

The Plight of Stateless Rohingya and ASEAN's Responsibility

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It is for the first time for ASEAN to have an Intergovernmental Human Rights Commission whose main job is to deal with all human right problems within the association. This newly formed body would not be effective unless it deals properly by collective arrangements within the region. ASEAN would face criticism as a lip service body, which fails to take a firm action to deal with the Rohingya issues. Persecution and human rights violations against the Rohingya inside Burma, especially in Arakan state, have persisted for over 20 years, with insufficient international attention. Within the study of International Relations, the problem of forced migration and displaced persons are understudied, despite they are daily features in global conflict. The problem have great significance to understand the international society's behaviour, yet "there has been little systematic attempt...to explore what the central concepts within IR might offer to the study of forced migration" (Betts and Loescher 2011, 11). Forced migration and displaced persons are both causes and consequences of conflict and instability, hence mitigation needs involvement of both states and non-state actors. The Rohingya problem has been unique since their displacement is not caused by internal conflicts but because of denial of citizenship. Within ASEAN member countries we are witnessing some groups of people holding this status. Including the Rohingya people, almost everywhere the non-citizens facing official and non-official discrimination. Having social and practical hostilities from their surroundings. This essay, however, explores why ASEAN continues to turn a blind eye to the plight of the Rohingya even though ASEAN has inaugurated the Intergovernmental Human Rights Commission.

The plight of Rohingya

Rohingya people has been the victim of the Burmese military junta who does not recognize them as one of 135 ethnic groups in Burma. Yangoon's consistent fierce execution to Rohingyas resulted in tension with Burma's neighbouring countries, particularly Thailand and Bangladesh which share borders with Burma. The minority muslim Rohingya, who lives mainly in Rakhine (Arakan) State close to the border with Bangladesh and make up around 4 percent of Burma's total population, is one of

the most heartbreaking stories since they have been denied citizenship since 1982.¹ Burmese junta maintains that the Rohingya are not among the country's 135 recognized ethnic groups. As a consequence of denial of the citizenship, many human rights watchdogs, observers and scholars viewed that the Rohingyas suffer from human rights abuse undertaken by the Burmese military dictatorship. The abuse range from exclusion from government employment, health care, education, public service, restrictions from travelling, land confiscation and destruction of homes, forced labour, religious persecution, rape and sexual violence, deportation and forcible transfer of population, extortion and arbitrary taxation, complicated marriage permission (Karen Human Rights Groups 2002; Irish Centre for Human Rights 2010; Amnesty International 2004)

It is not really clear the reasons to make them denial of citizenship. The Burma government has announced that Rohingyas were not Burma citizens but Bengali. The government hold a theory about the origin of the Rohingya. The government believed that the Muslim Rohingya are illegal immigrants from pre-1971 Bangladesh. This theory is further hold as the government finds them 'to speak Bengali with a strong 'Chittagong dialect' (Ahmed 2011, 2). However, other claims state that Rohingyas are not Bengali. Rohingyas have their own language and they have lived in Arakan since the 7th century (Ghani 2009). Based on that, Burma government rejects the Rohingya as a part of Burma citizen. Rohingya's denial citizenship has resulted in various military operations objected to drive Rohingya out of the Burma state and to seek refuge to neighbouring countries, mainly to Bangladesh. As Zaw (2007) puts it, "since 1962, the Rohingyas are victims of the worst kind of systematic, state- sponsored and patronized oppression, repression and discrimination".

The government of Burma have been continuously and systematically made the Rohingya leave their homes since independence with variety of military operations.²

¹ Approximately 800,000 Rohingyas remain in Burma, 200,000-400,000 in Bangladesh, and 50,000 in Malaysia (Roughneen 2009). The 1982 Citizenship law create three classes of citizens: full citizen, associate citizen, and naturalized citizen. The Rohingyas are not issued any new national identity cards which were issued to other citizens since 1991 (Zaw 2007). The current 1982 Burma citizenship law, unlike the preceding 1948 Act, is essentially based on the principle of *jus sanguinis*. The Rohingya are recognised neither as citizens nor as foreigners. The Burmese government categorized them as 'Myanmar residents', which is not a legal status. In 1989, colour-coded Citizens Scrutiny Cards (CRCs) were introduced: pink cards for full citizens, blue for associate citizens and green for naturalised citizens. The Rohingya does not belong to any status of the citizenship, hence they were not issued with any cards. (Lewa, no date, 11).

² There are plenty of armed operation orchestrated by the Burma government to gradually evict the people of Rohingya, among them are: Military operation (5th Burma Regime) November 1948; Burma Territorial force (BTF) operation 1948 -50; Military operation (2nd Emergency Chin Regime) March 1952-52; May Yu Operation, October 1952-53; Mone -Thone Operation October 1954; Combine immigration and Army Operation January 1955; Union Military police (UMP) Operation 1955-59; Caption Htin Kyaw Operation, 1959; Shwe Kyi Operation, October, 1966; Kyi Gan Operation, October-December 1986; Ngazinka Operation 1967-1969; Myat Mon Operation Feb 1969-71; Major Aung Than Operation ,1973; Sabe Operation, February 1974-78; Naga Min (King Dragon Operation) February

As the result of multiple human rights abuse, the Rohingyas fled to neighbouring countries including Bangladesh, Thailand, Malaysia and Indonesia and set themselves undocumented, which in turn put both the Rohingya and host states are in trouble. The Burma government does not only rendered the Rohingyas stateless, but in many circumstances has systematically crushed the cultural, religious and ethnic aspiration. The situation of Rohingya people can be called as 'protracted refugee situation' (PRS). PRS is the situation where refugees are not in emergency situation. They survive in camps and urban communities in remote and insecure parts of the world, and the vast majority of these refugees have been in exile for many years. PSR is associated with conflict situation where push factors are found from armed violence and state failure resulted in large numbers of people forced to leave their homes. Furthermore, PRS generates complicated problems, as Loescher et al (2008, 3) put it,

Refugees trapped in these situations often face significant restrictions on a wide range of rights, while the continuation of these chronic refugee problems frequently gives rise to a number of political and security concerns for host states and states in the region.

Continuing abuse by the Burma government push the Rohingya find refuge to neighbouring countries, particularly Bangladesh, Thailand, Malaysia and Indonesia. Entering these countries, they face unfavour treatment because they are undocumented. They are stamped unlawful termed as smuggled people and illegal immigrants.

Flow of displaced persons create a regional dilemma and mess social order. According to the international society perspective, when the problem of refugee has not been managed well, it leads to the disruption of international social order, which is built from normative structure of international structure (Hurrel 2011).

As a country with shared borders and religion, Bangladesh is a place where Rohingya choose to seek refuge. Bangladesh hosts 28,000 Rohingya in two refugee camps supervised by the UN (Roughneen 2009a). Continous eviction by Yangoon has pushed the Rohingyas entering Bangladesh, which created, to some exacerbated the border dispute between Burma and Bangladesh. Most Rohingyas fled to Bangladesh because of the proximity of geography, religious and physical appearance between the people of Bangladesh and the Rohingyas. Although has not transsformed into an open war, border clashes recur sporadically between the two countries, in which Bangladesh keep on suspicious over the Burmese military build-up along the Burmese side of the land border following by the station of naval warship adjacent of the disputed area by the Burmese navy in Arakan State. This situation was responded

1978-79; Shwe Hin Tha Operation Aug 1978-80; Galon Operation 1979 July 1991-92; Pyi Thaya Operation July 1991-92; Na-Sa-Ka Operation since 1992 (Zaw 2007).

by the Bangladeshi navy that sent four warships to Chittagong area (Roughneen 2009b). Facing difficulty finding a safe spot for living in Bangladesh, in many occasion the Rohingyas fled to Malaysia via Thailand. Security officials in Thailand, however forced them back to Bangladesh as they are believed to be economic migrants rather than refugee and caught them as illegally enter the Thai's border (Roughneen 2009a).

Rohingya problem complicates Bangladesh's poor economic, social and environment, law and order problems. Frustration and hatred between Rohingya and local people caused human rights abuses are daily practice. Devitt (2011) argues,

sexual abuse and gender violence is endemic and this has had a major impact on women and girls in the camp as well as their families, whilst corruption which is rife on all levels of governance in the camps including government officials, police and military personnel prevent the refugees from living any sort of life in peace and security.

ASEAN's absence

Burma, a country with neutralist foreign policy outlook, joined ASEAN in 1997 after the military junta released Aung San Suu Kyi in 1995 and joined ASEAN Regional Forum in 1996. As a country with authoritarian governance, Burma's accession to ASEAN has not been smooth and took a long process. Katanyuu (2006, 287) argues, "constrained by the non-interference doctrine, a collective position on Myanmar has never been easily achieved".³ For Burma, joining ASEAN could help her to handle a problem of isolation imposed by Western countries (Roberts 2006; McCarthy 2008). McCarthy (2008, 917) puts it,

Facing diplomatic isolation and punitive sanctions from Western countries, Burma saw the advantages of ASEAN members having access to international funding (particularly the World Bank); a common voice in the U.N.; and a common posture on major policy issues and in negotiations with major powers— especially the U.S., the EU, India, and Japan.

For Burma, joining ASEAN means that it could continue in keeping its authoritarian practice as long as ASEAN maintains the principle of non-interference.⁴ For a certain time, Burma's membership in ASEAN promotes the country's position and victory in

³ Burma's membership into ASEAN compelled ASEAN to review its rigid practice of non-interference policy. ASEAN's gradual departure of the policy started in 1998 as a reaction of Burma's domestic affairs particularly in human rights abuse and democratic reforms.

⁴ The non-interference principle within ASEAN based on three important codes of conduct. 1. It discourages member states from criticizing or intervening in members' internal affairs; 2. It commits members to deny sanctuary or support to groups seeking to subvert or overthrow the governments of member states; 3. Discouraged members from providing external powers with any form of support deemed subversive to other members (Katanyuu 2006, 826).

international politics. However, the relationship between Burma and ASEAN seems to be awkward: while maintaining its neutralist posture, Burma at the same time still a loyal Chinese ally and an ASEAN member at the same time. Along with the post-cold war's wave of democratization in many parts of the 'third world' countries, ASEAN receives more pressure from Western countries because of Burma's political and human rights situation that has not been improved since Burma's accession. Burma's accession to ASEAN is victorious for this country but a burden for ASEAN. Yet, critics have forwarded to Western governments on the long-term diplomatic and economic sanctions would had negative impact on the human security and delayed positive change in Burma (Roberts 2006, 2).

When an internal strife or human rights violation happen, neighbouring countries are deeply affected politically, economically and socially. They have to be able to manage security within their own border, including displaced persons. Government usually seeking assistance to address the problem, bilaterally or multilaterally, through regional organization. However responds might be slow due to variety of reasons, including limited resources, ineffective emergency systems or unwillingness to become involved (Cohen 1997). Because regional countries are directly impacted, regional initiatives are expected to come from them. This especially true since international organizations alone cannot be demanded to address the problem. As Cohen (1997) maintains,

...regional institutions are increasingly being expected to assume some of the responsibility in their own geographic areas. The knowledge and entree they have in their regions make them likely candidates to become the first line of defense, the first to alert the international community to potential problems, and the first to seek to avert and resolve crises.

As a regional organization, ASEAN are expected to take action and cope with the problem faced by the Rohingyas, involving itself to some kind of assistance such as providing adequate protection and support and to cooperate with international organizations to ensure that the displaced persons of Rohingya are better to deal with. Yet, ASEAN way seems does not work this way. ASEAN has been long practicing silent diplomacy regarding human right abuses carry out by its member countries.

Different government of ASEAN members responds differently to Rohingya issue. Indonesia and Malaysia probably countries with the strongest reaction whereas Thailand is the weakest. As having religious proximity with the Rohingyas, these two countries have more affections with Rohingya people. Thailand and Singapore, on the contrary, concerning over Burma's natural gas supply and other natural and human resources, in many cases tend to influence its stand on the issue. Thailand often been criticized on its policy. For example, in 2009 Thailand was strongly criticized over its handling of a group of Rohingya boat people who turned up on its shores (<http://www.irinnews.org/>)

Hence, other than problems mentioned above, ASEAN-Burma relationship has been problematic by a number of reasons such as the ruling government in Burma that is not in accordance with the general model of governance in ASEAN, illegal business between the ruling SLORC-SPDC with drug cartels, problems of refugees and illegal immigrants.

After the Cold War and partly because of Burma's accession into ASEAN, the 'non-intervention' principle was modified into "constructive engagement" introduced by Thailand's foreign minister, Arsa Sarasin, in 1991.⁵ The latter then is used by ASEAN to deal with Burma, based on the belief that '[b]y promoting trade, diplomatic, and economic ties with an authoritarian regime, socioeconomic progress and the growth of a middle class would produce political liberalization (McCarthy 2008, 971). Following that, a 'constructive intervention' approach was introduced by the then Deputy Prime Minister of Malaysia, Anwar Ibrahim to deal with Burma. Then, ASEAN adopted a policy of "flexible engagement," proposed by the then Thailand's Foreign Minister Surin Pitsuwan that allow ASEAN members to be more open in discussing each country's domestic issue, although Indonesia, Malaysia and Singapore still put reservation on this move. However, ASEAN members agreed to the idea of "enhanced interaction," that allows individual states comments on others' domestic issue without involving ASEAN (McCarthy 2008).

Despite efforts to shift the non-interference principle, ASEAN failed to discuss more openly and fairly about the Rohingya problem. Even more with its new human rights body within the organization, ASEAN makes no sufficient attention to help the Rohingya people. Human Rights Watch said that the Association of Southeast Asian Nations (ASEAN) has failed to address the Rohingya's plight adequately (<http://www.hrw.org> 2009). ASEAN treated the Muslim Rohingya as one of the association's problems yet as an urgent security issues need to be handled properly, at least until the 14th ASEAN Summit. Bali Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crimes to be held on April 14-15, 2009 as a forum to discuss regional solutions for the Rohingyas. The reason why ASEAN endorsed the plight of Rohingya as 'illegal immigrants' reflects the ignorance of the problem by ASEAN leaders. This depiction is suggested by the statement of the Thai Foreign Minister Kasit Piromya, delivered on the close of the 14th ASEAN Summit, in which he referred to them as "illegal migrants in the Indian Ocean" (Inside Thailand, 2012). This description referred to a humanitarian tragedy occurred in 2008. According to Mathieson (2009), [t]he drama of the Rohingya boat people⁶ revealed two glaring failures of ASEAN: a disinclination to criticize systematic human rights violations against the Rohingya inside Burma, and ASEAN's reluctance to address the resulting decades-long exodus" (Mathieson 2009).

⁵"Constructive engagement" is an Asian alternative to the "comprehensive engagement" concept coined by the Australian foreign minister, Gareth Evans, in the mid-1980s.

⁶ In 2008 a small boat carried big numbers of Muslim Rohingya pushed back by Thai authority after landed in Andaman Island in Indian Ocean but then towed back by Indian police. This drama attracted international attention and stemmed as humanitarian tragedy.

In its 4th summit in February 2009 in Thailand, ASEAN put the Rohingyas as human trafficking under the Bali Process, a regional forum on human trafficking and related issues. ASEAN's non-intervention principle is much more important than human rights, that does not solve the problem. To make things complicated, together with Bangladesh, despite ASEAN's new human rights commission, its member: Thailand, Malaysia and Burma have not ratified the UN Refugee Convention nor enacted domestic refugee legislation. The non-signatory does not oblige the principle stipulates that refugees cannot be sent back to their home country if it is clear that they face persecution.

The absence of ASEAN in making any action in this problem is a case of the impotency of this regional organization, particularly its newly formed Human Right Commission. This body would only served proforma, since this institution cannot sanction offenders or protect victims. Furthermore, there are some member countries where human rights values are not in the agenda as long as those countries are communist oriented.

Although ASEAN aware about the plight of Rohingya for more than 20 years, the issue has never been placed on the formal agenda and there was little serious discussion of multilateral initiatives, and hence no solution was found. ASEAN leaders have admitted that a regional solution is necessary to address the annual exodus of Rohingya. However, ASEAN have not reached the consensus about the status of Rohingya. To make things complicated, the Bali Process for People Smuggling, Trafficking in Persons, and Related Transnational Crime implicitly categorize them as 'criminals'. Reflecting the decision made during the meeting, ASEAN has not yet agreed to define the Rohingya whether as economic migrants, asylum seekers or refugees. The proper call for them is pivotal for ASEAN adopting a lasting policy response that will solve the issue. Rohingya cannot be simply treated as human smuggling as many of them are asylum seekers and refugees. In this context, it is a necessity that ASEAN needs a comprehensive refugee protection among member states receiving Rohingyas, and the root causes of the exodus.

ASEAN's ignorance against the plight of Rohingya generates fears that their alienation and desperation could lead the Rohingya becoming militant and turn them into fundamentalists. This fear particularly spread among Bangladeshi government and community who fear that devastating people who lives in the camps are fertile source of new recruits. Arakan Rohingya Nationalist Organization (ARNO) and Rohingya Solidarity Organisation (RSO) were among the groups who were trained in Afghanistan camps and were and are active in Myanmar and Bangladesh (Gomes, nd). However, the link between Rohingya and the Al Qaeda have been denied by Nurul Islam, president of the Arakan Rohingya National Organisation, that "These are pure fabrications to discredit us". Furthermore, Asia Pacific Media Services Limited claims that "There is little doubt that extremist groups have taken advantage of the disenfranchised Rohingyas, including recruiting them as cannon fodder for Al-Qaeda in Afghanistan" (Asia Pacific Media Services Limited

http://www.asiapacificms.com/articles/bangladesh_extremism/). Ahmed (n.d, 2011) reiterates that,

protracted statelessness and refugeehood can...ending up in militancy be used to muster support against the hapless Rohingyas internationally in the name of countering 'terrorism' and 'Islamic militancy,' as it is now being done by the military government of Myanmar.

During the 2008 boat people drama, among ASEAN leaders, including Indonesia's President Susilo Bambang Yudhoyono, Thai Prime Minister Abhisit Vejjajiva, and Former Malaysian Prime Minister Abdullah Ahmad Badawi agreed that the Rohingya boat people should be addressed at the meeting, and a regional solution to stem the flow should be found (Mathieson 2009). However, action to materialize something that have been said is not as easy as it seems.

ASEAN's efforts to influence the ruling party for a more democratic stance seem to be fruitful yet slowly. Over the recent years, Burma's political landscape has seen a number of developments. Among them are the decision by the National League for Democracy (NLD) to re-register as a political party, a degree of press liberalization, unblocked a number of news websites, publish photographs of and reports about Aung San Suu Kyi, provide internet and had made email services such as Gmail, Yahoo and Hotmail accessible though limited in a number of users and tight control by the ruling regime (Price 2011, 5). This significant progress is expecting to be a conducive development for human rights issues including the plight of Muslim Rohingyas.

However, the impotency of ASEAN to deal with the problem of Rohingya refugees has been attributed to some key factors that have been faced by the refugee problems. Betts (2011) explores two main hypothesis to make arguments about failures of global cooperation to deal with refugee issues. First, there has not been substantive linkages between refugee protection in issue-areas in which Northern states have had interest. Furthermore, there have been assumption that UNHCR has not played important roles "in creating, changing, and communicating substantive linkages". Dominant literature within Refugee Studies undermine the important asymmetry inherent in North-South power. There is an absence of burden-sharing between North-South in deal with the problems whereas the majority of refugees are hosted in the South, caused the refugee problems are not properly handled. Additionally, different interests between North and South are one of the foremost reasons for delaying the problems appropriately.⁷ In case of the absence of ASEAN, it is notable

⁷ More details on the North-South collaboration in the refugee regime, see Alexander Betts and Gil Loescher, International Cooperation in the Refugee Regime. In Betts, Alexander and Loescher, Gil (eds.). *Refugees in International Relations*. Oxford, Oxford University Press, 2011.

that diplomatic practice within this regional cooperation is supplementary to the reasons has been stated by many scholars. The ASEAN Human Right body, thus, will be mainly a pay of lip service unless the association eager to call for Burma to be more democratic and 'humanly' to the people of Rohingya.

Conclusion

As a regional organization moving toward its maturity, ASEAN has faced many non-traditional problems that can be said as a test to its existence. In 2009, ASEAN has given institutional recognition to human rights, at its 15th summit held in Thailand in 2009, the ASEAN inaugurated the ASEAN Intergovernmental Human Rights Commission. Meanwhile, human right abuses in Burma continuously undergone that led the Rohingya made their way to neighbouring states for more than a decade now. ASEAN, however, has not come up with any solutions on the plight of the people of Rohingya who have been denied citizenship since 1982 by the military junta of Burma. To make it worse, ASEAN passed on the Rohingya issue to the Bali Process for People Smuggling, Trafficking in Persons and Related Transnational Crime, a multilateral mechanism created in 2002 by Australia and Indonesia for increased cooperation between regional governments and law enforcement agencies on human trafficking and smuggling. In a diplomatic level, the Rohingya issue has not been placed on the formal agenda of ASEAN for more than 20 years that makes no solution to the problem. Many underlying reasons why ASEAN facing difficulty in handling the Rohingya issue. On substance, non-interference principle remains the core of diplomatic practice within ASEAN. This principle is a constraint to tip off deeply on human rights abuse carry out by the member of the association. ASEAN makes a little effort to speak overtly about the issue and hence, ASEAN lack attempt to find a solution in wider international assistance. ASEAN's slow respond will only put Rohingya people to a desperate protracted refugee situation and become one of the most destitute ethnic group in Southeast Asia. ¹

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- 1 Baiq LSW Wardhani, 'Assessing the Probability of Indonesia's Involvement in Conflict Resolution in Southern Thailand'.