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RESPONSIBILITY TO PROTECT FROM 'INAPPROPRIATE ACTION' TO 'APPROPRIATE INACTION': A REFLECTION ON THE ROHINGYA CRISIS

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Abstract

La responsabilité de protéger (R2P) a été l'objet de débats et de discussions à différents niveaux. Si la plupart des critiques de R2P trouvent son écarte inacceptable, cet article traite de son utilisation appropriée. Bien que plusieurs enquêtes aient révélé que des éléments d'abus ont été commis contre les Rohingyas justifiant l'application de la R2P, le gouvernement birman et la communauté internationale n'ont guère recouru à celui-ci. Ce document analyse le cas de la crise des Rohingyas et examine pourquoi la R2P n'est arrivée non seulement pour protéger cette minorité ethnique du Myanmar des crimes d'atrocité. Le document d'analyse montre d'abord comment le Myanmar, de manière normative, n'accepte pas la notion de R2P. Deuxièmement, il montre comment l'ASEAN en tant qu'organe régional n'a que rarement une influence sur la R2P et finalement pourquoi les acteurs internationaux restent attendus sur cette crise. Cet article soutient que si la R2P ne parvient pas à faire face à la crise des Rohingyas, elle risque de perdre de l'ampleur et n'apportera aucune valeur à la protection humanitaire internationale.

The last few decades have been a depressing history of mass atrocity. Preventing these crimes has always received attention from international community but it has made 'only modest progress' in stopping these atrocities.¹ Although mass atrocity troubled human being since a long time, it is the genocide in Rwanda, which forced the international community to have a global consensus of developing

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¹ *When Duty Calls: International Security*, 37(1), 41. http://dx.doi.org/10.1162/ISSC_a_00088

some arrangements to stop atrocity crimes. The Responsibility to Protect (R2P) is one of these arrangements. It aims to create a normative obligation for states and international community to protect people from atrocity crimes.

Immediately after the unanimous adoption of R2P at the United Nations, this doctrine has been subject to debates and discussions in both national and international levels. It has been criticised mainly for its inappropriate interventions, very recently in Libya when on the other hand, it has also been scolded for its inaction in Syria. However, some global leaders and scholars see it as an important international mechanism for ending mass atrocity. R2P, it has been argued, has created a habit for the Security Council for protecting humans from atrocity crimes.² Others, on the other hand, see it as a tool for new interventionism where weak states are posed with a threat of invasion by the stronger ones.³ From 2006 to 2011, Bellamy finds, out of the ten deadliest cases of anti-civilian violence, R2P was invoked in relation to seven and the Security Council acted on five cases.⁴

After the controversial R2P implementation in Libya, many people have been anxious about the future of R2P and its acceptance to the wider community. Scholars like David Chandler become very critical of the role of R2P and claims that the attack on Libya was the 'first success for military intervention without responsibility'.⁵ According to him, even the bombing of Syria and Iraq is the conclusion of a process through which the R2P doctrine completely achieved its goal of facilitating military intervention to escape the legal and normative concerns of sovereignty and intervention and therefore, 'R2P is dead'.⁶ This anxiety of Chandler raises grave concerns about the future of R2P and still, there is no visible consensus among international actors on how R2P can be used to stop atrocity crimes in a legitimate way.

² A. J. Bellamy, 'The Responsibility to Protect: Added Value or Hot Air?' *Cooperation & Conflict* 48 (2013): 333–57, doi:10.1177/0010836713482448.

³ A. Hehir, 'The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect', *International Security* 38 (2013): 137–59, doi:10.1162/ISEC_a_00125.

⁴ Bellamy, 'Responsibility to Protect'.

⁵ D. Chandler, 'The R2P Is Dead, Long Live the R2P: The Successful Separation of Military Intervention from the Responsibility to Protect', *International Peacekeeping* 22 (2015): 4, doi:10.1080/13533312.2014.992572.

⁶ *Ibid.*

Inappropriate application of R2P has generated a significant level of debates in both academia and international politics. But on the other side, the failure of international community in applying R2P in Syria raised same question and it is argued that R2P is not applied where it demands application. This context provokes a question: why R2P is not applied to a certain case where it seems an appropriate action and if it cannot act where it should do so, does it lose its relevance and validity in international humanitarian protection. To answer this question, this paper takes the Rohingya crisis in Myanmar as a case. It first, discusses what is R2P and how it envisions to stop atrocity crimes and then it analyses whether R2P is an international norm or not. It then goes on to explain the crimes committed against the Rohingya and finally why R2P cannot protect the Rohingya from these crimes. It argues that not only ‘inappropriate action’ but also ‘appropriate inaction’ damages credibility of a doctrine like R2P. It further notes that when the legitimacy of R2P has widely been questioned at the international and domestic level if the crisis like Rohingya remains unaddressed with R2P after so many pieces of evidences of atrocity crimes against them, the doctrine will face questions regarding its validity and legitimacy more seriously.

What is R2P and how it envisions stopping atrocity crimes?

R2P is often seen as one of the most significant innovations in human rights protection for decades.⁷ It challenged the impunity of states or heads of state for the atrocity crimes they commit towards their citizens. After observing the impact of Rwanda and Kosovo, then Secretary General Kofi Annan urged ‘the member states to come up with a new consensus on the competing visions of national and popular sovereignty’.⁸ In response to this, Canadian Foreign Minister Lloyd Axworthy set The International Commission on Intervention and State Sovereignty (ICISS) introduced the term R2P to the wider audience.⁹ This R2P framework, according to the ICISS report, has three fundamental responsibilities: responsibility to

⁷ K.Ainley, ‘The Responsibility to Protect and the International Criminal Court: Counteracting the Crisis’, *International Affairs*91 (2015): 37–54, doi:10.1111/1468-2346.12185.

⁸ R.Thakur, ‘Outlook: Intervention, Sovereignty and the Responsibility to Protect: Experiences from ICISS’, *Security Dialogue*33 (2002): 325, doi:10.1177/0967010602033003007.

⁹ G.Evans and M.Sahnoun, *The Responsibility to Protect Report of the International Commission on Intervention and State Sovereignty* (Ottawa: International Development Research Centre, 2001).

prevent, responsibility to protect and responsibility to rebuild.¹⁰ R2P 'establishes a normative link between sovereignty and human rights at a time when controversy has clouded the practice of humanitarian intervention'.¹¹

With the adoption of the R2P doctrine, all the UN members accept that each individual state has the primary responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. It sheds light on the responsibilities of the international community through the United Nations, 'to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity'.¹² According to Bellamy 'the principle of R2P rests on three equally weighted and non-sequential pillars: (1) the primary responsibility of states to protect their own populations from the four crimes of genocide, war crimes, ethnic cleansing, and crimes against humanity, as well as from their incitement; (2) the international community's responsibility to assist a state to fulfil its R2P; and (3) the international community's responsibility to take timely and decisive action, in accordance with the UN Charter, in cases where the state has manifestly failed to protect its population from one or more of the four crimes'.¹³ Put another way, R2P 'acknowledges that responsibility rests primarily with the state concerned; only if the state is unable or unwilling to fulfil this responsibility, or is itself the perpetrator, does it become the responsibility of others to act in its place'.¹⁴

The ICISS report was presented and unanimously approved in the United Nations World Summit 2005. Since then, states, non-governmental organizations, and the international media have advocated for international action by invoking R2P in response in various crises including Darfur, Kenya, Burma, Sri Lanka, Cote d'Ivoire, and recently, Libya and

¹⁰ H.Peltonen, 'Sovereignty as Responsibility, Responsibility to Protect and International Order: On Responsibility, Communal Crime Prevention and International Law', *Uluslararası İlişkiler-International Relations* 7 (2011): 59–81.

¹¹ S.Africa, and R.Pretorius, 'South Africa, the African Union and the Responsibility to Protect: The Case of Libya', *African Human Rights Law Journal* 12 (2012): 398.

¹² A/RES/60/1: Resolution adopted by the General Assembly 2005 World Summit Outcome (Geneva: United Nations General Assembly, 2005), 30.

¹³ Bellamy, 'The Responsibility to Protect-Five Years On', *Ethics & International Affairs* 24 (2010): 143, doi:10.1111/j.1747-7093.2010.00254.x.

¹⁴ Thakur, 'Outlook', 328.

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Syria.¹⁵ But a body of evidence suggests that political leaders and humanitarian activists have strategically used the language of R2P to persuade others to undertake certain actions.¹⁶ Some advocates invoked R2P to mobilise political will to intervene in Darfur,¹⁷ in Myanmar, it was invoked for delivering humanitarian aid, in Kenya for pursuing the stepping back of the political leaders,¹⁸ in North Korea to urge the international community to undertake tougher action against Pyongyang.¹⁹ From 2006 to 2013, R2P has been invoked for 35 times in relation to human rights violation by states, UN offices, and NGOs.²⁰ However, the recent status of R2P is quite static and after more than a decade, ‘R2P’s potential for preventing conflict and rights violations remains limited and oft-ignored’.²¹

At a normative level, the R2P is a set of human rights standards transformed into international law under mandated within the United Nations General Assembly (UNGA) aimed at preventing acts of genocide against ethnic, religious, or linguistic minority groups within any country in which these crimes may be committed. 2005 ushered in the commitment of all UN member-states to sign onto the Outcome Document of the 2005 United Nations World Summit suggesting that ‘a state carries the primary responsibility for protecting populations from genocide, war crimes, crimes against humanity and ethnic cleansing, and their incitement’ that the world at large ‘has a responsibility to encourage and assist States in fulfilling this responsibility’ and finally the international community also ‘has a responsibility to use appropriate diplomatic, humanitarian and other means to protect populations from these crimes’.²² Most

¹⁵ Glanville, L. (2012). The responsibility to protect beyond borders. *Human Rights Law Review*, ngr047.

¹⁶ Bellamy, ‘Responsibility to Protect’.

¹⁷ C. G.Badescu and L.Bergholm, ‘The Responsibility to Protect and the Conflict in Darfur: The Big Let-Down’, *Security Dialogue*40 (2009): 287–309, doi:10.1177/0967010609336198; Bellamy, ‘Responsibility to Protect’; L.Feinstein, *Darfur and Beyond: What Is Needed to Prevent Mass Atrocities*, CSR No. 22 (New York: Council on Foreign Relations, 2007).

¹⁸ Bellamy, ‘Responsibility to Protect’; S. K.Sharma, ‘The 2007–8 Post-Election Crisis in Kenya: A Case of Escalation Prevention’, in *Responsibility to Prevent: Overcoming the Challenges of Atrocity Prevention*, ed. S. K. Sharma and J. M. Welsh (Oxford: Oxford University Press, 2015), 280-303.

¹⁹ Bellamy, ‘Responsibility to Protect’.

²⁰ *Ibid.*

²¹ L. N.Kingston, ‘Protecting the World’s Most Persecuted: The Responsibility to Protect and Burma’s Rohingya Minority’, *International Journal of Human Rights*19 (2015): 1164, doi:10.1080/13642987.2015.1082831.

²² A/RES/60/1, 30.

importantly, 'if a state is manifestly failing to protect its populations, the international community must be prepared to take collective action to protect populations'.²³ Referred to as the three pillars of R2P, these principles and norms have generated much controversy since their inception and the uses of R2P in international humanitarian intervention, particularly the most famous example of its use in Libya in 2011.

On a similarly broader level, the supranational institutionalization of humanitarian intervention embedded within UN treaties entails that if the state fails to live up to its responsibility to protect its citizens from the infringement on their basic human rights, the international community has a responsibility to intervene and protect them in the state's place mandating some sort of action to protect vulnerable people. Nonetheless, this is not necessarily a call for what the 2009 Report of the General Secretary refers to as 'a false choice between two extremes' being the either standing by in the face of mounting civilian deaths or deploying coercive military force to protect the vulnerable and threatened populations.²⁴ Other options do exist such as buffering state institutions and capacity building embedded within the second pillar. Unfortunately, as the same report admits, 'if the political leadership of the State is determined to commit crimes and violations relating to the responsibility to protect, then assistance measures under pillar two would be of little use'.²⁵ This brings us to the third pillar. What does R2P offer as protections for vulnerable groups against human rights violating states and sub-national groups short of military intervention after crimes are being committed or during the process in which these crimes are being carried out?

After the downfall of humanitarian intervention due to the vehement criticism by many, R2P evolved with a very promising note of stopping atrocity crimes and prevent the humanitarian crisis. It offered a framework for the legitimate actor to act upon but at the same time, it created an opportunity for the states and state heads to understand their responsibility to protect their citizens from atrocity crimes. Further, it also created a legitimate stake for the international community to support and intervene, at the last resort, in individual state's territory to avoid massive humanitarian crisis. But to what extent, R2P has met that expectation is an unanswered question.

²³ Ibid.

²⁴ A/RES/63/677: Implementing the Responsibility to Protect (Geneva: United Nations General Assembly, 2009), 6.

²⁵ Ibid., 15.

R2P as a structural international norm

In international relations theory, norms are considered one of the fundamental bedrocks of the ways in which states interact with one another. Defined as ‘a standard of appropriate behaviour for actors with a given identity’, norms are forged through a lengthy process before they can shape the terms of conduct in the international community.²⁶ They are developed through shared history, social construction, culture, institutions, and sometimes they have developed arbitrarily. However, the norm of accepting fundamental human rights was embedded within the post-World War II global order under the leadership of the UN and articulated through the Universal Declaration of Human Rights. These norms, buttressed by international law, were accepted by all 48 signatory nations including major powers such as the United States, China, Great Britain, France, and even minor nation-states such as Myanmar then known as Burma.

Finnemore and Sikkink distinguish three stages in this cycle: norm emergence, norm cascade, and norm internalisation.²⁷ At the emergence level, the norm entrepreneurs introduce and spread the concept to mobilise a critical mass of countries to endorse it.²⁸ When the norm is endorsed, it leads to a norm cascade stage where countries try to spread it to the remaining countries. Norm cascading happens after it is institutionalised or goes through the procedures of international organisations. At the final stage, it gains a status when no one challenges its validity and compliance become automatic.²⁹

The extent to which R2P has been a norm has been the subject of various debates. Part of this relates to the differences in interpretation of norms. Different levels of understanding and interpretation among the concerned states and regional bodies underpin evolution of a norm. While it can be argued that the norm of R2P has emerged and cascaded in the United Nations, it remains contentious whether such norms have been practiced on the level of compliance. Bellamy claims that after ten years of its adoption in the General Assembly, R2P has become ‘an established

²⁶ M.Finnemore and K.Sikkink, ‘International Organization Foundation International Norm Dynamics and Political Change’, *International Organization* 52 (1998): 891.

²⁷ *Ibid.*, 887-917.

²⁸ *Ibid.*; N.Shawki, ‘Responsibility to Protect: The Evolution of an International Norm’, *Global Responsibility to Protect* 3 (2011): 172-196, doi:10.1163/187598411X575676.

²⁹ Finnemore and Sikkink, ‘International Organization’; Shawki, ‘Responsibility to Protect’.

international norm'.³⁰ With few exceptions, 'states accept that they have committed to R2P and agree to the principle's core elements'.³¹ Even the states who initially raised some concerns with this principle are now the supporters of it and they acknowledge the necessity of R2P in preventing mass atrocities.³²

On the other hand, Jason Ralph and James Souter, however, have taken a more modest assessment of R2P, suggesting that R2P is a normative inspiration, but not yet an international norm.³³ 'Norm building,' as Cristina Badescu suggests, 'requires a number of successful cases'.³⁴ It is evident that R2P has not been able to have several successful cases rather it has been criticised significantly for its failure and therefore, it may seem unfair to label it as an international norm. Lack of confidence on R2P has inspired some states to come with the notion of Responsibility while Protecting. Moreover, R2P falls short in Keck and Sikkink's final stage of compliance as the compliance to R2P has not been automatic rather the world is significantly divided on not only on applicability but also on the legitimacy of the concept. Further, it can be argued that even before the adoption of R2P, states and their citizens enter into a social contract where states are automatically obliged to protect their citizens and this sense of responsibility is inbuilt in the states' behaviour. There is rarely any evidence that R2P has influenced this behaviour of states to be more conscious of protecting their population.

Crime against the Rohingya

The Rohingya constitute an ethnic, linguistic, and religious minority and have been subject to a long history of systematized persecution and destruction in Myanmar.³⁵ They constitute 1 percent of the total

³⁰ Bellamy, 'The Responsibility to Protect Turns Ten', *Ethics & International Affairs* 29 (2015): 161, doi:10.1017/s0892679415000052.

³¹ Ibid.

³² Ibid., 161-85.

³³ Ralph & Souter, 'Is R2P a Fully-Fledged International Norm?' 3(4), (2015):68-71. <http://doi.org/10.17645/pag.v3i4.319>

³⁴ Badescu, & Weiss, 'Misrepresenting R2P and advancing norms: an alternative spiral?' *International Studies Perspectives*, 11(4), (2010): 354-374: 355.

³⁵ S.Cheung, 'Migration Control and the Solutions Impasse in South and Southeast Asia: Implications from the Rohingya Experience', *Journal of Refugee Studies*, 25 (2011): 50-70; T. K.Ragland, 'Burma's Rohingyas in Crisis: Protection on Humanitarian Refugees Under International Law', *Boston College Third World Law Journal* 14 (1994): 301-36.

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population, and 4 percent of the Arakan state population of Myanmar.³⁶ Nonetheless, some townships in the Northern Rakhine consist of 98 percent Rohingya peoples.³⁷ They have been pushed by the wayside in the game of colonial and post-colonial politics and are stateless because of the history over which they have been victimized.³⁸ However, the word ‘Rohingya’ is an ethno-religious term which means Muslim people whose ancestral home is in Arakan, Myanmar.³⁹

However, on the other hand, the pro-nationalist Buddhist narratives claim that the Rohingya are basically illegal migrants from Bengal (now Bangladesh). The belief that Myanmar is only a place for Buddhists is ahistorical and ignores the historical demographics of the territory in which Myanmar now encompasses.⁴⁰ Under the 1974 Emergency Immigration Act, the Rohingya became non-citizens of Myanmar. Finally, the Citizen Act of 1982 recognises 135 ethnic groups in Myanmar as citizens and denies the Rohingya recognition.⁴¹

Evidence suggests that over the past few decades local and national groups within Myanmar have intentionally formulated, pursued, and executed national and state-level plans aimed at destroying the Rohingya people.⁴² Atrocities committed against them include various acts of violence including widespread socio-economic discrimination, destruction of property, systematic rape, and murder. Patterson notes in a report that there is no doubt that the plight of the Rohingya ranks among the very worst humanitarian situations today and without appropriate action, Rakhine State may come to be listed alongside Kosovo or Darfur.⁴³ Zarni and Cowley also claim that the violence against Rohingya

³⁶ A. Habibollahi, H. McLean, and Y. Diker, *Crimes Against Humanity: The Case of the Rohingya People in Burma* (Ottawa: Norman Peterson School of International Affairs, Carleton University, 2013).

³⁷ J. P. Leider, ‘Rohingya: The Name, the Movement, the Quest for Identity’, *Nation Building in Myanmar* (2014): 204-55.

³⁸ E. Pittaway, ‘The Rohingya Refugees in Bangladesh: A Failure of the International Protection Regime’, in *Protracted Displacement in Asia: No Place to Call Home*, ed. H. Adelman (London: Routledge, 2008), 83–106.

³⁹ M. W. Charney, *Buddhism in Arakan: Theories and Historiography of the Religious Basis of Ethnonyms* (2005).

⁴⁰ M. Zarni and A. Cowley, ‘The Slow-Burning Genocide of Myanmar’s Rohingya’, *Pacific Rim Law & Policy Journal* 23 (2014): 683.

⁴¹ Cheung, ‘Migration Control’; Zarni and Cowley, ‘Slow-Burning Genocide’.

⁴² Zarni and Cowley, ‘Slow-Burning Genocide’.

⁴³ J. Patterson, ‘Harrowing UN Report on Rohingya Should Move the World to Action,’ *Diplomat*, February 9, 2017, <http://thediplomat.com/2017/02/harrowing-un-report-on-rohingya-should-move-the-world-to->

people is state sponsored and legalized in Myanmar.⁴⁴ They argue that the Rohingya people in Myanmar are the victim of a slow burning genocide which is jointly carried out by the state itself and the nationalist Buddhists. While the applicability of the term 'genocide' continues to undergo debate, many scholars argue that the situation in Myanmar by definition can be called as genocide, ethnic cleansing, and also a crime against humanity as per the international law.⁴⁵ Even, depriving a minority of its identity represent a step towards genocide.⁴⁶ Zawacki notes that among the eleven acts listed in the Rome Statute, nine are somehow relevant to the situation with the Rohingya.⁴⁷ There is little doubt about ethnic cleansing and crimes against humanity⁴⁸ against the Rohingya (specifically in 2012 and 2016, but is also ongoing) carried out by local mobs and sometimes with the help of the state apparatus according to a report conducted by Human Rights Watch.⁴⁹ Additionally, a 2015 report conducted by a group from Yale Law School in conjunction with the NGO Fortify Rights found 'strong evidence of intent to destroy the Rohingya group' by local extremist Buddhist groups.⁵⁰ Despite the acknowledging of the crimes committed against the Rohingya, so far, 'the international community has been unwilling and unable to offer an effective solution to their predicament'.⁵¹ Strong evidence of targeted violence against the Rohingya minority has been significantly documented over the past years begs the question, why has the UN failed to intervene through an R2P mechanism in any major capacity to protect these people from systematic discrimination, rape, and murder?

The newly elected government led by the National League for Democracy (NLD) does not even acknowledge the term 'Rohingya' as an ethnic minority depriving them of rights like social welfare other ethnic minorities receive from the state. Recent crises and the extremism

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⁴⁴ Zarni and Cowley, 'Slow-Burning Genocide'.

⁴⁵ B. Zawacki, 'Defining Myanmar's Rohingya Problem', Human Rights Brief 20 (2012): 18.

⁴⁶ Anstey, Zartman, & Meerts, 'The Slippery Slope to Genocide: Reducing Identity Conflicts and Preventing Mass Murder'. OUP USA. (2012): 286.

⁴⁷ Zawacki, 'Defining'.

⁴⁸ Genser & Cotler, 'The responsibility to protect'. Oxford University Press, (2012).

⁴⁹ Human Rights Watch, 'Burma: End "Ethnic Cleansing" of Rohingya Muslims', (2015) <https://www.hrw.org/news/2013/04/22/burma-end-ethnic-cleansing-rohingya-muslims> (accessed January 2, 2017).

⁵⁰ 'Rescue of the Rohingya Muslims: Is genocide occurring in Myanmar's Rakhine state' (2015): 55.

<https://www.law.yale.edu/system/files/documents/pdf/Clinics/fortifyrights.pdf>

⁵¹ Pittaway, 'Rohingya Refugees', 83.

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propagated by some extremist Buddhist monks, most notably Ashin Wirathu, has exacerbated the problem adding a religious element to the ethnic conflict. Furthermore, other internal political dynamics are at play regarding the reasoning behind why no major actions at the international level have been implemented despite the international community's knowledge of crimes against humanity being committed against the Rohingya minority. From the humanitarian ground, their statelessness and lack of recognition have made it very difficult to address their status and plight as refugees.⁵² And thus, the Rohingya crisis remains unaddressed both domestically and internationally.

R2P for protecting Rohingya from atrocity crimes

Several investigations and analyses have clearly signposted various human right violations of the Rohingya by the hands of the state and local groups for several decades but ‘this case has not yet been actively considered under the auspices of R2P’.⁵³ Kingston finds the understanding of R2P as equivalent to military intervention as one of the major challenges for implementing R2P in Myanmar but it appears to be far more complex than that.⁵⁴ Internally within Myanmar and externally within the Security Council, the R2P doctrine has yet to be considered despite the crimes against humanity and potential genocidal acts committed against the Rohingya community.⁵⁵ These pieces of evidence offer a ground for discussing the applicability of R2P in protecting the Rohingya. The first resort of R2P is to make the state responsible for protecting its populations from four major crimes i.e. genocide, ethnic cleansing, crimes against humanity and war crimes. Afterward, R2P involves regional bodies or international community if that state cannot protect or is not willing to protect its populations from these crimes. Therefore, this case analysis of Rohingya first engages the Burmese government, it then goes to the regional body ASEAN and neighbouring countries and finally to the international community or eventually the UNSC.

Myanmar, as a state, is not properly oriented or prepared for R2P to be implemented internally. When it is true that the country is going through a transition and reconciliation among the ethnic groups, an ego-centric and nationalistic view of the common Buddhist people observe the Rohingya

⁵² Cheung, ‘Migration Control’; Pittaway, ‘Rohingya Refugees’.

⁵³ Kingston, ‘Protecting’, 1169.

⁵⁴ *Ibid.*, 1163-75.

⁵⁵ Genser and Cotler (2012).

as a threat of Muslim invasion. With the gradual fall of the military junta and rise of the pro-democratic opposition party, the NLD, many observers such as human rights advocates were very hopeful—the new government would be much more accommodating or helpful to the plight of the Rohingya minority.⁵⁶ However, the NLD's de facto leader, Aung San Suu Kyi, has been widely criticized for the way in which she has not greatly stepped up efforts to prevent the continued persecution of the minority group.⁵⁷

There are different opinions on why Suu Kyi is keeping silent on the issue. There is little doubt that she does not gain at all politically in a majority Buddhist country to speak up for a comparatively small minority group.⁵⁸ Electorally, the NLD would face consequences down the road in future elections if Aung San Suu Kyi was too vocal of coming out against violence being committed by Buddhists against these Muslim minorities.⁵⁹ The NLD would likely lose popularity among the majority Buddhist population for sticking up for this small group.⁶⁰ Even after the election, she is less interested to displease the majority Buddhists of this country. Moreover, the military is still very powerful in the parliament and therefore retains the capacity to influence NLD policy significantly. Despite this or perhaps with these considerations in mind, her silence is quite a stain on her reputation as a champion of human rights. Her political calculations are, from a human rights perspective, highly disappointing considering her rise in Myanmar politics as a proponent for the universal dignity of all human beings.

The rise of egoistic Buddhist nationalism promoted by Ma Ba Tha has added another dimension to this crisis. This group could successfully mobilise mass people by infusing a fear of invasion by the others. The recent visit of Kofi Annan to Myanmar was protested by some people as

⁵⁶ S. Prager-Nyein, 'Aung San Suu Kyi Between Biographical Myth and Hard Realities', *Journal of Contemporary Asia* 43 (2013): 546–54, doi:10.1080/00472336.2013.771942.

⁵⁷ R. H. Taylor, 'The Lady and the Peacock: The Life of Aung San Suu Kyi & Aung San Suu Kyi and Burma's Struggle for Democracy', *Asian Affairs* 43 (2012): 510–2, doi:10.1080/03068374.2012.720781.

⁵⁸ N. Kipgen, 'Conflict in Rakhine State in Myanmar: Rohingya Muslims' Conundrum', *Journal of Muslim Minority Affairs* 33 (2013): 298–310, doi:10.1080/13602004.2013.810117.

⁵⁹ A. Fagan, 'The Rohingya, Genocide and a New Dawn for Myanmar' (2015).

⁶⁰ R. Lee, 'A Politician, Not an Icon: Aung San Suu Kyi's Silence on Myanmar's Muslim Rohingya', *Islam & Christian–Muslim Relations* 25 (2014): 321–33, doi:10.1080/09596410.2014.913850.

they thought that was a threat to their sovereignty and it was foreign intervention to the country. By the name of protecting the race and religion from the perceived threat, Ma Ba Tha is instigating violence against the non-Buddhists especially Muslims. Not only in the Buddhist society, but also in the Burmese politics, monks play a crucial role and they 'have been considered the champions of not only moral order but also political affairs'.⁶¹ The influence of Ma Ba Tha is perceived looking their successful lobby for the passing of four laws popularly known as race and religion laws.⁶² Ma Ba Tha is thought to be an ally of the past military government and Ma Ba Tha leader Wirathu directly went against NLD during the election. Critics thought that after the election, this group would be weakened. But except some criticism towards the hate speech of Wirathu, NLD government has done hardly anything significant to control or restrict them.

Therefore, domestically there is rarely any congenial environment which can indicate Burmese government's willingness to act upon the issue with the principle of R2P. Further, the denial of the term 'Rohingya' by Suu Kyi and many others in Myanmar has made the situation more critical. When the Burmese government disowns the Rohingya, protecting these people from atrocity crimes becomes irrelevant. Aung San also recognizes how coming out too greatly in favour of communal plurality would bruise her electorally and could put the NLD in a difficult position in upcoming elections. Such are the problems of democratic societies; democracies are often quite fragile to xenophobia combined with religious nationalism as can be seen throughout Europe and the United States in recent elections. Further, the Burmese government has denied access to the journalists, humanitarian workers and even humanitarian aid to the affected Rohingya. These movements of Burmese government epitomise the absence of the core notions of R2P in Myanmar or within the government.

At the regional level, the Association of Southwest Asian Nations (ASEAN) is also not an appropriate platform which can invoke R2P. Although R2P has not been invoked in Southeast Asia, this region has been subject to wider discussion in regards to this doctrine because of the uniqueness of the regional body here. State sovereignty and non-interference are the

⁶¹ T. Than, 'Nationalism, Religion, and Violence: Old and New Wunthanu Movements in Myanmar', *Review of Faith & International Affairs* 13 (2015): 16, doi:10.1080/15570274.2015.1104974.

⁶² T. M. M. Than, 'Myanmar's General Election 2015: Change Was the Name of the Game', *Southeast Asian Affairs* 2016 (2016): 241-64.

strong norms preached within ASEAN mandates, the complexities of which R2P curtails to protect vulnerable minority groups subject to violent persecution like the Rohingya minority groups. It is argued that to gain traction in Southeast Asia, R2P needs to be compatible with regional norms,⁶³ but it is not likely to happen considering the incompatibility between ASEAN's strict adherence to state sovereignty. Bellamy and Drummond argue that ASEAN governments are trying to accommodate both ASEAN and R2P norms in their practices but localisation of this global norm is crucial.⁶⁴ The region is not prepared for the internalisation of R2P which, according to them, need to be "reconciled with the principle of non-interference and applied in a manner consistent with it".⁶⁵

This issue is further taken by David Capie who takes a closer look at the Southeast Asian region to see how this global principle is being localised in this regional level.⁶⁶ He explains that for two reasons R2P as a norm has not been localised here: the local actors are not driving R2P to make it institutionalised; rather it is the outsider agents who are the advocates and many states see R2P as a threat to their sovereignty and regime and that is why they are not willing to internalise the entire concept. Some of the states are only interested in dealing with the segments of R2P which are less threatening to their national interests and some of them view it as a threat to their sovereignty.⁶⁷ The author also notes that unlike Africa or Latin America, none of the Southeast Asian Countries are willing or have decided to put R2P at the centre of their foreign policy. Kraft examined the ASEAN Inter-Governmental Commission on Human Rights (AICHR) and found that the principle of AICHR is in contradiction with the notion of R2P.⁶⁸ The Terms of Reference (TOR) of AICHR specifies the adherence of it to the principle of sovereignty, non-interference, consultation and consensus. It also focusses on human rights promotion rather than human

⁶³ A. J. Bellamy and M. Beeson, 'The Responsibility to Protect in Southeast Asia: Can ASEAN Reconcile Humanitarianism and Sovereignty?', *Asian Security*6 (2010): 262–79, doi:10.1080/14799855.2010.507414.

⁶⁴ A. J. Bellamy and C. Drummond, 'The Responsibility to Protect in Southeast Asia: Between Non-Interference and Sovereignty as Responsibility', *Pacific Review*24 (2011): 179–200, doi:10.1080/09512748.2011.560958

⁶⁵ Bellamy and Beeson, 'Responsibility to Protect', 275.

⁶⁶ D. Capie, 'The Responsibility to Protect Norm in Southeast Asia: Framing, Resistance and the Localization Myth', *Pacific Review*25 (2012): 75–93, doi:10.1080/09512748.2011.632967.

⁶⁷ *Ibid.*

⁶⁸ H. Kraft, 'R to P by Increments: The AICHR and Localizing the Responsibility to Protect in Southeast Asia', *Pacific Review*25 (2012): 27–49, doi:10.1080/09512748.2011.632963.

rights protection.⁶⁹ Similar scepticism has also been expressed by Caballero-Anthony.⁷⁰

While Malaysia and Indonesia, majority Muslim countries, have cried out against what they fear may be ethnic cleansing, other non-Muslim majority countries within ASEAN have not signalled nearly as much concern.⁷¹ Like many collective problems within international organizations, all parties seem to be interested in the Rohingya crisis being fixed, but the countries have a different level of understanding of both the crisis and the doctrine. This has caused discussion on a policy path forward within ASEAN to have virtually come to a standstill, but also because there is very little political will within Myanmar itself to alleviate human rights violations in their own country. Even sending international aid within proper permission when it is greatly needed such as after the disaster of the 2008 Cyclone Nargis which killed more than 100,000 people in Myanmar alone would be considered ‘humanitarian intervention’, a term that is now all but negative whenever it is used (*Ibid.*, para. 1). Because ASEAN struggles to negotiate for humanitarian relief for natural disasters in Myanmar, it appears nearly impossible to implement R2P at even a regional level.

The position of R2P at international level is yet not very stable and it has got both legal and practical criticisms from different scholars and politicians. From the international law standpoint, R2P does not have a legislative status, it is not even equivalent to an international treaty,⁷² it does not have the status of legally binding norm.⁷³ In practical terms, as some critiques claim, R2P can create an easily abused framework for Western intervention under the veil of humanitarian intervention which can advance ‘moral principles’ but not ‘selfish interest’.⁷⁴ David Chandler and Mohammed Ayooob warns about deleterious impact of R2P.⁷⁵ Hehir

⁶⁹ *Ibid.*

⁷⁰ Caballero-Anthony, ‘The Responsibility to Protect in Southeast Asia: opening up spaces for advancing human security’ *Pacific Review*, 25(1) (2012): 113–134. <http://doi.org/10.1080/09512748.2011.632971>

⁷¹ T. Chalermpananupap, ‘Myanmar’s Rohingya Crisis Is ASEAN’s Responsibility’, *Diplomat*, December 8, 2016, <http://thediplomat.com/2016/12/myanmars-rohingya-crisis-is-aseans-responsibility/> (accessed January 9, 2017).

⁷² M. W. Doyle, ‘International Ethics and the Responsibility to Protect’, *International Studies Review* 13 (2011): 72–84, doi:10.1111/j.1468-2486.2010.00999.x.

⁷³ Africa and Pretorius, ‘South Africa’.

⁷⁴ Pape, 45.

⁷⁵ Chandler, ‘R2P Is Dead’; M. Ayooob, ‘Humanitarian Intervention and State Sovereignty’, *International Journal of Human Rights* 6 (2002): 81–102, doi:10.1080/714003751.

argues that when R2P has quickly 'pervaded political discourse', it lacks substance and is little more than 'slogan'.⁷⁶ Since the nineties, humanitarian issues have played a historically unprecedented role in international politics and R2P is nothing different.⁷⁷ It is also viewed as 'blank cheque for intervention'.⁷⁸ Due to these legal and practical limitations, R2P has not got appropriate traction both at national and international levels.

Apart from the weakness of R2P itself as an international principle, there are several other issues which stop international community to consider R2P for protecting Rohingya. Bellamy confesses that the action of the Security Council is highly 'influenced by the contextual factors relating to the complexities of the situation at hand, relations between Council members and parties to the situation at hand, the availability of feasible policy options, expectations about the likely costs of various policy options, and the importance attached to the situation relative to other situations at the time'.⁷⁹ The historical analysis implies that R2P cannot be applied to all in an objective way, rather the very criticism of selectivity of R2P lies in it and the geopolitical interest of the Security Council members or big international powers have the scope of defining the course of action in line with R2P. This limitation of R2P has also been noted by Ayoob.⁸⁰ He notes that when people perceive that interventions are undertaken as selective basis and same criteria are not applied uniformly and universally in every case, such intervention loses credibility in the international system. Mamdani calls it an absence of 'rule of law'.⁸¹ Ayoob argues that R2P excludes the possibility to intervene against the veto power holding countries or against their allies.⁸² According to him, because of the power disparity among the states, humanitarian intervention has a strong potential to be the tool of interference of the strong states in the issues of weaker states.

⁷⁶ Hehir, 'Permanence of Inconsistency', 219.

⁷⁷ Roberts, 'NATO's "humanitarian war" over Kosovo'. *Survival*, 41(3), (1999): 102–123. <http://doi.org/10.1093/survival/41.3.102>

⁷⁸ Hehir, 'Permanence of Inconsistency', 223.

⁷⁹ Bellamy, 'Responsibility to Protect', 235.

⁸⁰ Ayoob, 'Humanitarian Intervention'.

⁸¹ M. Mamdani, 'Responsibility to Protect or Right to Punish?', *Journal of Intervention & Statebuilding* (2010): 62, doi:10.1080/17502970903541721.

⁸² Ayoob, 'Humanitarian Intervention'.

Some scholars have pointed out the Rohingya crisis and called for R2P to stop atrocity against them. For example, apart from Kingston,⁸³ Alison McCormick notes it as an ideal case study for the application of R2P.⁸⁴ The writer analysed the historical evidence of ethnic cleansing and atrocity in Myanmar and tried to fit R2P in this context. McCormick notes, ‘it is hard to imagine how forced displacement, burning villages, raping women, and systematically slaughtering thousands of Burmese people is not enough to apply the Responsibility to Protect’.⁸⁵ Jeremy Sarkin and Marek Pietschmann and Katherine Southwick also find a similar situation of massive human rights violation in Myanmar and note that there is a significant ground for humanitarian intervention in Myanmar under the Genocide Convention, United

Nations charter and customary International Law.⁸⁶

From historical perspective, it is assumable that the international communities are more unlikely to agree upon R2P invocation in Myanmar. When the Western powers are very optimistic about the democratic opening up of the country, China and Russia have always supported Burmese government and blocked any initiative from the international community especially from the Security Council. Haacke presents a thorough analysis of Myanmar’s foreign affairs and the influence of other counties in its domestic affairs.⁸⁷ The writer argues that Myanmar has significantly benefited from the development of its relationship with two giant nations China and India. At the UN General Assembly in 1990, Beijing prevented the adoption of first ever draft resolution on the human rights situation in Myanmar. This is how China became the ‘most trusted friend’ of Myanmar. The author finds that Myanmar has also developed defence relationship with Israel, Pakistan, and Singapore and has broadened its arm supply sources to India, North Korea, Serbia and Ukraine.

⁸³ Kingston, ‘Protecting’.

⁸⁴ A. McCormick, ‘From Sovereignty to Responsibility: An Emerging International Norm and Its Call to Action in Burma’, *Indiana Journal of Global Legal Studies* 18 (2011): 563–91, doi:10.2979/indjglolegstu.18.1.563.

⁸⁵ *Ibid.*, 139.

⁸⁶ J. Sarkin and M. Pietschmann, ‘Legitimate Humanitarian Intervention Under International Law in the Context of the Current Human Rights and Humanitarian Crisis in Burma (Myanmar)’, *Hong Kong Law Journal* 33 (2003): 371; K. Southwick, ‘Preventing Mass Atrocities Against the Stateless Rohingya in Myanmar: A Call for Solutions’, *Journal of International Affairs* 68 (2015): 137.

⁸⁷ J. Haacke, *Myanmar’s Foreign Policy: Domestic Influences and International Implications* (London: Routledge, 2006), 191, <http://eprints.lse.ac.uk/24574/>.

However, in the fall of 2015, the crisis finally entered a more mainstream discussion as it entered the minds of the world writ large when mainstream international media outlets, already focused on the refugee crisis in Europe, began paying attention to and reporting on the crisis and issues surrounding Rohingya fleeing Myanmar to neighbouring countries.⁸⁸ It was reported that thousands of Rohingya on overcrowded boats would sail down the Siam Peninsula looking for any place or any country that would take them to Thailand, Malaysia and even as far south as Indonesia.⁸⁹ For the most part, these countries' governments implemented a policy of letting them land on their shores, but they could not stay. While some were given supplies such as food and water, others were simply shooed away being forced to disembark from their shores after only briefly being allowed onto shore, but not being able to enter the countries in which they landed (*Ibid.*).

Yet while the crisis gripped the minority group and communities across Southeast Asia, the UN, with the obligation of the international community to protect vulnerable minority groups, decided not to take a hard line against the recently formed government under the postulation that the country, now under the leadership of a democratic administration, would do something to curtail the violence. Unfortunately for these who thought Suu Kyi would take a further democratic step towards pluralism proved wrong. Suu Kyi fell ominously silent on the topic of violence against the Rohingya and when probed further during a Channel 4 news interview when she suggested the issue of violence against the Rohingya was 'very complex', but then went on to assert that Buddhist extremists were attempting to paint her as sympathetic to the Muslim minority groups.⁹⁰ So, the international community would not like for Myanmar to fall into renewed conflict as had been seen in violent government anti-democratic crackdowns in 1989 or 2007.

⁸⁸ S. N. Parnini, 'The Crisis of the Rohingya as a Muslim Minority in Myanmar and Bilateral Relations with Bangladesh', *Journal of Muslim Minority Affairs* 33 (2013): 281–97, doi:10.1080/13602004.2013.826453.

⁸⁹ T. Fuller and J. Cochrane, 'Rohingya Migrants from Myanmar, Shunned by Malaysia, Are Spotted Adrift in Andaman Sea', *New York Times*, May 14, 2015, https://www.nytimes.com/2015/05/15/world/asia/burmese-rohingya-bangladeshi-migrants-andaman-sea.html?_r=0.

⁹⁰ Aung San Suu Kyi, 'I Have Condemned Rohingya Persecution', Channel 4 News, 2015, <https://www.youtube.com/watch?v=Zh7cleCVJ0Y> (accessed January 9, 2017).

Therefore, when it is true that predominant understanding of R2P as military intervention dismisses its applicability to the case of Rohingya, there are more dimensions which abstain international community from associating R2P for protecting Rohingya in Myanmar. When in a simplistic level, that the international community does not want to disrupt the process of democratization in Myanmar, its strategic alliances with powerful states has also subdued the crisis at international level.

Conclusion

Suu Kyi has taken two significant initiatives: she sat down with many ethnic group representatives at the Panglong Conference in Naypyitaw and invited Kofi Annan Foundation for an independent investigation in Rakhine state. However, these may seem to demonstrate her willingness of reuniting country with all its ethnic division. But unfortunately, none from the Rohingya community was invited to the Panglong Conference and the actions based on Kofi Annan's recommendations will also highly rely on the goodwill of the government. Prior to this commission, Myanmar Foreign Minister WunnaMaungLwin also announced a separate inquiry by three government-appointed groups into the circumstances that led to the violence in Rakhine state but these could not bring a lasting solution to the simmering tensions between the Muslims and Buddhists in Rakhine state.⁹¹ These initiatives partly failed because the government does not have substantive plans to address the core issues of identity and citizenship crisis of the Rohingyas.⁹²

Furthermore, Aung San's electoral issues with the unpopularity of supporting minority rights in the country would put the NLD in a challenging position during the elections. Being supportive of the plurality is an unpopular position in the majority-Buddhist country, a country that also happens to be at the mercy of a particularly unique extreme Buddhist ideology. The UN and major pro-democratic international states recognize these internal political dynamics and would prefer not to take a hard-line stance against a government they see friendly to their pro-democratic values.

⁹¹ N. Kipgen, 'Can Kofi Annan's Commission Solve the Rohingya Conundrum?', *Diplomat*, September 5, 2016, <http://thediplomat.com/2016/09/can-kofi-annans-commission-solve-the-rohingya-conundrum/>.

⁹² *Ibid.*

Furthermore, regional implementation of humanitarianism such as ASEAN leadership on these issues also seems to have fallen short for the Rohingya minority group. While some Muslim-majority countries such as Malaysia and Indonesia have voiced their concerns over the abuses of the Rohingya minority community, it can be concluded ASEAN is of little help to the Rohingya people in a similar manner that the UN is in relation to the implementation of an effective R2P campaign to alleviate the suffering of the Rohingya people.

At the international level, there is not much discussion of protecting the Rohingya from these atrocity crimes with R2P. It appears that Rohingya are victims of atrocity crimes and R2P can be an appropriate tool, as it promises, can stop these. But, because of the internal political issues and the recent democratization of Myanmar, the international community is more concerned with the democratic development and stabilisation in the country. In some way, the democratic transition and NLD empowerment overshadowed the Rohingya crisis. Therefore, protection of the Rohingya from atrocity crimes with R2P norm remains a far cry.

It is because of this that R2P has not been implemented in Myanmar and why this policy, while seemingly created to address exactly these problems, does not address how to protect minority groups subjected to violent discrimination in countries with friendly pro-democratic governments. In fact, this is one of the main criticisms of R2P; the policy has mostly been used as a legitimization for cracking down on unfriendly regimes or regimes in which major Western Powers wish to remove such as in Libya. While many R2P advocates vehemently deny this to be the case, Myanmar proves to be yet another example of why R2P and 'humanitarian intervention' is just another way to articulate 'regime change' against an unfriendly regime.

However, it appears that R2P remains far-reaching from the discussion of protecting the Rohingya either in domestic, regional or international level. R2P has severely been criticised as it was applied for some inappropriate situation and now it is facing challenges for not being able to act in some appropriate case like the Rohingya crisis. The 'inappropriate action' and the 'appropriate inaction' equally damage the doctrine. If R2P is preserved as a weapon to be used against some specific country and context, this important innovation for protecting human being will soon be irrelevant to the discussion of humanitarianism and protection of human being from atrocity crimes.