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Saving the Stateless? Myanmar, the Rohingya and R2P

Yukiko Nishikawa 21 March 2019

The Responsibility to Protect (R2P), founded on a particular discourse of sovereignty, has limited usefulness and could even exacerbate the crisis in Myanmar.

Author's note: This article draws from the article "The reality of protecting the Rohingya: An inherent limitation of the responsibility to protect", Asian Security (ISSN: 1479-9855) published on 23 November 2018.

The situation in [Rakhine State](#), Myanmar became widely known around the world in 2012 due to [major violence](#) that [left scores of people dead and many thousands displaced](#). More recently, mass killing, sexual violence and [attacks occurred](#) in the north-west Rakhine State in August 2017. Muslim communities ([the Rohingya](#)) in northern Rakhine (Arakan) State in Myanmar continue to suffer from [the extremely severe treatment by authorities of both Myanmar and Bangladesh](#). This resulted in a number of civilians fleeing to Bangladesh. Many international media outlets, reporting on the Rohingya crisis, have used the term "ethnic cleansing". The then-UN High Commissioner for Human Rights Zeid Ra'ad al-Husseini indeed [declared](#), "The situation seems a textbook example of ethnic cleansing". Human rights organisations have warned about the serious threat of genocide, ethnic cleansing and crimes against humanity, calling for immediate intervention by the international community.

The situation has evoked discussion of the Responsibility to Protect (R2P) and its applicability to protect the Rohingya who are in critical insecurity in Myanmar. But the situation actually brings to the surface some of R2P's limitations and its application could make the malaise in Myanmar much worse.

The Responsibility to Protect

R2P obtained firm recognition and legitimacy after it unanimously adopted at the 2005 UN World Summit and further reaffirmed at [the UN Security Council \(2006\)](#). [The 2005 UN World Summit](#)'s outcome document sets forth three pillars of R2P:

1. the state's responsibility to protect people from genocide, war crime, ethnic cleansing and crime against humanity;
2. the international community's responsibility to help states build the capacity to protect their populations;

3. and, should states fail in their responsibilities, there is the possibility of the international community acting to aid the people at critical risk both through peaceful means and through collective enforcement measures under [Chapter VII](#) of the UN Charter. But only as a last resort.

R2P has become part of the UN's vocabulary as the UN Security Council has cited R2P in most cases of humanitarian crises since 2011. Nevertheless, it has not been used to propose appropriate responses to the crisis in Myanmar. Some scholars argue that this is because almost all the states in Southeast Asia, in one way or another, have [internal problems that affect their people in relation to the state](#), such as human rights violations, internal conflicts or long-sustained violence, and thus they avoid addressing any internal problem of other Association of Southeast Asian Nations (ASEAN) members.

In fact, the principle of non-intervention has been maintained in intra-regional relations within Southeast Asia, which is part of what is generally called [the "ASEAN Way"](#). Other scholars, such as [David Capie](#) and [Petcharamesree Sriprapha](#), contend that R2P has not been localised enough to be accepted by policy makers in Southeast Asia in order to resolve actual crises existing each country. However, the applicability and usefulness of R2P in relation to Myanmar may not be such a simple matter of ASEAN states' habit of non-intervention or the compatibility between R2P and the region's modalities, such as local values and culture.

Myanmar and the Rohingya: A question of citizenship

The critical insecurity faced by the Rohingya derives from their contested status in Myanmar and neighboring Bangladesh. Despite the Rohingya being present in the region for centuries, neither government recognises the Muslim minority as their citizens. For that reason, the Rohingya have been deemed "stateless" who are, according to Hanna Arendt, in a "rightless condition". In other words, the Rohingya, whose citizenship has been contested, are outside both the political community and sovereignty of Myanmar and Bangladesh. If we apply Arendt's interpretation, they are not only left unprotected by both governments but also in a situation of the "loss of all rights" because for human rights protection, citizenship is the prime guarantor.

It is apparent that Myanmar is now undertaking a period of political consolidation or nation-building, which is key factor in stabilising and legitimising the nation-state and in securing a sense of national identity. In Europe, this process was undertaken in the nineteenth century and democratic states arose as a result of popular uprising, thereby generating a particular form of citizenship. This type of citizenship is explained as "expansive" in nature, which usually assumes a bottom-up process. In contrast, in Myanmar, citizenship takes on a "formal" nature. It is a top-down approach which primarily focuses on the state deciding who qualifies to be a citizen. The government of Myanmar, then, defensively uses citizenship as a means of exclusion and control. Accordingly, nationalism in Myanmar is different from civic nationalism that demands equal rights for all, which was observed in nineteenth-century Europe. In Myanmar nationalism serves as a means of exclusion based on politically motivated groups. The current situation in Rakhine State in Myanmar is not merely a humanitarian emergency, but a protracted conflict and a prolonged crisis of nation-building.

When R2P becomes a double-edged sword

The original idea of R2P suggested by [the International Commission on Intervention and State Sovereignty \(ICISS\)](#) was to establish a possible way for intervention by the international community in state affairs, in certain situations, by placing responsibility at the centre of the debate over the meaning of sovereignty. In other words, responsibility is a constitutive element of sovereignty. In this interpretation, if states cannot fulfil the responsibility, they do not deserve to retain sovereignty. Someone then must fulfil the responsibility on behalf of suffering people. Therefore, R2P is principally about sovereignty, particularly constitutional sovereignty, in which the state carries the responsibility to protect the citizens in the political community, although there are many other discourses concerning sovereignty in political thought, such as parliamentary and popular sovereignty.

Because R2P is about sovereignty and inherently couples sovereign responsibility with citizenship, it cannot help the Rohingya or other groups of people whose citizenship is contested. After all, sovereignty does not help the stateless whose membership in the political community is not acknowledged even though leaving stateless people to suffer is morally unacceptable. R2P cannot provide a suitable framework to help the Rohingya due to the inherent limits on its ability to protect critically affected populations in states that are in the process of nation-building and state-building with a distinctive history of nationalism, democracy and citizenship. In the worst scenario, R2P may give the government in concern space to deny their responsibility to

protect certain group of people as they are considered as outsiders. R2P can produce unintended consequences for people suffering in post-colonial states where their membership in a political community is contested, like the Rohingya's citizenship is in Myanmar.

Conclusion

The author certainly does not intend to excuse crimes against humanity, war crimes, or genocide even in such a contested citizenship situation. Nor does the author intend to deny the fact that the Rohingya and other people who are deemed stateless deserve protection. Without question, their basic rights as human beings should be protected irrespective of their religion, ethnicity or nationality. Ultimately, the key issue is that even without R2P, the international community should be able to help them by using diplomatic, economic, and humanitarian assistance tools. Those who are deemed stateless such as the Rohingya should be protected, as the Universal Declaration of Human Rights stipulates, by referring to their fundamental rights as "human beings" rather than the rights of citizens.

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About the Author

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Source: <https://www.oxfordresearchgroup.org.uk/blog/saving-the-stateless-myanmar-the-rohingya-and-r2ps-limits>