemed to have made more progress in shining light on the plight of the Rohingyas to the world, albeit achieving little in prompting the world into action.

25 Singh, *The Talibanization of Southeast Asia*, 42.

26 Lintner, "Bangladesh: Breeding Ground for Muslim Terror."

The Arakan Rohingya Union (ARU) is a non-profit global umbrella organization founded in 2011 in Saudi Arabia to represent various Rohingya organizations worldwide. Its mission is to seek a political solution to the issues faced by the Rohingya ethnic minority in Myanmar.²⁷ Since the individual citizens within Burmese borders presently and collectively have rights as a people to self-determination, the goals of the ARU include forging an indivisible Arakan State within Myanmar by seeking peaceful co-existence, democracy, human rights, and federalism. The ARU also seeks the recognition and protection of the rights of the Rohingya minority by the government of Myanmar, including their cultural, religious, ethnic, and political rights. The ARU counts Pakistan and Saudi Arabia as its Muslim allies.²⁸

The Global Rohingya Center (GRC) has a more defined structure, with a legal section to monitor the development of the situation of the Rohingya people and coordinate with donors to provide relief.²⁹ The GRC and the ARU have strived to garner support for their cause within the Muslim world and have been relatively successful. ARU and GRC representatives have met some key leaders, including the King of Saudi Arabia and the Prime Minister of Turkey, which has garnered considerable press coverage in the Muslim world.

However, like the military organizations, the ARU and the GRC gave fresh traction to the Rohingya issue but ultimately failed to speak for the Rohingya people on the international stage. There is little to no press coverage about them or their activities in Western media, nor is there any mention of them in press releases and statements made by the UN offices handling the Rohingya crisis. The lack of a strong unifying force for the Rohingya has resulted in a lack of world attention to their plight, and the resolution of the Rohingya problem will only continue to be a struggle.

27 "ARU Mission Statement," Arakan Rohingya Union, accessed June 1, 2016, <http://ar-union.org>.

28 Associated Press, "UN Rights Council: Rohingyas Hail Pak-Saudi Resolution," *The Express Tribune*, July 8, 2015, accessed June 1, 2016, <http://tribune.com.pk/story/916764/un-rights-council-rohingyas-hail-pak-saudi-resolution/>.

29 "About Rohingya," Global Rohingya Center, accessed June 1, 2016, <http://rohingyacenter.org/en/?p=259>.

ASEAN: The Paper Tiger

As the second non-domestic factor, the response of the Association of Southeast Asian Nations (ASEAN) to the issue has been weak despite its proximity to the Rohingya crisis. While the ASEAN approach of constructive engagement has been partially responsible for the opening up and democratization of Myanmar, it has been unsuccessful in changing the country's discrimination towards its Rohingya population. This section will explore how ASEAN's soft stance towards Myanmar has enabled the Burmese government to continue its repression of the Rohingya people with little consequences.

ASEAN and Myanmar

Myanmar became a member of ASEAN in 1997. In contrast to the sanctions adopted by Western countries against Myanmar, the ASEAN approach has been that of "constructive engagement." ASEAN's norms of respect for sovereignty, territorial integrity, and non-interferences in domestic affairs enabled Myanmar to continue to be a part of ASEAN while doing little to rectify its political authoritarianism and severe human rights abuses. The policy of "constructive engagement" was undertaken to decrease pressures from the West to punish Myanmar for its authoritarian political system and human rights abuses.³⁰ While it was useful in bringing Myanmar into the ASEAN community, it is counterproductive when trying to pressure the Myanmar government about the Rohingya issue. ASEAN has long faced the challenge of how to handle a member state whose actions went largely against the values and ideology of ASEAN without a potential solution.

Unfortunately, ASEAN's reaction towards Myanmar's discriminatory policies towards the Rohingya has mostly been verbal. While Myanmar has since come a long way, with a 2010 general election that ended the rule of the military junta and the release of Aung San Suu Kyi in 2012, little has changed for the Rohingyas. Not only have they not benefitted from the recent democratizing of Myanmar, they became victims whose plights are drowned out by the noise of global encouragement and praise at Myanmar's opening up.

30 Fan Hongwei, "ASEAN's 'Constructive Engagement' Policy towards Myanmar," *China International Studies* (2012): 55.

ASEAN on the Rohingyas

Much of ASEAN's response towards the Rohingya issue can best be described as lackadaisical—soft and hiding behind the policies and doctrines of respecting territorial sovereignty and integrity as well as non-interference in the internal affairs of ASEAN member states. Responses from the Muslim majority ASEAN member states, in particular Indonesia and Malaysia, have been stronger as they largely involve non-state actors.³¹ The plight of the Rohingyas has attracted sympathy, political, and non-political support from several Muslim organizations across the region, forcing Malaysia and Indonesia to be more vocal of Myanmar's handling of the issue.

The exodus of Rohingyas by sea in 2012 presents itself as a new and acute challenge for ASEAN. Despite the nature of this non-traditional transnational security threat, ASEAN has struggled to achieve a solution. Furthermore, several ASEAN member states face huge strains in accommodating the Rohingya refugees. ASEAN continues to lack a regional framework on refugees, with only two of ten ASEAN member states (Cambodia and Philippines) serving as signatories of the UN Refugee Convention. While the member states have convened to criticize the handling of the Rohingyas on boats, there has been no formal criticism of Myanmar, except for bringing up the Rohingya issue during bilateral talks.³²

ASEAN Intergovernmental Commission on Human Rights

The establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR) in 2009 has not led to any improvements in the ASEAN response towards the Rohingya issue. The ASEAN Human Rights Declaration, while being a step in the right direction in advancing human rights awareness and protection in ASEAN member states, merely remains a paper tiger. It does not have the mandate to handle individual cases should they be submitted to the AICHR, depending heavily on consensus and consultation. The AICHR describes its contribution and impact on human rights in ASEAN as “educating and raising awareness on human rights to

31 Bilveer Singh, “ASEAN, Myanmar and the Rohingya Issue,” *Himalayan and Central Asian Studies* 18 (2014): 12.

32 “ASEAN Leaders To Press Myanmar To Solve Rohingya Issue,” *South China Morning Post*, November 19, 2012, accessed June 4, 2016, <http://www.scmp.com/news/asia/article/1085658/asean-leaders-press-myanmar-solve-rohingya-issue>.

the people of ASEAN” and its duty as “the overarching institution in ASEAN on human rights...cooperat[ing] with other ASEAN bodies and with external partners. AICHR will develop a regional cooperation on human rights.”³³ It is ambitious with good intentions but has few, if any, achievements to show for its grand ambitions.

An examination of the AICHR’s second five-year work plan (2016–20) shows that the mandates are an exact replica of what is listed in the ASEAN Human Rights Declaration, the Phnom Penh statement, and the first five-year work plan (2010–15). While improvements have been made, serious fundamental defects remain, especially within the realm of human rights. Also, AICHR relies on human rights reports submitted by member states to the human rights bodies in the UN instead of conducting a thorough investigation and writing its own report on each member state. It also relies on each member’s voluntary sharing of information and updates instead of closely monitoring the situation. AICHR’s work fails to meet even the minimum level for compliance with international human rights law and standards for it has never intervened in nor reported on any concrete national or regional human rights issues. It has also been disappointingly and shamefully silent on key incidents of human rights violations in Southeast Asia, such as the mistreatment of migrant workers from ASEAN states, thus failing a basic test of its integrity as a human rights body. This incoherence in goals and execution is undeniably the reason why the AICHR has failed to provide any meaningful impact on the Rohingya crisis and on the overall human rights situation in ASEAN.

Toothless ASEAN

The long-burning Rohingya crisis is an apt example of how ASEAN principles of non-interference and a weak mandate on non-economic issues are no longer up to date with the geopolitical reality of Southeast Asia, for they severely limit ASEAN’s ability to enforce collective political will to mitigate the Rohingya crisis.³⁴ The lack of a rough outline of a possible regional solution,

33 The ASEAN Secretariat, “AICHR: What You Need To Know,” ASEAN Public Outreach and Civil Society Division, October 19, 2012, accessed June 1, 2016, http://aichr.org/?dl_name=web_FA_AI-CHR_19102012_FINAL.PDF.

34 Syed Munir Ksarsu, “Rohingya Refugee Crisis can be Solved Only if ASEAN Musters the Will to Do So,” *South China Morning Post*, June 19, 2015, accessed June 3, 2016, <http://www.scmp.com/comment/insight-opinion/article/1823719/rohingya-refugee-crisis-can-be-solved-only-if-asean-musters>.

in spite of all the discussions about the Rohingya crisis in 2015, further exposes the toothlessness of ASEAN. The ASEAN community will be a failure without any form of regional rights protection, and each day that ASEAN does not step up and take ownership of the Rohingya crisis as a regional problem is one more day where the Rohingyas will suffer in silence.

International Community: Strategic Ignorance?

As the final non-domestic factor, the international community is mostly focused on Myanmar's democratization and seems very willing to lavish praises upon it, despite the blatant human rights violations carried out against its minorities. There is an overall optimism about the democratization progress, marked most visibly by the release of Aung San Suu Kyi from long-term house arrest and her party's sweeping win in the 2015 parliamentary elections. Such optimism remained largely undampened even as Aung San Suu Kyi, a symbol of human rights activism in Myanmar and in the world, flatly denied the ethnic cleansing of Rohingyas in a BBC interview in April 2017.³⁵ The UN is also overstretched in its resources to help the displaced, including the Rohingyas, due to the various systemic barriers placed upon them by the Burmese government. While the UN Human Rights Council finally agreed in March 2017 to send a fact-finding mission to investigate the human rights abuse long suffered by the Rohingya, it was not a Commission of Inquiry (a higher level of investigation) as called for by the UN's special rapporteur in Myanmar.³⁶ This section will thus examine how the unwillingness to pressure Myanmar plus the limitations of finite UN resources contribute to the perpetuation of the Rohingya crisis.

International Community on the Rohingyas

While the outbreak of the boat crisis in the last few years has sparked horror around the world and saw the word "Rohingya" carried in the headlines

35 "Aung San Suu Kyi Denies Ethnic Cleansing of Rohingya," *Al Jazeera*, April 6, 2017, accessed April 28, 2017, <http://www.aljazeera.com/news/2017/04/aung-san-suu-kyi-denies-ethnic-cleansing-rohingya-170406081723698.html>.

36 OHCHR Press Release Office, "Human Rights Council Decides to Dispatch a Fact-Finding Mission to Myanmar to Establish Facts on Violations, Especially in Rakhine State," *Human Rights Council*, March 24, 2017, accessed April 26, 2017, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21443&LangID=E>.

of major global newspapers, little concrete action to help these migrants has been taken. Western optimism about government reforms in Myanmar coupled with the history of Chinese and Russian vetoes on intervention translates into little political will for a military intervention of any sort against the violence experienced by the Rohingyas.

Despite the attention shone on Myanmar from US President Obama's visit in 2012, the Rohingya crisis remains as dire as ever.³⁷ Tom Malinowski, the US Assistant Secretary of State for Human Rights and Labor, also cautioned against hoping for any major improvements in the situation in the short term. US engagement with Myanmar was, and still is, mostly driven by the concern that Myanmar may become part of China's sphere of influence.³⁸ The strategic location of Myanmar and its abundance of natural gas resources have led the US to become less vocal on the plight of the Rohingya. The US wishes to keep Myanmar within its sphere of influence and has avoided imposing sanctions that would only alienate Myanmar.

The Rohingya crisis remains a challenge for the West, which has showered economic aid and good will on Myanmar in the hope of one day winning support from a democratic, resource-rich country. Thus, many Western governments have mostly kept quiet about their concerns towards the Rohingya's treatment in hopes of persuading the Burmese government to change its stance.³⁹

UN Efforts

While a Special Rapporteur to Myanmar by the UN has been appointed, Myanmar has not allowed the establishment of an Office of the United Nations High Commissioner for Human Rights (OHCHR) with a full mandate. It continues to place restrictions on visas and travel authorizations on OHCHR team members.

While the Special Rapporteur is a step in the right direction for supervising the situation in Myanmar and an effort to work with the domestic government, the Special Rapporteur faces many hurdles in being

37 Holly Yan and Ivan Watson, "Obama in Myanmar: Rohingya Crisis Could Dim ASEAN Summit," *CNN*, November 13, 2014, accessed June 4, 2016, <http://edition.cnn.com/2014/11/13/politics/myanmar-obama-asean-visit/>.

38 "Will Anyone Help the Rohingya People?" *BBC News Asia*, June 10, 2015, accessed June 5, 2016, <http://www.bbc.com/news/world-asia-33007536>.

39 *Ibid.*

able to make significant steps towards resolving the Rohingya crisis. Former Special Rapporteur Tomás Ojea Quintana commented in a 2013 interview that Myanmar has not done enough to address human rights abuses and described the situation in Rakhine as “quite fragile and critical.”⁴⁰

The Special Rapporteur report in 2016 emphasizes the importance of changing the discriminatory Citizenship Law (1982) to meet international standards. In particular, the provisions of granting of citizenship on the basis of ethnicity or race, which are clearly discriminatory, should be revised. The report also calls upon the new government to take immediate steps to end the highly discriminatory policies and practices against the Rohingya and other Muslim communities in Rakhine. It highlights that little progress has been made in resolving the legal status of the more than one million Rohingya in Myanmar, including their access to citizenship.

The UN’s weak stance regarding the Rohingya can also be seen from the UN Secretary General’s Special Advisor on Myanmar Vijay Nambiar’s visit to the Rakhine State in May 2015. A disappointingly benign statement was released following the visit, stating that “[t]he UN recognizes and appreciates the recent improvements in the conditions in Rakhine, including efforts to improve the situation of the IDPs [internally displaced persons]” and weakly concluded that “[n]otwithstanding these welcome improvements, more work needs to be done to address the daily issues of discrimination, restricted freedom of movement, and deprivation of fundamental rights faced by the IDPs and other Muslim populations.”⁴¹ The statement failed to use the term Rohingya, instead accommodating the Myanmar government by using its preferred term “Bengalis,” referring to and underscoring their alleged illegal immigration from Bangladesh.

The current UN strategy emphasizes development investment as the solution to Rakhine State’s problems; however, it fails to account for development initiatives carried out by discriminatory state actors through discriminatory institutions will likely have a discriminatory outcome. The UN Resident Coordinator in Myanmar (with an ambassador equivalent status) was more focused on the development approach instead of human rights, even asking the Special Rapporteur to be less vocal about the Rohingya

40 “Interview: Tomás Ojea Quintana,” *IRIN*, October 24, 2013, <http://www.irinnews.org/report/98988/interview-un-special-rapporteur-human-rights-myanmar>.

41 “Press Statement,” UN Office of the Resident & Humanitarian Coordinator, Union of Myanmar, May 22, 2015, accessed June 4, 2016, http://reliefweb.int/sites/reliefweb.int/files/resources/FINAL%20Press%20Release_UN%20Mission%20to%20Rakhine%20State_22-23%20May%20.pdf.

issue and to not visit Rohingya displacement camps.⁴²

Also, no commission of inquiry on the human rights situation in Rakhine State was established for an urgent, comprehensive, and independent investigation of the widespread and systematic abuses committed against the Rohingya. For decades, the UN limits its criticism of the Burmese government's treatment towards the Rohingya people to verbal statements and press releases. Despite reports from the Special Rapporteur and various other NGOs about the worsening situation, the UN is still unable to rally member states in undertaking an official resolution against Myanmar's systematic discrimination towards the Rohingya people. The inaction underlies a strategic intent to not cross the line in pressuring the Burmese government with hard measures, especially with the Special Rapporteur's comment about the UN's decision to launch a fact-finding mission instead of a Commission of Inquiry in order to give the new Aung San Suu Kyi-led government more time.⁴³

Conclusion

The inability of the Rohingya people to put up an organized resistance, an ASEAN hiding behind the shield of non-interference, and a strategic ignorance of the international community have all contributed to the perpetuation of the Rohingya crisis. Of the three factors, the author believes that most difficult to change would be the Rohingya people's ability to organize themselves. The Rohingyas, having been a disenfranchised minority for a long time, lack the resources to unite and stand up for themselves. It would also not be ideal to arm them and sit back, letting them fend for themselves and escalating the Rohingya problem into a military conflict. Not only would it not lead to a resolution of the problem, but it would give the Burmese government more reason to use force against the Rohingya people, thus creating further civilian casualties.

The most feasible course of action would be for ASEAN and the international community to stand up for the Rohingya by pressuring the

42 Emanuel Stoakes, "Leaked Documents Show How the UN Failed to Protect Myanmar's Persecuted Rohingya," *VICE News*, May 22, 2016, accessed June 4, 2016, <https://news.vice.com/article/how-the-un-failed-to-protect-myanmars-persecuted-rohingya>.

43 "UN to Probe Alleged Crimes against Rohingya in Myanmar," *Al Jazeera*, March 24, 2017, accessed April 28, 2017, <http://www.aljazeera.com/news/2017/03/probe-alleged-crimes-rohingya-myanmar-170324113526685.html>.

Myanmar government into ending its decades-long persecution. While experts have determined that a resolution to this crisis would require more political interest and economic resources from across Southeast Asia, the ASEAN member states lack collective political will. ASEAN's collective failure to address the root causes of the inadequate rights of the Rohingya will ensure its continuation. On the part of the international community, a Human Rights Watch report's succinct conclusion that "the Rohingyas have no constituency in the West and come from a strategic backwater, no one wants them (and no one is prepared to help them end their decades of persecution) even though the world is well aware of their predicament" is a painful but brutally honest truth. The Rohingya crisis persists today because no one has sufficient interest to create a blueprint of what needs to be done to end this slow-burning humanitarian crisis.