



The Principle of Non-Interference and the Question of Human Rights Violation: The Case of the Rohingya Minority

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Abstract


The formation of ASEAN was witnessed by five founding member states promising full cooperation on security and other areas. Within three decades of its establishment, majority of states in the region have joined ASEAN except East Timor. Although the treaty underlines several areas of cooperation, it restrains states from interfering in the domestic affairs of its members. This clause has strictly been observed by all ASEAN states in their cooperation. This traditional norm has affected the Rohingyas, an ethnic Muslim minority in Myanmar, who have been subjected to tyrannous treatment at the hands of Burmese allegedly supported by the national government. As a result, neighbouring states, in particular Malaysia, Thailand and Indonesia are receiving thousands of refugees from Myanmar, whilst their willingness to engage in resolving the crisis is jeopardised by virtue of non-interference in the internal affairs of other state. Therefore, no strong message has been conveyed to the Myanmar government, while neighbouring states are forced to accommodate thousands of Rohingya refugees. This paper investigates contributing factors that led to the current plight of the Rohingya ethnic minority, the effects of border-crossing movement, and the ASEAN principle of non-interference in the domestic affairs of member states. The research concludes by recommending solutions to the crisis and suggesting factors that can shape ASEAN to stand as a true regional organisation.

Keywords: ASEAN, Ethnic minority, Internal affairs, Non-interference, Human rights violation, Refugees, Rohingya minorities.

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1. Introduction

The Bangkok declaration of 1967 created ASEAN as a regional organisation among five funder nations: Thailand, Indonesia, Malaysia, Philippine, and Singapore. A major focus in the ASEAN charter is the principle of non-interference and respect for territorial integrity as well as the sovereignty of member states as conditions for ASEAN cooperation. This principle allows member states to manage their relations and embark on the organisation's objectives through consultation (*Mushawarah*) and consensus (*Mufakat*). The principle has helped the organisation to adequately manage their relations during the Cold War. One should remember that the founding leaders were amid the nation-building project from the post-colonial periods when ASEAN was formed. In this context, the principle of non-interference has facilitated peace allowing complete concentrate on nation-building ([Noel, 2014](#)).

Human rights protection in ASEAN is yet to yield significant and remarkable returns due to various unresolved human rights violations. Such issues include the plight of the Rohingya minority ethnic group in Myanmar and human trafficking involving syndicates in Laos PDR, Myanmar and Thailand. In addition, the kidnapping and murder of human rights activists such as Munir Said Thalib in Indonesia, Sombath Somphone in Lao PDR and Somchai Neelaphaichit in Thailand have also raised public attention at the lack of progress in human rights protection across the ASEAN region ([The Huffington Post, 2014](#)). These issues fall under the context of domestic or national issues that are not to be interfered by member states.

Despite the non-interference principle which must be observed by the ASEAN, the ASEAN Charter further encouraged member states to comply with the principles of protecting human rights. As a result, ASEAN took the initiative to establish the ASEAN Inter-governmental Commission on Human Rights (AICHR), which aims at strengthening the promotion and protection of human rights among member states to demonstrate its concern for human rights in the region and beyond. Subsequently, some member states such as Myanmar, Malaysia, Indonesia, the Philippines, and Thailand have further established National Human Rights Institutions (NHRIs) showing commitment for a better human rights protection at the national level. This development raised question on the role of AICHR in the region, and how to execute human rights protection in accordance with the national and regional requests without being considered interfering in one another's domestic affairs. Whenever there is conflict between the two principles, the principle of non-interference will prevail over the human rights principle ([Mohd, 2015](#)).

2. Non-Interference in the International Law and Practice

The first major non-interference case in international law that drew the line dividing impermissible interference from permissible actions between states and anti-government insurgencies adopted a pattern of pressuring a government through economic measures. Such was the case for the Military and Paramilitary Activities in and Against Nicaragua. The International Court of Justice decided that the United States had breached international law by providing funding and training to the Contra rebels, who sought to violently overthrow the Nicaraguan government. However, the learned judge further held that a trade embargo, cessation of economic aid, and other economic measures did not violate the principle of non-interference. It was believed that if economic pressure on a government does not amount to interference under international law, then surely a variety of measures short of that would not violate the non-interference principle ([David, 2014](#)).

Unlike ASEAN, a number of regional organisations have also expressed a commitment to non-interference in member state affairs such as the Organisation on Security and Cooperation in Europe (OSCE), the Organisation of American States (OAS), and the African Union (AU). However, they have also publicly supported action to reverse unconstitutional seizures of power within democratic member states, for instance ASEAN was very proactive in encouraging Cambodia's government to reform as a condition for her admission to ASEAN. ASEAN non-interference also emphasises that ASEAN's purpose is to enhance regional peace, growth, security, and stability. Interestingly, several members of ASEAN were very vocal when Indonesian forest fires created a regional haze.

3. ASEAN'S Principle of Non-Interference in the Internal Affairs

The principle of non-interference among ASEAN implied that member states tolerate differences in their various countries based on their diverse political systems. As a result, states refrain from making open criticism of member states. Regardless of political belief be it a dictatorship, communist, absolute monarch, constitutional monarch or democratic states tend to respect one another. The six fundamental principles that ASEAN adopted in their internal relation can be found in the Treaty of Amity and Cooperation in Southeast Asia 1976 ([Noel, 2014](#)):

- 1 Mutual respect for the independence, sovereignty, equality, territorial integrity, and national identity of all nations;
- 2 The right of every state to lead its national existence free from external interference, subversion or coercion;
- 3 Non-interference in the internal affairs of one another;
- 4 Settlement of differences or disputes by peaceful manner;
- 5 Renunciation of the threat or use of force; and
- 6 Effective cooperation among member states.

This special recognition of respect led to total negligence of human rights promotion in the region. As a result, states are comfortable resorting to systematic national violation of human rights in the hope that no external interference is allowed. This is in contrast to the EU where the state has to surrender part of its national sovereignty to the regional organisation. It is interesting then to note that the ASEAN charter that came into effect in 2008 includes obligations and responsibilities of member states to envisage rights. 2009 witnessed further improvement in human rights among ASEAN, with inclusion of the ASEAN Inter-Governmental Commission on Human Rights (AICHR), a consultative body tasked to envisage a dialogue on the promotion of human rights education among ASEAN states. Some of the clauses of the AICHR are to motivate ASEAN to ratify international treaties and conventions on human rights. However, the AICHR has had little impact because it was silenced by the sanction and

expulsion of member states upon violation. It also reflects a lack of willingness among ASEAN with only Indonesia, Malaysia, Philippines, and Thailand having national human rights commissions, while others do not (Noel, 2014).

Lack of sanctions gave states the power to act arbitrarily, while the organisation is powerless to act against any member state that violates the charter. Moreover, before any decisive action can be applied, it requires consensus which seems infeasible. Even AICHR's implementation faced a deadlock due to disagreement between member states on the nature of the powers of the regional human rights body. States often oppose any discussion on human rights on internal conflicts: e.g. Thai former prime minister Thaksin Shinawarta rejected and even threatened to walk out of the ASEAN summit if member states attempted to place the conflict in southern Thailand in the agenda in 2005 (Noel, 2014).

Furthermore, the responsibility to prevent and eliminate acts of genocide and mass atrocities lies first with the national authority, while the international community has a vital role that cannot be blocked by the invocation of any sovereignty. Sovereignty should not be seen as an obstacle to protect states from foreign interference. It is the responsibility of states to account for the welfare of their people. This principle is provided in article 1 of the Genocide Convention and embodied in the principle of sovereignty as responsibility and in the concept of the Responsibility to Protect (Office of the Special Adviser on the Prevention of Genocide). The principles of responsibility to Protect (RtoP) was universally adopted by the world leaders at the 2005 World Summit, including ASEAN member states. There are three pillars of responsibilities to protect stipulated in the outcome of Rtop:

1. The state carries the primary responsibility for protecting populations from genocide, war crimes, crimes against humanity and ethnic cleansing, and their incitement
2. The international community has a responsibility to encourage and assist states in fulfilling this responsibility
3. The international community has a responsibility to use appropriate diplomatic, humanitarian and other means to protect populations from these crimes. If a state is manifestly failing to protect its populations, the international community must be prepared to take collective action to protect populations, in accordance with the Charter of the United Nations (United Nations World Summit, 2005).

The RtoP principle determines that it is the responsibility of the state to protect its population from genocide, war crimes, ethnic cleansing, and crimes against humanity. Moreover, in situations where a state has manifestly failed to protect its population, it then becomes the international community's responsibility to assist the state to fulfil its responsibility by providing such protection. Although the RtoP principle was adopted by ASEAN member states, there has been no tangible step to discuss the principle widely within the ASEAN. Even though it was concluded in the ASEAN Charter in 2005 that the majority of its members believe that Rtop upholds state sovereignty, this seems a false commitment when we recall the major atrocities committed in ASEAN such as the Khmer Rouge in Cambodia in the mid 1970's, the 1990's East Timor crisis, ongoing violence in southern Thailand, and the Myanmar military dictators and their various human rights violations in Myanmar.

4. Myanmar's Human Rights Atrocities against Ethnic Minorities

Human rights represent rights to which all human beings are entitled because of their humanity and not because of their social status or individual merit (Abdul and El-Fatih, 2005). There are three well known categories of human rights. The first is material integrity and the freedom of function politically. Second, solidarity rights which includes environmental rights and the right to development. Third, rights that concentrates on the entitlement of cultural minorities to use their respective language and religion without any harassment from the dominant cultural group (Mudathir, 2005).

The recent human rights violation can be traced after Myanmar gained independence from British colonial government in January 4, 1948, and then named Burma. Three successive parliamentary governments ruled Myanmar for fourteen years, representative democracy flourished in Burma, a time when it was internationally recognised as a full democratic state and the United Nations elected Burmese representative U Thant to become the first non-Westerner secretary general of the United Nation. Ironically, the military led by General Ne Win conducted a coup d'état which ousted the previous government. There are widespread accusations of severe human rights violations and abuses by the military such as arresting and detaining political leaders and officials without trial. The action of military junta caused ethnic minority groups to form larger rebel factions such as the Kachin Independence Army, in response to the new government's refusal to adopt a federal government structure. Since then, the government of Myanmar has been accused of all sorts of human violations against civilians, most notably on Karen civilians. Such accusations include burning down their entire villages, planting landmines, and the rape and murder of Karen women among other atrocities. These tactics were considered ethnic cleansing (Moshe, 1973).

Myanmar has suffered from one military to another for most of its independent political existence. In 1987 for instance, Burma's economy collapsed triggering political and economic unrest that led to massive protests against Win's government known as the "8888 Uprising". The military responded with decisive action killing over 1000 demonstrators who demanded economic reform and regime change. The National League for Democracy (NLD), an opposition party under the leadership of Aung San Suu Kyi, won the elections but the military junta refused to hand over power. In 1997, the SLORC changed its name to the State Peace and Development Council (SPDC); however, the name did not reflect its autocratic and oppressive policies. Regardless of these atrocities, Myanmar was admitted into ASEAN on June 23, 1997 (John, 2009).

Myanmar is a majority Buddhist society. The composition of religion ethnicities in Myanmar comprises Buddhism (80%), Burmese folk religion (6%), Protestantism (5%), Islam (4%), Catholicism (2%), Hinduism (2%), others (1%). This shows that Muslims are a minority in Myanmar and are predominantly composed of the Rohingya people and the descendants of Muslim migrants from India including from what is now Bangladesh, as well as descendants of Arab settlers and the recognised Kamein minority. History of atrocity against Muslims can be dated as early as the 11th century, when the two sons of Byat Wi's brother Byat Ta, known as Shwe Byin brothers, were killed due to their religious affiliation and refusal order to forced labour. Recorded in the Glass Palace Chronicle of

the Kings of Burma believed Muslims were no longer trusted. During war time, King Kyansittha ordered his assassination (Pe and Luce, 1960).

As of 1921, the population of Muslims in Burma reached half a million. During British colonial period, Burmese Muslims were recognised as Indian, even though the Burmese Muslims were different from Indian Muslims. Burmese Muslims, Indian Muslims and Indian Hindus were popularly known as “kala” which means black. During World War II, the Japanese committed countless acts of rape, murder, and torture against thousands of Rohingyas, and not less than 22,000 Rohingyas are believed to have crossed the border into Bengal for safety. During the Ne Win regime in 1962, the status of Muslims continued to deteriorate with Muslims expelled from the army. While religious freedom of Muslims is restricted. The monitoring and control of Islam undermines the free exchange of thoughts and ideas associated with religious activities. Allegations of terrorism are made against Muslim organisations among them is the All Burma Muslim Union. Others are anti-Muslim riot of 1997 Mandalay, anti-Muslim riot of 2001 in Taungoo, 2012 Rakhine state violence, anti-Muslim riot of 2013 in Central Burma, and the recent Mandalay riots of 2014 (Fiona, 2013).

It was argued that the recent anti-Buddhist actions of the Taliban in Afghanistan such as destruction of the Buddhas of Bamiyan was also used as a pretext by Buddhist mobs to punish Muslims in Burma. In the middle of May 2001, Human Rights Watch relates the tension between the Buddhist and Muslim societies in Taungoo for weeks and later resulted. Buddhist monks demanded that the Hantha Mosque in Taungoo be destroyed in retaliation for the destruction of the Buddhas of Bamiyan (Moshe, 1973).

According to Amnesty International, the Muslim have continued to suffer from human rights violations under the military junta since 1978, which led to several fled to neighbouring Bangladesh (Ahsan, 1993). The Rohingyas have been denied citizenship since the Burmese nationality law was enacted. Their freedom is restricted and a special permission is needed before they can travel, they were further restricted not to have more than two children, though the law was not strictly enforced. Rohingya's land was confiscated and given to the Buddhist (Jonathan, 2009).

Regardless of the UN efforts to repatriate Rohingya to Myanmar since 2005, majority of them remained in Bangladesh, fear for their lives in the hand Myanmar government if they return (Jonathan, 2009).

The situation in Myanmar resulted in thousands of Rohingya become victim in the hand of Thai army. It was revealed that a group of Rohingya refugee rescued by Indonesia authority in 2009 said that they witnessed 190 Rohingya refugees boatloads were beaten and abandoned on the open sea by Thai forces. In February 2009, it was reported that 4 out of 5 boats towed out to open sea by Thai army sank. This was followed by a confirmation statement by the then Thai PM Abhisit Vejjajiva that there were instances in which Rohingya were pushed out to open sea (Dan Rivers CNN, 2014). Rasheduzzaman, a professor of international relations at Dhaka University, said the reformist administration of Myanmar was said to be democratic, however there were no signs that its strategy on the Rohingya would see an adjustment soon. Even the opposition democratic pioneer Aung San Suu Kyi, who served for nearly 15 under house arrest for being propagating democracy made no clear position on the issue (Habib and Palma, 2015).

5. Effect of Rohingya Migrant in Neighbouring States

Tens of thousands of Muslim Rohingya fled Myanmar in the past year, many of them taking to the sea in the spring of 2015 to try to reach Thailand, Malaysia and Indonesia. A repeat of the discriminatory policies of the Myanmar government in Rakhine State that resulted in hundreds of thousands of Rohingya fled Myanmar since the late 1970s. Their plight has been compounded by the responses of many of Myanmar's neighbours, which have been slow to take in the refugees for fear of a migrant influx they feel incapable of handling. Therefore, more than thirty-two thousand registered Rohingya refugees have sought refuge in Bangladesh, while over two hundred thousand additional unregistered Rohingya refugees are believed to live in the country, according to UN High Commissioner for Refugees (UNHCR, 2014) estimates.

In Malaysia, more than 137,000 refugees from Myanmar were registered as of September 2014 according to the UN, including tens of thousands of Rohingya. The Global Emergency Overview, which tracks humanitarian crises, tallied more than 40,000 UN-registered Rohingya as of last December, but activists say there are roughly an equal number of unregistered Rohingya in the country. Malaysia has signalled a growing unease with the migrant influx. As a result, in May 2015, Malaysian Deputy Home Minister Wan Junaidi Jafaar asserted that Malaysia has treated the Myanmar migrants humanely but they cannot afford to allow them to flood their shores. The Rohingya also seek refuge in Indonesia, although the number of refugees there remains relatively small, estimated at roughly two thousand Rohingya as of June 2015. Indonesia's military chief has earlier expressed concerns that for his country to ease immigration restrictions would spark an influx of people coming in the thousands (Mark and Peter, 2016).

Thailand serves as a common transit point for Rohingya leaving Myanmar through boats before moving on foot to Malaysia or continuing by boat to either Indonesia or Malaysia. Reuter's report of 2013 found that some Thai authorities were colluding with smuggling and trafficking networks in the exploitation of detained Rohingyas, with the deputy commissioner general of the Royal Thai Police conceding that officials might have profited from smuggling. In May 2015, amid international pressure, Indonesia and Malaysia offered temporary shelter to thousands of migrants, Malaysia launched search-and-rescue missions for stranded migrant boats stranded, and Thailand agreed to halt pushbacks. Myanmar's navy also conducted initial rescue missions at the end of the month. Similarly in June 2015, several secret mass graves were detected by Malaysian police in the Thai border town of Padang Besar. The U.S. State Department downgraded Thailand to Tier 3 the bottom rank, as a source, destination, and transit country for men, women, and children who are subject to trafficking in its 2014 Trafficking in Persons report. Recently however, the military-led government in Bangkok has prioritised a crackdown on smuggling and trafficking rings following the discovery of mass graves in what are believed to have been detention camps. But some experts say that new punitive measures directed at traffickers are responsible for the increases in abandoned vessels at sea—a development that has worsened the humanitarian crisis (Mark and Peter, 2016).

6. Legal Status of the Rohingya

The Myanmar government denies the Rohingya citizenship. As a result, the vast majority of them have no legal documentation. In other words, they are making them stateless. The citizenship law of 1948 excludes Rohingya, while the new law introduced by the military junta (a citizenship law in 1982) strictly stripped the Rohingya of access to full citizenship.

Up until now, the majority of the Rohingya remain temporary residents with temporary identification cards in Myanmar, known as white cards which stated being issued in the 1990s. The white cards confer limited rights and have no legal status as citizens. Although in 2014, the government held a UN-backed national census whereby the Muslim minority group was allowed to self-identify as Rohingya, but upon Buddhist nationalists threatening to boycott the census, the regime made a U-turn and decided that the Rohingya could only register if they identified themselves as Bengali.

Subsequently, the Rohingyas right to vote in a 2015 constitutional referendum was denied through the cancellation of the temporary ID cards in February 2015. Muslim minorities continue to consolidate under one Rohingya identity, while the government introduced several policy restrictions such as on marriage, family planning, employment, education, religious choice, and freedom of movement that have institutionalised systemic discrimination against the ethnic group. The United Nations calls the Rohingya one of the most persecuted minorities in the world. Nowadays, many Rohingya have turned to smugglers to find their way out of Myanmar to escape persecution. The below chart reflects the estimation of more than eighty-eight thousand migrants that have travelled by sea from the Bay of Bengal since January 2014

7. Developments and Obstacles in the Political Tradition of ASEAN

One of the most momentum periods of political transformation was during the ASEAN economic crisis of 1997 whereby Indonesia moved from the authoritarian government of Suharto to a more democratic order in 1998. ASEAN, which was earlier isolated due to its communist ideology, has been recognised as an important emerging market. The event of 9/11 also contributed productively on how ASEAN states work together to fight terrorism. It encouraged states to cooperate with one another to confront a common enemy, especially, the subsequent Bali bombing attacks of October 12, 2002. Although the cause of rise of terrorism is disputed among scholars, some believe that poverty is one of the major reasons for attacks in ASEAN meaning that poverty alleviation is a promising solution. As a result, ASEAN decided to move beyond traditional military weaponry security, to include security on epidemic diseases, natural disaster, environmental problems, transnational crimes and human trafficking. It also encourages member states to transform ASEAN into a more people centred organisation. The Bali Concord II outlines three main pillar for ASEAN; (i) security (it was later changed to political security) (ii) economic and, (iii) social-culture. The declaration aims at utilizing the three elements to elevate the level of cooperation into higher stage. For instance, the ASEAN security community focused on regional cooperation in a democratic and harmonious atmosphere. Civil society sees this opportunity to engage government on a range of non-traditional security issues such as the rule of law, human right protection and good governance. The priority is to make sure that ASEAN is transformed to reflect security and welfare of its people rather than traditional security of states.

It should be further noted that in the proposals of the Eminent Persons Groups (EPG) 2005 to 2006, whom were entrusted to draft a blue print for the ASEAN Charter, the proposal recommended by the EPG do away with consensus decision making, and recommends inclusion of sanctions against erring members. EPG also recommends the propagation and protection of human rights adhering to certain norms such as international humanitarian laws and protection of people against genocide and ethnic cleansing. Regardless of this remarkable proposal, the High Level Task Force (HLTF) tasked with drafting the Charter although welcoming several parts of the recommendation, failed to consider any punishment for erring states for non-compliance (Noel, 2014).

According to Human Rights Watch, the Burmese authority refused citizenship to any Rohingya person who failed to establish their ancestors presence in the country before 1823, the beginning of British occupation of what is now Arakan State (Human Rights Watch, 2012). As usual, there are no unified or coordinated responses proposed or implemented by ASEAN to resolve the deepening crisis of Myanmar refugees. States in Southeast Asia also lack established legal frameworks to provide for the protection of rights for refugees. Indonesia, Myanmar, Malaysia and Thailand have yet to ratify the UN Refugee Convention and its Protocol. ASEAN has also remained silent on the issue of the Rohingya and in particular, the asylum-seekers in member countries. The organisation's commitment to the fundamental principle of non-interference in the internal affairs of member-states is a major reason behind this neglect despite the ASEAN Parliamentarians for Human Rights stating in April 2015 that the continuous persecution of Rohingya has led to the highest outflow of asylum seekers the region since the late 1970s (Parliamentarians call on ASEAN, 2015).

8. Conclusion

Strong leadership is the main requirement to make ASEAN an organisation that adheres to human rights principles. One might argue that the RtoP principle could not be enacted within the ASEAN mechanism due to many ASEAN member states domestic problems regarding minorities. However, the RtoP principle could help the ASEAN community in the global community of nations. Recently, a former Prime Minister of Malaysia, Tun Mahathir Mohamad urged his government to deviate from the principle of non-interference in the state-sanctioned discrimination against the Rohingya in Myanmar. He considered the situation genocide. Mahathir further urged ASEAN countries to discard their non-interference policy on the matter, after thousands of Rohingya and Bangladeshi migrants were stranded at sea. Mahathir suggested that Myanmar be expelled from ASEAN membership if it continues to keep committing genocide against its people (Kanyakumard, 2015).

ASEAN needs to be determined and press the Burmese government to end human rights violations and discriminatory policies, including respect to citizenship of Rohingya and other minorities. ASEAN must be prepared

to convey a firm stand to the Myanmar government that such actions will harm its relationship with ASEAN and the international community (HRW, 2013). It is widely believed that persecution of Muslim minorities in Burma could triggered Islamic extremism in the country and her neighbours. Many Muslims have joined armed resistance groups who are fighting for greater freedoms in Burma (Ahsan, 1993).

Lilianne Fan opined that even if ASEAN has the capacity to control the Myanmar crisis, member states lack the political will to resolve it. Analysts like *New York Times* columnist Nicholas Kristof, suggests that the United States should not have normal relations with the country until her atrocity act ends. Others, like senior advisor at the United States Institute of Peace and former U.S. mission chief in Myanmar Priscilla Clapp, argued that Myanmar government alone cannot be blamed due to oversimplifies and misrepresents the complexities of the country's historical ethnic diversity. She believes, international response is slow and urgent action is badly needed. It is time for the international community to organise a realistic, workable solution to compel ASEAN to take a leading role.

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