

THE PRINCIPLE OF RESPONSIBILITY TO PROTECT: THE CASE OF ROHINGYA IN MYANMAR

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ABSTRACT

The issue of Rohingya Muslims of Myanmar is not only an ethnic but religious issue as well. The Rohingya are Myanmar's Muslim minority who reside in the northern parts of the Rakhine region (historically known as Arakan), a geographically isolated area in western Myanmar, bordering Bangladesh. The ethno-religious clashes between Buddhist population and Rohingya Muslims draw the attention of the world to the relatively insignificant country- The Myanmar. The paper argues that the Rohingya is facing a serious threat of genocide, ethnic cleansing and crimes against humanity, while the government of Myanmar has failed in its primary duty to protect them. Due to such failure, the responsibility to protect them falls on the international community to prevent the occurrence of mass atrocities under the principle of Responsibility to Protect (R2P). The objectives of this article are two-fold. First is to provide an understanding of the plight of the Rohingya and second is to analyse the application of R2P as a solution to the crisis.

Keywords: Responsibility to Protect, Rohingya, United Nations, Ethnic minorities, Genocide, Crimes Against Humanity.

INTRODUCTION

Living as minority within a state's population may look obviously natural for Europeans sharing a relative small continent with different nations and religions of their own. Cultural and ethnic diversity made us think equal – at least the EU's politics presume that – but it has come as a result of a better late than never journey, which also included world wars and colonization along the way. Under the rules of the Council of Europe and partly European Union law, minorities – especially those who possess citizenship of a Member State, face no distinction when it comes to their (human) rights. However, globally this is hardly the case. According to the United Nations Office of the High Commissioner for Human Rights, 10 to 20 percent of the world's population live as minorities apart from their homeland, which means special measures are in demand for up to 1.2 billion people.¹

The protection of minority rights could not be feasible without the declaration of basic human rights, which had been and still is an aim of the United Nations (UN) since its founding in 1945. Besides fundamental rights protection, in 1992 the UN's General Assembly agreed on the Declaration on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities.² The document has no binding force by its nature, but still has to be considered as a milestone in granting rights to minorities, as it is a crucial UN document among several international provisions³ on the topic. However, protection at international level is not effective enough to achieve major changes in the states' legal system. Lack of enforcement procedures also emphasizes the need for proper national measures to be taken, but unless those regulatory bodies are controlled by sanctions, it is unlikely to happen. Minority rights in a broader perspective cover different aspects of fundamental right protection as well, such as provisions on statelessness, asylum law, and basic human rights. Even with international measures in force, infringements still occur in domestic laws. There are even some cases⁴ due to the greater number of affected population, where the international community has completely failed to eliminate the collective infringement of human rights.

¹ United Nations Guide for Minorities, 1 March 2017. Available at <http://www.ohchr.org/EN/Issues/Minorities/Pages/MinoritiesGuide.aspx>

² General Assembly resolution 47/135 of 18 December 1992 on the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

³ For example Article 27 of the International Covenant on Civil and Political Rights also contains the right for minorities to enjoy their own culture and religion, and the right to use their own language.

⁴ Like the Rwanda genocide or the Srebrenica massacre, also known as the Bosnian genocide.

There is a Muslim ethnic minority group living in Western Myanmar's (formerly Burma) Rakhin State whose ancestry remains unclear and who have always suffered oppression in past centuries. The Rohingya people had originally settled along the Naf River, and later along the border region of Bangladesh and Myanmar. Their great ancestors have a long history since the 1400's and shared the area with Buddhist ethnic groups. Their exact number is still unknown since no census has been taken, but considering the number of people living outside of Myanmar as refugees, the Rohingya population is estimated to include nearly 2 million people.⁵

This ethnic group is now divided by two countries which could be an explanation for their current legal status. Besides their geographical division and ethnic origin, religious confrontations are present as well between the Rohingyas and the mostly Buddhist population of Myanmar.

The name Rohingya cannot be explained precisely – the expression came up only in the 1940's and was only a fiction for political propaganda⁶ – and its real origin cannot be found anywhere. Today the term is associated with Muslims living in a particular area of Myanmar, however both the Muslim and Buddhist communities of Rakhine state reject this naming. Their refusal confirms the fact that Rohingya refers more to a legal status, rather than an ethnic group.⁷ Controversies around the naming and ancestry could be the main reasons for discrimination and for the lack of citizenship since Burma regained its independence after the British occupation in 1948. The Rohingyas were never given citizenship by the state of Myanmar as they are considered illegal migrants, who settled down during the British era.⁸

⁵ Kei Nemoto, "The Rohingya Issue: A Thorny Obstacle between Burma (Myanmar) and Bangladesh" in K. Inoue, E. Arai, M. Murayama, Eds, *Elusive Borders: Changing Sub-Regional Relations in Eastern South Asia, Institute of Developing Economies*, Chiba, Japan, 2013 pp. 2-3. Available at http://www.burmalibrary.org/docs14/Kei_Nemoto-Rohingya.pdf.

⁶ Trevor Gibson, Helen James, Lindsay Falvey, *Rohingyas: Insecurity and Citizenship in Myanmar*, TSU Press 2016. p. 49.

⁷ Jacques P Leider, *Rohingya: The name, the movement, the quest for identity*, EGRESS/Myanmar Peace Centre, Yangon, 2013, p. 210. Available at http://www.academia.edu/7994939/_Rohingya_The_name_the_movement_the_quest_for_identity._Yangon_2013.

⁸ Kei Nemoto, "The Rohingya Issue: A Thorny Obstacle between Burma (Myanmar) and Bangladesh" in K. Inoue, E. Arai, M. Murayama, Eds, *Elusive Borders: Changing Sub-Regional Relations in Eastern South Asia, Institute of Developing Economies*, Chiba, Japan, 2013 pp. 2-3. Available at http://www.burmalibrary.org/docs14/Kei_Nemoto-Rohingya.pdf.

The controversy surrounding Myanmar's Rohingya people is evident in conflicting stories about the ethnic group's origin. The Burmese government and Burmese historians argue that the Rohingya are actually Bengali Muslims, refusing to recognize the term "Rohingya." They claim that the Rohingya migrated to Rakhine state in Myanmar from Bengal during and after the British colonial era of 1824-1948. However, most experts outside of Myanmar agree that the Rohingya have been living in Rakhine state since at least the 15th century, and possibly as early as the 7th century. Claims that the Rohingya are recent immigrants from Bangladesh are simply untrue.

The Rohingya are frontiersman that their ancestral roots and cultural ties are placed along the borders of Myanmar (Burma) and Bangladesh and today their residence place are located in Rakhine (Arakan) State Myanmar country. After Myanmar's independence from Britain colonial rule in 1948, in the regimes that have ruled in Myanmar one after another, the ethnic-linguistic identity of this group was recognized, but this identity systematically by the anti-Islamic military governments that since 1962 have organized, has been ignored.⁹

There are between 800,000 and 1,100,000 Rohingya in Myanmar today, 80% of whom live in Rakhine state. The Rohingya primarily reside in the two northern townships in Rakhine state--Maungdaw and Buthidaung--along the border with Bangladesh. Rakhine Buddhists are the major population group residing in Rakhine state. Tensions leading to violence between these two groups are a regular occurrence.

While the government has played a significant role in the oppression of the Rohingya, it has not been without the help of Burmese citizens. There is widespread dislike and even hatred toward the Rohingya in Myanmar. The Burmese government has ingrained this disdain into it's citizens, using dislike for the Rohingya as a way to mobilize support. Leading up to November 2015 elections, President Thein Sein has pointed to the passage of numerous discriminatory laws as evidence that he is a strong leader and should be elected for another

⁹ Zarni, Maung; Cowley, Alice, "The Slow-Burning Genocide of Myanmar's Rohingya," *Pacific Rim Law & Policy Journal*, Vol. 23, Issue 3, 2014, pp. 682-752. Available from: http://www.academia.edu/7787141/Compilation_2014_Pacific_Rim_Law_and_Policy_Journal_AssociationZarni, 2012.

term. His campaign is fueled, at least in part, by anti-Muslim rhetoric.¹⁰ The Rohingya are a stateless people, hated in their own country and forced to live in appalling living conditions.

The history of the Rohingya people is inextricably linked to the history of Myanmar. Important lessons from the country's history can be drawn to help explain the oppression of the Rohingya people today. Myanmar is ethnically diverse, with 135 officially recognized races, and at least a few more that are unrecognized (like the Rohingya). The majority ethnic group is the Burmans, who make up 68% of the population (distinct from the term "Burmese" which refers to all citizens of Myanmar). Burmans reside primarily in the central geographic region of the country. Other ethnic groups, such as the Kachin, Chin, Rakhine, Shan, and others, reside primarily in the outside borderlands of the country, also called the Frontier Areas. Many of these minority ethnic groups live on both sides of Myanmar's border with neighboring countries.

Burma was colonized by the British in 1885, and achieved independence in 1948. A coup in 1962 put the military in control of the government. While recent reforms have lessened the military's influence, it has played a prominent role in politics ever since the 1962 coup.¹¹ After taking power, the military implemented a unique form of socialism in Burma. The government did its best to isolate Burma from the rest of the world, suppress dissent, and remain in control of the economy. More recently, the government has implemented democratic and economic reforms that have improved relations somewhat with the rest of the world.

As a British colony, the Burmese held very little control over their own country.¹² Their government, economy, resources, and administrative responsibilities were in the hands of British colonialists. Burmans felt as though their country was completely in the hands of outsiders--politically, culturally, and economically. After independence, centralized state control over both the government and the economy emerged as a response to the many years of foreign control. The extreme nationalistic tendencies of Myanmar after independence are rooted in fears that the country will once again fall under the control of non-Burmese. While

¹⁰Rohingya Briefing Report, October 2015. Available at <http://www.equalrightstrust.org/ertdocumentbank/Rohingya%20Briefing%20Report.pdf>.

¹¹ *Ibid.*

¹² *Ibid.*

the threat of colonialism has ended, the government continues to utilize this fear to meet its own objectives, directing the fear towards China, the West, or Islamist extremism.

During colonialism, the British encouraged immigration of Indians and other South Asians into Burma. Indians, in particular, occupied a “middle tier” of influence in political and economic affairs, while the Burmese occupied the lowest tier. This fueled suspicions and resentment toward foreigners, both British and non-British. Following the colonial era, anti-immigration legislation was passed. These anti-foreigner sentiments contribute to the discrimination of the Rohingya, especially because of the belief that the Rohingya are relatively recent immigrants to the region. The Citizenship Act of 1982 is the most prominent example of anti-foreigner attitudes solidified into law, limiting citizenship to those who are considered true Burmese. Foreigners residing in Myanmar today are seen as remnants and reminders of colonialism.¹³

The colonial era also created divisions between the Burmans and minority ethnic groups, solidifying the separation and suspicion between races. The British didn’t trust the Burmans, so they assembled the Burma Army with minority groups divided into ethnic units.¹⁴ During World War II, the two groups even fought on different sides; the Burmans with the Japanese and the minority groups with the British. These events created divisions between ethnic groups and armed minority groups.

ETHNIC CONFLICT

On-going ethnic conflict in Myanmar qualifies as the world’s longest running civil war. An element of every ethnic group in Myanmar has rebelled during the country’s history. Mistrust between the government and ethnic groups has been in effect since colonial times. Ethnic groups feel that they must protect their culture, language, land, and resources from the Burmese government. The government fears the ethnic groups will destabilize or even cause a breakup of the Union of Myanmar. The government is also suspicious of the involvement of foreign powers in disputes with ethnic groups, especially those connected by non-Buddhist religious ties.

¹³Rohingya Briefing Report, October 2015. Available at <http://www.equalrightstrust.org/ertdocumentbank/Rohingya%20Briefing%20Report.pdf>.

¹⁴ *Ibid.*

In the past decades, the Rohingya are placed frequently subjected to violence by Myanmar Buddhists and government agents.¹⁵ The history of conflict between the Rakhine people and Muslims returns to World War II, when Muslims were remained loyal to Britain colonial rulers and other Rakhine people who were supported from the Japanese invaders. The Muslims, after Myanmar's state independence in 1948, have faced with the next government violence, so that the government has paid to the Muslims' persecution and in order to change the racial context of Rakhine state has been acted to their forced deportation.¹⁶ In the year 1978, Myanmar army was expelled from the country more than 200 thousand people of the Rohingya population with the barbaric acts such as murder, rape and the burning of homes. The most important discrimination against Muslims was started in 1982 and with the approval "Burma Citizenship Law". This law was denied the Rohingya Myanmar citizenship based on racial discriminating fields. Since this law was not replaced the Rohingya as the ethnics who were recognized as national races and had been granted the title of citizenship to them, so they must provide strong evidence based on their ancestors were living in this country before Myanmar's independence that this work was very difficult for most Rohingya.¹⁷

In 1947, the Burmese government and the Shan, Chin, and Kachin ethnic groups signed the Panglong Agreement, which promised "full autonomy in internal administration for Frontier Areas".¹⁸ The 1947 constitution also suggested the possibility of independence for ethnic minorities after ten years. Despite these promises, the Agreement was never truly implemented, and soon after it was signed the military began ruling the ethnic areas by force. Ethnic groups viewed the Burmese military as an occupying force rather than a government, as it posted troops in these regions but did not provide schools, health care, or other public goods. In 1958, the ethnic groups realized they would not be granted the autonomy promised in the 1947 constitution, and took up arms in response. The adoption of Buddhism as the state religion in 1960 also caused renewed rebellions, as all non-Buddhists are part of minority ethnic groups.

¹⁵ Rebecca Ratcliffe, "Who are the Rohingya and what is happening in Myanmar?", *The Guardian*, 6th September, 2017.

¹⁶ Human Rights Watch, "All You Can Do is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State", 2013, p.165. Available from: http://www.hrw.org/sites/default/files/reports/burma0413_webwcover_0.pdf, p 15.

¹⁷ *Ibid.*

¹⁸ Lian H. Sakhong, "The Dynamics of Sixty Years of Ethnic Armed Conflicts in Burma", Burma Centre for Ethnic Studies: Peace and Reconciliation, Analysis Paper No.1., January 2012, pp.1-3.

The stateless Rohingya receive no protection as a result of Myanmar's 1982 Citizenship Law, and they are targeted with threats to their security under six of the seven main categories recognized by the UNDP: political, economic, food, health, personal, and community.¹⁹ The Rohingya suffer political insecurity through their exclusion from the political process and through the state's policy of discrimination against them. Political security means the protection of basic human rights by the state and freedom from political repression.²⁰ In stark contrast to this definition, the Rohingya are the target of human rights violations and have no civil or political rights under the Myanmar political system. The Rohingya have been excluded entirely from the formation of the Rakhine state government and the Myanmar central government.²¹

The Myanmar government has perpetrated many key elements that threaten the existence of the Rohingya: denial of their right to citizenship; far-reaching state discrimination against them; facilitation of public hatred and violence against the Rohingya; and restriction from access to food, medicine, and other basic necessities of life. Together, these elements demonstrate that Myanmar's policies against the Rohingya have escalated from long standing ethnic cleansing to the initiation of genocide.²² For those Rohingya trapped in the camps, there is no escape from the brutality of the Myanmar government.

2012 witnessed a series of violent conflicts between ethnic Rakhine Buddhists and Rohingya Muslims.²³ Although the immediate cause of the riot was unclear, sources inform that the alleged rape and murder of a Rakhine woman by a few Rohingyas followed by a reprisal killing of Burmese Muslims by the ethnic Rakhines unleashed the violence.²⁴ On 10th June, 2012, a state of emergency was declared in Rakhine state, but sectarian violence continued.²⁵

¹⁹ The Rohingya do not suffer environmental insecurity, as defined by the UNDP. "Human Development Report 1994," pp.24 – 25.

²⁰ *Ibid.*

²¹ Kipgen, "Conflict in Rakhine State in Myanmar: Rohingya Muslims' Conundrum", *Journal of Muslim Minority Affairs*, Vol. 33, Issue 2, 2013, p.307.

²² Khin, "Is Rohingya Genocide in Burma Being Ignored?", *The Huffington Post*, 5th May, 2014.

²³ Human Rights Watch, "The Government could have stopped this": Sectarian Violence and ensuring abuses in Burma's Arakan State", August 2012. Available at http://www.hrw.org/sites/default/files/reports/burma0812webwcover_0.pdf.

²⁴ *Ibid.*

²⁵ *Ibid.*

In October 2012, a fresh round of violence between the two communities broke out that resulted in 89 deaths and the displacement of more than 32,000 people.²⁶ Press reports indicated that extremist vigilantes attacked and burned homes and boats in the predominantly Muslim town of Kyaukpyu.²⁷ The United Nations reported that most of the victims were Rohingyas.²⁸ In Sittwe, the capital of Rakhine state, violence effectively segregated the Buddhist and Muslim populations, as many Rohingyas took shelter in the camps.²⁹ The violence followed by what the UN High Commissioner for Human Rights Navi Pillay described as ‘a crackdown targeting Muslims, in particular members of the Rohingya communities’.³⁰ An undetermined number of Rohingyas also took to the sea in panic, in houseboats, barges and fishing vessels, with over 130 people being reported to have drowned after their boat capsized in one incident.³¹

Satellite images published by Human Rights Watch indicated that the arson attack on the settlements of Muslims in Kyaukpyu was apparently premeditated and involved elements from the military, and affected some eight townships or districts, leaving over 4,000 homes and religious buildings destroyed.³² Kyaukpyu is said to be a strategic area that has earmarked for a multi-billion dollar China-Myanmar oil pipeline project.³³ Following the release of the satellite image on 27th October 2012 by Human Rights Watch, a spokesperson for the Myanmar President acknowledged “incidents of whole villages and parts of the town being burnt out in Rakhine state”.³⁴ In early November 2012, the international health NGO, Doctors Without Borders reported that fliers and posters were being distributed in Rakhine state threatening

²⁶ Gethin Chamberlain, “Muslims fleeing sectarian violence in Burma drown as crisis deepens”, *The Guardian*, 4th November 2012. Available at <http://www.guardian.co.uk/world/2012/nov/04/rohingya-muslim-burma-buddhist-rakhine>.

²⁷ Reuters, “Muslim survivors of Myanmar’s sectarian violence relive ordeals”, *The New York Times*, 28th October, 2012.

²⁸ Global Centre for Responsibility to Protect (GCR2P), “Imminent Risk: Burma/Myanmar”, R2P Monitor, No.6, 15th November 2012. Available at http://reliefweb.int/sites/reliefweb.int/files/resources/Fill_Report_4413.pdf.

²⁹ *Ibid.*

³⁰ “Myanmar: Pillay concerned about human rights situation in Rakhine state”, UN News Centre, 27th July, 2012. Available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12394&LangID=E>.

³¹ Asia-Pacific Centre for the Responsibility to Protect, “R2P Ideas in Brief: ASEAN, the Rohingyas and Myanmar’s responsibility to Protect”, *International Coalition for Responsibility to Protect (ICRtoP)*, November 2012. Available at <http://responsibilitytoprotect.org/index.php/crises/128-the-crisis-in-burma/4528-asia-pacific-centre-for-the-responsibility-to-protect-r2p-ideas-in-brief-asean-the-rohingyas-and-myanmars-responsibility-ro-protect>.

³² “Burma: New Violence in Arakan State”, Human Rights Watch, 27th October, 2012. Available at <http://www.hrw.org/news/2012/10/26/burma-new-violence-arakan-state>.

³³ Syed Tashfin Chowdhury and Chris Stewart, “Rohingya miss boat on development”, *Asia Times Online*, 10th November, 2012.

³⁴ “Burma acknowledges mass burning in Rakhine unrest”, *BBC News Asia*, 27th October 2012.

health workers who treated Muslims.³⁵ It was reported that close to 200 people had been killed and over 100,000 Rohingyas displaced in Rakhine state since the outbreak of violence in June 2012.³⁶

Ceasefires between the Government and ethnic militias have been signed and broken repeatedly over the last few decades. Fear and mistrust between groups causes little incentive to uphold these ceasefire deals. Today, many minority groups sight the Panglong Agreement in their demands, encouraging the government to finally uphold their portion of the deal. However, the government views these ethnic groups as a military problem rather than a political one. More recently, 2013-2014 saw a renewed outbreak of ethnic conflict until a ceasefire deal was signed in March 2015.

Without documentation of identity or nationality, the Rohingya suffer prolonged and unwarranted imprisonment in Bangladesh, Thailand, and Malaysia. The Rohingya are unable to reenter Myanmar without documentation of their residence in the state, and the detaining states cannot determine where to deport the stateless detainees. Myanmar's neighboring states are also unwilling to let the Rohingya illegally reside within their territory. As a result, the Rohingya regularly suffer indefinite detention in Bangladesh, Thailand, and Malaysia because the question of where to send them remains unresolved.³⁷

Bangladesh hosts the largest number of Rohingya refugees due to the border it shares with Myanmar's Rakhine state in northwest Myanmar. As of 2010, the Rohingya refugee population in Bangladesh was estimated at 200,000 to 400,000. That year, there were only 28,000 registered Rohingya refugees in Bangladesh that lived in "official" camps administered by the Bangladeshi government and the UNHCR." The remaining Rohingya refugees are not protected by the UNHCR because Bangladesh ceased conferring refugee status to the Rohingya after 1993.³⁸

³⁵ Thomas Fuller, "Charity says threats foil medical aid in Myanmar", *New York Times*, 5th November, 2012.

³⁶ "Top Islamic body warns of 'genocide' in Myanmar", *AFP*, 18th November, 2012.

³⁷ Weissbrodt and Collins, "The Human Rights of Stateless Persons", *Human Rights Quarterly*, 2006, pp.267 – 268.

³⁸ "Stateless and Starving: Persecuted Rohingya Flee Burma and Starve in Bangladesh," Physicians for Human Rights, 2010, p. 6. Available at https://s3.amazonaws.com/PRH_Reports/stateless-and-starving.pdf.

IMPACT OF ROHINGYA REFUGEE ON FOREIGN RELATIONS

The issue of the Rohingya refugees jeopardizes relations between Myanmar and Bangladesh.³⁹ Bangladesh has stepped up efforts since 2008 to expel large numbers of Rohingya back to Myanmar due to new conflicts over the two countries' disputed maritime border. One of these conflicts followed an agreement between Bangladesh and South Korea's Daewoo International Corporation to explore oil and gas resources in contested waters. Since then, Bangladesh has increased its expulsion of Rohingya living in the border area. Tensions increased between the two countries following the Myanmar government's decision to force Rohingya laborers to build a two hundred kilometer fence along the country's border with Bangladesh. Despite the Myanmar government's claims to the contrary, this fence is intended to prevent the future return of the Rohingya refugees to Myanmar. In response, Bangladesh has increased the number of Rohingya returns to Myanmar before the fence can be completed.⁴⁰

On Myanmar's Eastern border, Rohingya fleeing violence in Myanmar turn to smugglers in Thailand for passage to Malaysia, a majority Muslim country that largely accepts the refugees. The refugees use Thailand as a way-station where Rohingya arrive on fishing vessels as human cargo. Thailand does not provide basic shelter or accept requests for asylum from the Rohingya. Once in Thailand, if the Rohingya have the \$2,000 fee demanded by the brokers, then they quickly depart for Malaysia. Those who do not have the means to pay for their transit to Malaysia languish in smugglers camps hidden in the jungles of Thailand, or in government detention camps, where they usually die.⁴¹ As of July 2013, nearly 2,000 Rohingya men, women, and children were captive in Thai immigration detention centers and government shelters.⁴²

Rohingya who are captured by the Thai government and survive incarceration in the detention camps are eventually moved out for deportation from the country. Thai officials claim that the refugees should be granted citizenship in Myanmar and that their illegal presence in Thailand

³⁹ Parnini, S.N., "The Crisis of the Rohingya as a Muslim Minority in Myanmar and Bilateral Relations with Bangladesh", *Journal of Muslim Minority Affairs*, Vol.33, 2013, p.285.

⁴⁰ Blitz, Brad K. "Refugees In Burma, Malaysia And Thailand: *Rescue for the Rohingya*", *The World Today*, 2010, 31.

⁴¹ Jane Perlez, "For Myanmar Muslim Minority, No Escape from Brutality," *The New York Times*, March 14, 2014. Available at http://www.nytimes.com/2014/03/15/world/asia/trapped-between-home-and-refugeburmese-muslims-are-brutalized.html?_r=0.

⁴² Dana Savannah MacLean, "Analysis: In Search of a Regional Rohingya Solution", *Asia Pacific*, 26th July, 2013.

gives the Thai government no choice but to deport them. Instead of sending them back to Myanmar, from which they fled, Thai officials engage in a “soft” deportation whereby they load the Rohingya refugees onto boats and send them off into the Andaman Sea with no destination. For those who survive the deportation, about 80 percent are once again captured by smuggling rings.⁴³ According to the People’s Empowerment Foundation, “In 2009, the Thai navy towed six boatloads [of Rohingya] (over 1,000 people) back to the Andaman Sea where they were left without food, water, and fuel.” The refugees were eventually picked up by the Indonesian navy, but many are not so lucky.⁴⁴ Thus, the stateless Rohingya are usually caught in an endless cycle of persecution, with little to no protection by any government. Even when the Rohingya refugees manage to reach Malaysia, they receive few protections of their human rights.

The Muslim Rohingya have historically sought refuge in other Muslim countries. For decades, human smugglers sent the Rohingya to “Saudi Arabia, Pakistan, and to the UAE where many were able to obtain a temporary permit to stay.” At first, Saudi Arabia was the preferred destination for refugees leading Bangladesh. However, since 2005 tighter restrictions on documentation in Bangladesh and Saudi Arabia have diverted the Rohingya to Malaysia as the only affordable Muslim destination. Malaysia began registering Rohingya for residence and work permits in August 2006. The process was quickly suspended due to allegations of fraud, but not before word spread to the Rohingya in Myanmar and Bangladesh. Hence, Rohingya refugees began to travel to Malaysia via the dangerous sea voyage in the Bay of Bengal as the only option for leaving without travel documentation. The most popular route runs by land through Thailand because most, if not all, of the boats landing in Malaysia are captured, which results in arrest and detention on arrival.⁴⁵

The plight of the Rohingya is therefore not contained to Myanmar alone. Neighboring states like Bangladesh, Thailand, and Malaysia are also involved in the plight of the Rohingya and must, therefore, be part of any solution to this humanitarian crisis.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ Lewa, Chris, “Asia’s New Boat People”, *Forced Migration Review*, July 2008, Vol.1, Issue 30, pp.40 –41.

RESPONSIBILITY TO PROTECT: EMERGENCE AND EVOLUTION

The “responsibility to protect” doctrine resulted from the humanitarian catastrophes of the 1990s: Somalia, Bosnia, Kosovo and especially Rwanda. The world struggled to balance respect for state sovereignty with the imperative to prevent the slaughter of civilians. In 2001, the International Commission on Intervention and State Sovereignty issued a report redefining the problem. It stated that states had primary responsibility to protect their populations. But, if they could not or would not, then that duty could be exercised by the international community.

As earlier mentioned, the Responsibility to Protect norm grew out of events in the 1990s, such as the Rwandan genocide and the atrocities in the former Yugoslavia. In both of these cases, the international community did not effectively prevent or respond to the gross human rights violations perpetrated against populations within the two sovereign states. These unfortunate events made it apparent that state sovereignty alone should not prevent the international community from responding to humanitarian crises. The norm focuses on the “victims’ point of view and interests, rather than questionable [state-centered] motivations.”⁴⁶ Since the 1990s, a collection of international humanitarian law has come to legitimize the involvement of external states in the affairs of states that “massively oppress and persecute their own people violently” to protect populations, like the Rohingya, from further crimes.⁴⁷

Moreover, the obligation for international intervention is also enshrined in the Genocide Convention of 1948, which states that “genocide, whether committed in time of peace or in time of war, is a crime under international law which [states] undertake to prevent and to punish.” Violation of this Genocide Convention was cited as the legal authority in the international criminal tribunals for the atrocities committed in the former Yugoslavia and Rwanda. Essentially, both the 2005 UN Responsibility to Protect document and the long-standing 1948 Genocide Convention stipulate that the duty to protect individuals against gross human rights violations is a function of sovereignty and should be fulfilled by the state wherein the violence is occurring. Without the ability or willingness of that state to fulfill such obligations, as is the case in Myanmar, the burden of responsibility falls on external states. The

⁴⁶ Louise Arbour, “The Responsibility to Protect as a Duty of Care in International Law and Practice,” *Review of International Studies*, Vol. 32, no. 3, 2008, pp. 445 – 448. Available at <http://www.jstor.org/stable/40212484>.

⁴⁷ Oberschall, Anthony, *Conflict and Peace Building in Divided Societies: Responses to Ethnic Violence*, Taylor and Francis, 2nd March, 2007, p.83.

international community is called to help, compel, or even coerce the offending state to provide protection.⁴⁸

Responsibility to Protect emerged due to the alleged failure of the world community to respond accordingly to civil conflicts and humanitarian crises prevalent in the 1990s. After NATO's controversial intervention in Kosovo, which began on 24 March 1999⁴⁹, the UN was divided between those who strongly hold to the traditional notion of state sovereignty and those who insisted on the right of humanitarian intervention.⁵⁰ At the Millennium Summit 2000, the UN Secretary General, Kofi Annan challenged the international community to reconcile the issue of sovereignty and protection.⁵¹ In response to the challenge, the Canadian government offered willingness to discuss and propose a new framework for humanitarian intervention aimed at reconciling the conflicts between the State sovereignty and protection of human rights. The International Commission on Intervention and State Sovereignty was established and it produced its report in 2001. The report remarks the history of Responsibility to Protect, and according to Stahn, offers the most comprehensive explanation on the concept of Responsibility to Protect.⁵² In Paragraph 203 of the Report of the United Nations Secretary General on High-Level panel meeting on threats, challenges and change (High Level Panel Report, 2004), Responsibility to Protect is referred as an 'emerging norm.'⁵³

The theory of responsibility to protect, which in 2001 by the "International Commission on Intervention and State Sovereignty" was proposed, in fact, it was an attempt in response to the

⁴⁸ Louise Arbour, "The Responsibility to Protect as a Duty of Care in International Law and Practice," *Review of International Studies*, Vol. 32, no. 3, 2008, pp.448 – 50.

⁴⁹ Cassese, A., "Ex Inuria Ius Oritur: Are We Moving towards International Legitimation of Forcible Humanitarianism Countermeasures in the World Community?," *European Journal of International Relations*, 1999, Vol. 10, Issue 1, 1999, pp.23-30.

⁵⁰ Chandler, D., "R2P or Not R2P? More Statebuilding Less Responsibility", *Global Responsibility to Protect*, Vol. 2, 2010, pp. 161-166.

⁵¹ In his speech during the Millenium Summit 2000, Annan posed a question "how should we respond to a Rwanda, to a Srebrenica...to the gross and systematic violations of human rights that affect every precept of our humanity?" (p. 48). This question was the impetus for the establishment of International Commission on Intervention and State Sovereignty (ICISS) *The Principle of Responsibility to Protect: The Case of Rohingya in Myanmar*. Available from: https://www.researchgate.net/publication/295400152_The_Principle_of_Responsibility_to_Protect_The_Case_of_Rohingya_in_Myanmar [accessed Nov 29 2017].

⁵² Stahn, Carsten, "Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?," *American Journal of International Law*, Vol. 101, No.1., January 2007, pp.99-120.

⁵³ The High-Level Panel on Threats, Challenges and Change, "A More Secure World, Our Shared Responsibility", The United Nations, 2004.

mystery of intervention / Sovereignty that the international community was faced in the 1990s with it. This doctrine which in 2005 was reached to the adoption of the world's countries officials, the primary responsibility to protect people against the four major crimes, including genocide, war crimes, crimes against humanity and ethnic cleansing is in charge of the government of each country. Meanwhile, in the absence of a clear willingness or ability of the mentioned government, the international community has a responsibility under the Charter of the United Nations and in accordance with the Charter provisions is acting to prevent or stop of the mentioned crimes.⁵⁴

The Convention on the Prevention and Punishment of the Crime of Genocide defines genocide as acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group such by killing members of the group; causing serious harm to members of the group; inflicting on the group conditions of life calculated to bring physical destruction.⁵⁵ Attacks on Rohingyas ran rife in the past few decades, and the latest actions can be considered as committed genocide according to the 1948 Convention. Since Myanmar is Party to the Convention, committing such international crime should be punished, but no sanctions were ever taken against the state and with Suu Kyi in charge, the number and intensity of attacks have constantly arisen. The Organization of Islamic Cooperation even compared the situation to be similar to the genocide happened in Rwanda and urged the UN's intervention to avoid genocide and to stop the escalation of violence against the Rohingya Muslims.⁵⁶

Given that the Rohingya for several decades has been placed under a variety of international crimes, including crimes against humanity, genocide and ethnic cleansing and the international community is placed at the head of the United Nations, so far any action has not applied in order to punish the perpetrators of these crimes and prevent from happening them again, therefore, it is merit that to explain the concept of the theory of responsibility to protect and consequently be answered to this question whether the international community to protect of the Rohingya can invoke to this theory or not.

⁵⁴ Soltanzadeh, Sajjad, "The legal review of Russia's invoke to the theory responsibility to protect for attack on Georgia", *Foreign Policy Journal*, Vol. 23, Issue 4, 2009, p. 938

⁵⁵ 1948 Convention on the Prevention and Punishment of the Crime of Genocide Art. II.

⁵⁶ OIC envoy calls for U.N. intervention to avoid genocide of Rohingya Muslims. Available at <http://www.reuters.com/article/us-myanmar-rohingya-oic-idUSKBN1520CB>. Accessed on 1st December, 2017

In the meantime, Myanmar's government under President Thein Sein is failing to meet its obligations to protect the Rohingya from continued ethnic cleansing and genocide under the RtoP principle and the 1948 Genocide Convention. The Myanmar government has pursued policies of ethnic cleansing against the Rohingya since at least the 1978 Nagamin pogrom. The state's failure to protect the Rohingya from atrocities is evident through the active participation of state security forces in the 2012 massacres, the Myanmar government's inadequate response and investigation into the events, and its refusal or inability to protect the Rohingya from further crimes against humanity. The complicity of state security forces during the attacks demonstrates that the ethnic violence was not isolated from government involvement. Rather, representatives of the Myanmar state, through Rakhine state's security forces, were participants in the destruction and murder that occurred in the Rohingya villages. The Myanmar government's involvement in the crimes was both indirect and direct. While the violence was perpetrated primarily by mobs, the state security forces stood by and did nothing to protect the Muslim communities. In other instances, the state security forces participated directly in the violence.⁵⁷ Reports of the violence in June and October reveal that the state security forces killed many Muslims attempting to protect their homes from fire and other damage. Human Rights Watch assessed that this action "suggests that the authorities were willing to use lethal force against Rohingya . . . who were trying to prevent a forced population transfer."⁵⁸

The most remarkable development of Responsibility to Protect happened in 2005, whereby Responsibility to Protect was unanimously endorsed by 191 Head of States in the World Summit 2005 (United Nations, 2005). Paragraph 138 of the World Summit Outcome Document 2005 states that individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity, and the international community should encourage and help States to exercise this responsibility. Paragraph 139 lays down the international community's responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the UN Charter, to help to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. Should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from the four specific crimes of mass atrocities, the international communities are

⁵⁷ Smith, Matthew, "'All You Can Do is Pray': Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State," *Human Rights Watch*, 22nd April, 2013, p.15.

⁵⁸ *Ibid.*

prepared to take collective action through the Security Council in a timely and decisive manner. Responsibility to Protect also includes responsibility to prevent, in situation where it is not bravely conscience shocking but has the possibility of reaching it and responsibility to rebuild the society damaged by the mass atrocities (ICISS Report, 2001).

Responsibility to Protect is being criticized as lacking of substance⁵⁹, preserving the interest of certain powerful states, especially the Permanent Five (P5)⁶⁰ and eroding the principle of non-interference.⁶¹ Although it has not attained the status of legal norm, Responsibility to Protect has a substantial normative power and will be more significant in the future. Although Responsibility to Protect is received with mixed feelings, it does not mean that the principle itself is wrong. This article argues that despite the critics, in reality, Responsibility to Protect is still relevant that it has been affirmed in various General Assembly and the Security Council's resolutions.⁶² It was adopted by the consensus of the UN members in one of its largest gathering of Head of States in history, the World Summit, 2005. Thus, Responsibility to Protect will not be simply fading away, especially with numerous and continuous efforts in advancing Responsibility to Protect.

Moreover, the theory of responsibility to protect in multiple resolutions of the Security Council has been approved. For example, the Resolution 1769 dated 31 July 2007 of the Security Council on the licensing issue of peacekeeping mission of the United Nations and the African Union based on the Charter seventh Chapter by recalling and approving previous resolutions about Darfur Sudan, was approved the responsibility to protect.⁶³ Some believe that the responsibility to protect is the responsibility based on peremptory norms of international law (Genocide, war crimes, ethnic cleansing and crimes against humanity). Contractual obligations and customary international law oblige the states that to apply for prevent and punish the

⁵⁹ Hehir, A., "The Responsibility to Protect: Sound and Fury Signifying Nothing?", *International Relations*, Vol.24, Issue 2, 2010, pp.218-239.

⁶⁰ Ayoob, M., "Humanitarian Intervention and State Sovereignty", *The International Journal of Human Rights*, Vol.6, Issue 1, 2002, pp.81-102.

⁶¹ Bellamy, A.J. and Davies, S.E., "The Responsibility to Protect in the Asia-Pacific Region", *Security Dialogue*, Vol.40, Issue 6, 2009, pp.547-574.

⁶² Among other: Res. 1674, Res.1894, Res.1706, Res. 1970, Res.1973, Res. 1975, Res.1996, Res.2014, Res.2149, and Res.2150.

⁶³ "Security Council authorises deployment of United Nations-African Union 'hybrid' peace operation in bid to resolve Darfur conflict", United Nations, July 31, 2007 and "Sudan accepts UN resolution on Darfur force". *Channel NewsAsia*, 1 August, 2007.

genocide, war crimes and crimes against humanity. These cases are included in “Rome Statute of the International Criminal Court” and basically the performance of these international criminals is applied to implement and strengthen the responsibility to protect.⁶⁴

In 2012, after the outbreak of deadly violence against the Rohingya, the United Nations General Assembly (Which has raised its theory of responsibility to protect), was adopted a resolution in relation to Myanmar that it was raised its serious concern about the situation in the Rakhine state. Then, the Myanmar government was requested to perform such actions in relation to “The individual arbitrary arrest”, “The individual return to their main communities”, “property return” and “integration policy... and peaceful coexistence”. Although the Myanmar government was accepted the General Assembly requests, but it was objected to the use of the word “Rohingya” in the resolution text.⁶⁵

Since Myanmar has failed to prevent continuing human rights violations against the Rohingya, the international community has the responsibility under the RtoP to pursue all peaceful means to resolve the plight of the Rohingya and to provide Myanmar with sufficient capacity building and assistance to end the ethnic and religious conflict. However, the West in general has chosen to turn a blind eye to Myanmar’s ethnic cleansing and genocide against the Rohingya in favor of economic and political engagement with Thein Sein’s government. Public condemnations of Myanmar’s treatment of the Rohingya by the West and East Asia have fallen short of the response needed to affect change to protect the Rohingya.

Despite the US House of Representatives’ call for action, the Obama administration has not discussed a return to sanctions. The normalization of relations with Myanmar is viewed as a vital foreign policy success for the White House. Furthermore, Myanmar is a significant partner in the Obama administration’s “pivot to Asia” foreign policy, as this partnership is an important element of President Obama’s goal to increase US military presence in Southeast Asia. To this end, the US is pursuing military-to-military cooperation with Myanmar.⁶⁶ The US government is also focusing on the support Myanmar can provide in its role as the 2014 chair of ASEAN

⁶⁴ Soltanzadeh, Sajjad, “The legal review of Russia's invoke to the theory responsibility to protect for attack on Georgia”, *Foreign Policy Journal*, Vol. 23, Issue 4, 2009, p. 951.

⁶⁵ Zawacki, Benjamin, Defining Myanmar’s “Rohingya Problem”, 2013, p 18-25. Available from: <http://digitalcommons.wcl.american.edu/hrbrief/vol20/iss3/2/Zawacki>, 2013, p. 23.

⁶⁶ Patrick Barta, “Why the U.S. Needs Myanmar,” *The Wall Street Journal*, November 19, 2012.

in mediating territorial disputes in the South China Sea.⁶⁷ In addition to the political and strategic gains that partnership with Myanmar represents, the US also seeks to benefit economically from positive relations by enabling American firms to invest in the country.⁶⁸ American oil firms are particularly keen to explore Myanmar's offshore oil and gas reserves, which foreign experts estimate to be on par with Brazil's reserves.⁶⁹

For all these political, strategic, and economic reasons, President Obama has not held President Thein Sein accountable to his commitment to protect the Rohingya. The Washington Post's "Fact Checker" column in December 2013 assessed that the US government had not effectively stood up against atrocities in Myanmar, because "attacks have continued almost unabated with little or no consequences for the killers."⁷⁰ Thus, the US has not pursued all peaceful means to end the human rights abuses against the Rohingya as required by the RtoP. Without stronger action, ethnic cleansing and genocide will continue against the Rohingya in Myanmar.

In the mentioned resolution, the General Assembly did not formally invoke the theory of responsibility to protect. Maybe because the General Assembly did not want to judge about to commit crimes against humanity or genocide and ethnic cleansing in Rakhine state and it is assumed that the Myanmar government implements the primary responsibility protect from its citizens. However, despite the international crimes against the Rohingya, the Myanmar government has been failure clearly the protection from them and this failure was obvious in violence in June 2012, therefore, the international community should be prepared with the responsibility to protect doctrine, for collective action to protect the Rohingya, according to the United Nation Charter.⁷¹ However, it is said that the theory of responsibility to protect regarding to the Rohingya, if it is applicable that the first at least one of war crimes, crimes against humanity, ethnic cleansing and genocide to be committed against them; and secondly, the Myanmar government openly fails to protect them.

⁶⁷ Joseph J. Schatz, "U.S. Officials Warn Burma that Attacks on Rohingya Muslims, Aid Groups are Hurting Ties", *The Washington Post*, 17th April, 2014.

⁶⁸ James Politi, "US to Help Companies Invest in Myanmar," *Financial Times*, 17th April, 2014.

⁶⁹ "Drilling in the Dark: Companies Will Soon Find out How Much Oil and Gas There Really is Offshore", *The Economist*, 19th March, 2014.

⁷⁰ Glenn Kessler, "How Much Has the United States Been 'Standing Up Against' Atrocities in Burma?", *The Washington Post*, 31st December, 2013.

⁷¹ Zawacki, Benjamin, Defining Myanmar's "Rohingya Problem", 2013, p 18-25. Available from: <http://digitalcommons.wcl.american.edu/hrbrief/vol20/iss3/2/Zawacki>, 2013, p. 23.

Despite Myanmar's reluctance to implement the RtoP, ASEAN, as the regional organization, must play an important role in the international community's action because the spill-over of Myanmar's ethnic conflict into neighboring ASEAN member nations and Bangladesh demands a regional and international response. Moreover, according to the ASEAN Charter, "promoting and protecting human rights" is one of the primary purposes of the Association.⁷² ASEAN also has a positive history of facilitating international assistance for humanitarian concerns in Myanmar. For example, in 2008 following Cyclone Nargis, which devastated Myanmar's Irrawaddy Delta region, when the military junta refused to allow the West to provide humanitarian assistance, ASEAN facilitated backdoor diplomacy to convince the Myanmar government to allow international humanitarian aid under the aegis of ASEAN.⁷³ Thus, former Secretary General Surin Pitsuwan's comments in 2012 demonstrate that the Association recognizes that the plight of the Rohingya must be addressed regionally.

ASEAN could also use its established mechanisms to provide peacemaking, mediation, and conflict prevention in Rakhine state. The lessons learned by other ASEAN member states, such as Indonesia, Malaysia, Thailand, and the Philippines, in managing communal or religious conflict could be aptly applied to mitigate Myanmar's Rohingya conflict. Member states should assist Myanmar with border security and migration issues as well as with strengthening local government capabilities for peace management. ASEAN should leverage the resources and expertise of dialogue partners, such as the US, Australia, and the EU, to "assist in Myanmar's capacity building in law enforcement, rule of law, human rights protection, and good governance."⁷⁴

The responsibility to protect necessitates that states look after their populations to ensure that they do not suffer crimes against humanity, such as ethnic cleansing and genocide. This chapter has shown that the Myanmar government is unable or unwilling to defend the Rohingya against continued abuse. Due to this failure to protect, the regional association, ASEAN, and the international community are obligated under the Responsibility to Protect principle to pursue

⁷² "Good Practices: Addressing Statelessness in South East Asia," United Nations High Commissioner for Refugees, October 29, 2010.

⁷³ Morada, "ASEAN, The Rohingyas and Myanmar's Responsibility to Protect," *R2P IDEAS in brief*, Vol 2., Issue 9, 2012.

⁷⁴ *Ibid.*

all peaceful means to provide this protection. However, to date ASEAN, the US, and the EU have implemented only half measures to influence change within Myanmar with respect to the plight of the Rohingya. The international community needs to pursue coordinated diplomatic and economic steps that make it clear to the Myanmar government that there is a high cost associated with its refusal to end the abuses against the Rohingya. The next chapter provides recommendations for a peace building plan for the Rohingya conflict to include some short-term and long-term solutions that need to be implemented to ensure the survival of this long persecuted minority Muslim population.

WHAT CAN BE DONE, THEN?

Economic and political sanctions against the Myanmar military are a possibility. But without Chinese participation, they would have limited effectiveness. Sanctions might also lead the Myanmar military to reverse recent democratic reforms in the country.

An alternative would be for the United States and other countries to sharply increase aid to Bangladesh, which is hosting the fleeing Rohingya civilians. They might also consider accepting some Rohingya as refugees. However, this could be problematic given the current debate on refugees in the United States and many other countries.

In the Rohingya case, the most effective tool would be the deployment of a peacekeeping operation. According to the UN Charter, the Security Council has primary responsibility for the maintenance of international peace and security, however human right protection has been considered as an internal issue of each state for decades. After the consequences of the Cold War and the widespread acceptance of the relevance of human rights, the Council realized in order to achieve lasting peace, human rights should be addressed, at least on a rhetorical level.⁷⁵

Although the Security Council decides whether a peacekeeping operation should be deployed, it also needs the consent of the affected parties.⁷⁶ Taking into account that the commission – set up by the government of Myanmar to examine the alleged genocide – claims it has found

⁷⁵ Joanna Weschler, “Security Council Decision-making: New Concerns, Human Rights” In David Malone, *The UN Security Council: From the Cold War to the 21st Century*, Lynne Rienner, USA, 2004, p. 55.

⁷⁶ “What is peacekeeping?”. Available at <http://www.un.org/en/peacekeeping/operations/peacekeeping.shtml>. Accessed on 15. November, 2017.

insufficient evidence of such crimes⁷⁷, the consent from the Burmese government is very unlikely to happen in the near future. Personally, I see no other way that could be a viable solution to the systematic infringement of human rights – not to mention the lack of special measures on minority rights and the numerous stateless Rohingyas living in the country. The international community should not let incidents like the Rwanda genocide happen again.

Regarding the nationality issues of the Rohingyas, it has to be stated that ending statelessness is a major goal for the UN, although results are not really satisfying. With the current international instruments in force, some important issues⁵⁴ still remain out of the reach of the regulations.⁵⁵ The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness are key legal documents, but a comprehensive regulation, that could be enforced effectively and is detailed sufficiently, still awaits to be agreed on, not only in this field of human right protection.

In the longer term, diplomatic and financial pressure, as well as the possibility of indictment for crimes against humanity, may convince Myanmar's military leaders to cease the ethnic cleansing and allow some Rohingya to return. Unfortunately, no international cavalry is likely to ride to the Rohingya's rescue.

CONCLUSION

Rohingyas have never been treated equal, as they were never given citizenship during the history of modern Myanmar. They are excluded from the legal and social benefits of being a national, moreover they have been suffering genocidal attacks lately.

Why the Rohingyas became a target for the government, for the military and also for the extremist groups of Myanmar is not easy to decide, since the controversial theories about Rohingya origin. Although, these groups agree on one thing, all human rights should be deprived from this ethnic group. The Rohingyas has never been a threat to the state of Myanmar, but still over forty years of propaganda made most Burmese to regard them as foreigners, who are threat to Buddhist culture. Tensions between the Muslim Rohingyas and

⁷⁷ "Myanmar says 'no evidence' of Rohingya genocide". Available at <http://www.bbc.com/news/world-asia-38505228>. Accessed on 15. November, 2017.

the Buddhists of Rakhine are often, but in other parts of the country the level of bias is very low among the civil population.

The Rohingya people were promised an independent state out of Rakhine by the British, although this never materialized. On the contrary, the current governments certainly intended to liquidate them from the country during the past seven decades. The Rohingyas do have the right to citizenship, but without being party in the major human right treaties, the contradictory international provisions on citizenship⁷⁸, and the political and economic instability in the region – no progress in the expansion of citizenship is expected until external intervention is made.⁷⁹ The international community raised concerns about the reoccurring violent attacks against the Rohingyas, but the available legal actions are very limited for the UN.

Without question, the UNHCR takes major part in the protection of Rohingyas, not only with providing aid in Bangladesh, but through promoting good practices and observing refugee rights in the neighbouring countries. Sadly, the lack of governmental cooperation prevents major progress in the status of Rohingya refugees. As the Rohingyas are subject to extreme poverty, destitution and even genocide back in Myanmar explains why so many of them decide to leave despite being aware of poor the conditions of refugee camps or the problems of repatriation. Many of them die on the sea or fall victims to human traffickers, but still take the risk in hope of resettling. The situation, we could say, is a “Catch-22”: no change is expected in the cooperation of Bangladesh until a decrease in the number of refugees, but for that, their status should be secured in Myanmar first. The seriousness of lacking citizenship could not be stressed enough, as stateless persons are not able to benefit from any of the state services, even basic human rights protection.

Even other surrounding countries - like Thailand, Malaysia, Indonesia or India - disrespect the Rohingyas’ right to asylum and they hardly respect the principle of non-refoulement either. The 1951 Convention Relating to the Status of Refugees in its Article 33 prohibits any kind of expulsion or return, since refugees are considered as refugees because of such fear that led

⁷⁸ According to Article 1 of the Hague Convention, it is the state’s sovereign right to decide who can be regarded as its national – basically it also means the right to exclude individuals, in contrary the UN countries are also obliged to consider such principles as every person’s right to citizenship in their lawmaking.

⁷⁹ Irene Langran, Tammy Birk, *Globalization and Global Citizenship: Interdisciplinary Approaches*, Routledge, 2016 p. 244.

them to flee the country of origin. It is irrelevant that those countries are not signatories of the Refugee Convention, as the prohibition of “refoulement” applies to all states of the international community regardless of the state's treaty status and it is a matter of customary international law and the countries mentioned before should consider these obligations before violating such human rights.⁸⁰

In any case, there are serious concerns about the crimes which are happening in Northern Rakhine State of Myanmar against the Rohingya ethnic minority and to end the Rohingya community suffering and protect of them is necessary an immediate and effective measure. The responsibility to protect doctrine regarding the Rohingya is applicable, because despite of the crimes against humanity, genocide and ethnic cleansing against the Rohingya, the Myanmar's government has clearly failed to support them and this failure was obvious at least in violence in June 2012. Therefore, the international community with the responsibility to protect doctrine should be prepared for collective action to protect the Rohingya ethnic minority, according to the United Nation Charter.

⁸⁰ Benjamin Zawacki, “Defining Myanmar's "Rohingya Problem”, *Human Rights Brief*, Issue 3, Fall 2012 p. 20.