
The Myanmar-Rohingya Crisis, Civilian Protection, and the Dilemma of the Responsibility to Protect Norm Institutionalization

ABSTRACT Existing studies on the Myanmar-Rohingyan crisis have explored the contending issues from a narrow perspective. This underscores the need for broader engagement by interrogating the veracity of the claims of mass atrocities against the Rohingyans, nonauthorization of the Responsibility to Protect (RtoP), and implications for consolidating and internalizing the RtoP norm. This study argues that, while the acts of genocide, crimes against humanity, war crimes, and ethnic cleansing against the Rohingyans satisfies four of the crimes upon which RtoP can be authorized, its nonauthorization suggests that in spite of its commitment to “Never Again,” the international community is yet to come to terms with issues bordering on mass atrocity and civilian protection. This inaction amidst widespread atrocities against the Rohingyans explains why the RtoP is not only contested, but also risks the chances of further nonutilization and institutionalization. Thus, the possibility that the RtoP would remain valuable depends on how the international criminal court and the global community prosecute those culpable of atrocities against the Rohingyans, adopt a clear rule of establishing when mass atrocity has been perpetuated and demand RtoP intervention, and ensure that these interventions are guided by the principle of *Jus in Bellum* and *Jus ad Bello*. **KEYWORDS** armed conflict, conflict prevention mechanisms, humanitarian intervention, mass atrocity, Refugee and Migration Studies, responsibility to protect, Rohingya

The enthusiasm to protect civilians during armed conflict is one challenge the international community has struggled with since the end of the Cold War. Despite the continuing efforts at responding to this problematic feature of the post-Cold War era, armed conflict has proliferated. Scholars argue that situations of mass killings as witnessed in Rwanda and Kosovo justify the need to intervene, yet the international community struggles in this task, tacitly permitting the killing of many civilians.¹ Since then, the international community has devoted much time and energy to engineering possible ways of reconciling the need to guarantee the sovereignty of states and the responsibility of safeguarding human rights. A key outcome is the doctrine of the Responsibility to Protect (RtoP), which coalesced from the contributions of world leaders, NGOs, and Canada, in

1. Justin Morris, “Libya and Syria: R2P and the Spectre of Swinging Pendulum,” *International Affairs* 89, no. 5 (2013): 1269, <https://doi.org/10.1111/1468-2346.12071>; Thomas G. Weiss, “The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era,” *Security Dialogue* 35, no. 2 (2004):13, <https://doi.org/10.1177/0967010604044973>.

particular, playing a lead role in setting up the International Commission for Intervention and State Sovereignty in 2001. In the wake of its endorsement, RtoP has served as a veritable framework for responding to crises of human rights violations and the present need to protect civilian populations from mass atrocities.

RtoP's core pillars state explicitly (i) the state has a duty to protect its citizens from war crimes, crimes against humanity, genocide, and ethnic cleansing; (ii) the international community must assist the state in achieving this goal; and (iii) should a state show that it is unable or incapable of protecting its citizens, the international community has the right to intervene, including by use of force.² The RtoP equally embraces three specific responsibilities: (i) the responsibility to prevent; (ii) the responsibility to react; and (iii) the responsibility to rebuild. Unlike other human rights frameworks, the RtoP is yet to be situated within the ambits of international law. This explains why the doctrine largely remains contested. Though scholars have argued that the RtoP is not an emerging norm, and that recent evidence of the need to protect civilians and the consequent acceptance of the series of frameworks that culminated in the doctrine put to rest the question of legality,³ others contend that the RtoP remains peculiar to international law.⁴

Regardless of this unsettled debate, the 2011 Libyan crisis became the first litmus test toward assessing global commitment to the principle of "Never Again" and the consequent authorization of the RtoP. Specifically, an apprehensive Ghaddafi was poised to execute genocidal acts against Libyan citizens in rebel-held cities such as Benghazi, which led to United Nations Security Council (UNSC) Resolution 1973, calling for the use of "all necessary means" to protect civilians.⁵ Though the expectations and consequences of the North Atlantic Treaty Organization intervention in Libya has remained divisive, the need to protect civilians from mass war atrocities has remained consistently compelling.

Hence, the international community has been able to authorize interventions at sites of mass atrocities, including Cote d'Ivoire, Central Africa Republic, and Sudan, albeit on the grounds of humanitarian intervention. However, the inability of the international community to replicate such action in Myanmar, despite a long history of sustained violence against the Rohingyas and other minority Muslims in Myanmar, cast doubts on its commitment to end mass atrocity. This failure has been blamed for the deaths of thousands of civilians, forced migration, restriction of fundamental human rights, forced and compulsory labor, arbitrary arrest, displacement, economic and social injustice, and violation of religious rights of the Rohingya Muslim minority.⁶ While some experts have successfully dubbed the atrocity against the Rohingyas as the worst form of violence

2. "International Commission for Intervention and State Sovereignty," ICISS (2001), XI.

3. Maria L. Banda and Jennifer M. Welsh, "International Law and the Responsibility to Protect: Clarifying or Expanding States Responsibilities," *Global Responsibility to Protect* 2, no. 3 (2010): 230, 0.1163/187598410X500363.

4. Ian Hurd, "Is Humanitarian Intervention Legal? The Rule of Law in an Incoherent World," *Ethics and International Affairs* 25, no. 3 (2011): 311, doi:10.1017/S08926791100027x.

5. Roland Paris, "The Responsibility to Protect and the Structural Problems of Preventive Humanitarian Intervention," *International Peacekeeping* 21, no. 5 (2014): 569, <https://doi.org/10.1080/13533312.2014.963322>.

6. Akm Ahsan Ullah, "Rohingya Refugee to Bangladesh: Historic Exclusion and Contemporary Marginalization," *Journal of Immigrant and Refugee Studies* 9, no. 2 (June 2011): 11.

against a civilian population in human history,⁷ others have concluded that such action portrays Rohingyas as the least wanted and most persecuted minority population on earth.⁸

It is against this background that this study interrogates the Rohingya crisis within the context of claims of mass atrocity perpetrated against them, the extent to which the crisis meets the criteria of authorizing the RtoP, the expected nature of RtoP intervention, and the implications the Rohingya-Myanmar crisis holds for both future civilian protection and the institutionalization of the RtoP. The paper argues that the inability of the international community to authorize intervention despite evidence of mass atrocities against the Rohingyas and other minority Muslim populations, not only exposes the institutional, operational, end-state problem and expectation gaps that have become associated with the RtoP doctrine, but also points to the emptiness of the global commitment to “Never Again.” Thus, this perceived inability to mobilize the RtoP in Myanmar undoubtedly compounds the protection of threatened civilian populations and suggests that the RtoP is not being consolidated. The inability to mobilize the RtoP ultimately represents a major setback for its institutionalization process.

MASS ATROCITY, CIVILIAN PROTECTION, AND THE RtoP: THEORETICAL CONSIDERATION

The need to protect civilians in armed conflict situations has generated a series of debates between scholars who support intervention on moral grounds and those who oppose based on legality. Consequently, moralists argue that citizens have natural rights expected to be upheld by their respective governments. It is, therefore, impossible to conceive of individual citizens apart from their formative communities.⁹ Similarly, Immanuel Kant puts forward three moral positions justifying the protection of civilians. First, a state representative is expected to act in a manner that conforms to international law. Second, it falls within the purview of the state government to cater for the welfare of its citizens. Third, every rational being should act according to the dictates of legitimate sovereign authority.¹⁰ Some other philosophers have approached the issue from the perspective of distributive justice. In this context, Cicero emphasizes that as a matter of justice, a government must provide every member of society his due.¹¹

Hence, instances such as the Rwanda genocide and Bosnia killings, where the international community was accused of either intervening “too late” or “too little,”

7. Khin Tun, “Rohingya: Reclaiming the Region: Russia, the West and the Middle East,” *Insight Turkey* 19, no. 4 (2017): 43, SETA Foundation.

8. Yan Naing Swa and Jared Sichel, “Are Myanmar’s Rohingya Muslims the World’s Least Wanted People?,” *Jewish Journal*, last modified on June 4, 2015, https://jewishjournal.com/cover_story/171688/myanmars-rohingya-muslims-worlds-least-wanted-people.

9. George Wilhelm Friedrich Hegel, *Philosophy of Rights*, Trans. S. W. Dyde (Kitchener: Batoche Books, 2001), 21.

10. Immanuel Kant, *Groundwork for the Metaphysics of Morals* (New York: Vail Ballou Press, 2002), 107.

11. Martha C. Nussbaum, “Duties of Justice, Duties of Material Aid: Cicero’s Problematic Legacy,” *Spring Bulletin*, accessed on January 10, 2020, <https://www.amacad.org/news/duties-justice-duties-material-aid-ciceros-problematic-legacy>.

undoubtedly provoked the international community into adopting the RtoP. Since its adoption through the 2005 World Summit Resolution, scholars have thrown their weight behind the doctrine as a timely and positive development for the protection of civilians from atrocious crimes.¹² On the opposing side, some skeptics have questioned the adoption and implementation of the RtoP doctrine.¹³ For them, the doctrine is mired in conceptual ambiguity and its implementation plagued by real politicking. As such, it remains at best, a declaratory principle lacking legal basis,¹⁴ as the power politics between veto-wielding members of the Security Council constrain its deployment as a timely response to humanitarian catastrophes.¹⁵

The Rohingya crisis represents just such a case of a humanitarian conundrum. Its origins embody historical tensions, contests and political marginalization, ethnic profiling, and an anti-Muslim hate campaign across Myanmar.¹⁶ At the heart of the Myanmar crisis is the fundamental challenge of the citizenship status of Rohingya Muslims. While the Rohingyas have continually traced their ancestry to Burma, now called Myanmar, the central government thinks otherwise. Scholars have approached the issues from four different perspectives. First, the limitation of citizenship is mostly associated with countries who attach little or no importance to political and social rights. Second, the case of the Rohingyas and other Muslim minorities in Myanmar is not an isolated issue because citizenship is equally denied within the region. Third, the clustered nature of ethnic minority groups presents a platform for their easy denial or restriction to citizenship. Fourth, because the power to give and deny citizenship resides with the Bamar majority group, the citizenship status of the Rohingyas remains a matter of who wields political power.¹⁷ Yet, addressing the plight of the Rohingya remains compelling. There is, thus, need for purposeful and committed political leadership supported by international actors to address the citizenship conundrum in Myanmar.¹⁸ Undoubtedly, the inability of Rohingyas to gain full citizen status from Myanmar or neighboring countries where they have fled has resulted in the risk of labeling them “stateless persons.”

Aside from the controversial nature of citizenship in Myanmar, brutal attacks against the Rohingya Muslims have persisted. Executed systematically, the deliberate

12. James Pattison, “Mapping the Responsibilities to Protect: A Typology of International Duties,” *Global Responsibility to Protect* 7, (2015): 193, <https://doi.org/10.1080/15027570802510015>; Pinar Gozen Ercan, “R2P: From Slogan to an International Ethical Norm,” *Uluslararası İlişkiler* 43, no. 11 (October 2014): 36.

13. Adam Branch, “The Irresponsibility of the Responsibility to Protect in Africa,” in *Critical Perspective on the Responsibility to Protect: Interrogating Theory and Practice*, ed. Peter Cunliffe (New York: Routledge, 2011), 293–304.

14. Carsten Stahn, “Responsibility to Protect: Political Rhetoric or Emerging Legal Norm,” *American Journal of International Law* 101, no. 1 (January 2007): 21.

15. Alex J. Bellamy, “The Responsibility to Protect and the Problem of Military Intervention,” *International Affairs* 84, no.4 (July 2008): 617, <https://doi.org/10.1111/j.1468-2346.2008.00729.x>.

16. Adam Burke, “New Political Space, Old Tensions: History, Identity and Violence in Rakhine State, Myanmar, Contemporary Southeast Asia,” *Journal of International & Strategic Affairs* 38, no. 2 (August 2016): 262, DOI: 10.1355/cs38-2d.

17. Nick Chessman, “How in Myanmar ‘National Races’ Came to Surpass Citizenship and Exclude Rohingya,” *Journal of Contemporary Asia* 47, no. 3 (March 2017): 463, <https://doi.org/10.1080/00472336.2017.1297476>.

18. Ian Holliday, “Addressing Myanmar’s Citizenship Crisis,” *Journal of Contemporary Asia* 44, no. 3 (February 2014): 404–421, <https://doi.org/10.1080/00472336.2013.877957>.

infringement on Rohingyas' and other Muslim minorities' rights, perpetration of physical destruction in whole or in part, population suppression by prevention of registration of birth, and premeditated killing remain worrisome. Alluding to four out of the six stages of genocide listed by Daniel Feierstein, Penny Green et al.,¹⁹ argue that the Rohingya crisis holds up against the last two stages of genocide—the continuous and total destruction and the deliberate removal or supervised extinction of a section of a country's population from its collective history. This, for them, aptly explains the displacement and mass exodus, internally displaced persons, and refugee crises around neighboring countries. Green and colleagues conclude that it is evident the atrocious crimes including ongoing genocide in Myanmar continue, and warn of the consequences of inaction. For some, the Rohingya crisis is not so much that the international community is unaware of the ongoing genocide, but rather that international lawyers cannot agree on what should constitute genocide. This is coupled with fears about China's willingness to veto any Security Council resolution regarding intervention, as well as the preference of states for euphemistic language such as "crimes against humanity" as opposed to the more egregious "genocide."²⁰

Furthermore, while citing the case of the Srebrenica killings, Staton stated that the use of euphemizing language does not diminish the significance of the number of people who were killed, but merely serves the international community to justify its unwillingness to sanction forceful action to stop the killings. It was not until the international community was able to use the term genocide, which suggests that harm was being done and forced the perpetrators into focus, before it was able to authorize the use of force to stop further killings. Hence, Staton concludes that the international community should, as a matter of urgency, begin to institute criminal charges of genocide, crimes against humanity, and war crimes against the Myanmar government, the military, police, and the 969 Buddhists monk militias.²¹ Perhaps Myanmar is not of strategic interest to the permanent members of the Security Council and the international community at large.²²

Despite the local and international outcry against genocidal acts in the Rakhine state of Myanmar against the Rohingyas, the crisis continues, marked by increasing violence, making Rohingyas the most persecuted people in the world. Thus, the international community should compel the Myanmar government to adopt an inclusive policy to address the long deprivation, marginalization, and victimization of the Rohingyas.²³

19. Penny Green, Thomas Macmacus, and Alicia De la Cour Venning, "Countdown to Annihilation: Genocide in Myanmar," *International State Crime Initiative*, last modified on October 7, 2015, <https://Statecrime.org/Data/2018/04/ISCI-Rohingya-Report-II-PUBLISHED-VERSION-Revised-Compressed.Pdf>, 23.

20. Gregory Staton, "Prosecution, Forced Displacement and Genocide of Rohingya, Kachim, Shan, Karen and other Minorities of Myanmar. Testimony of Dr Gregory H. Staton to Permanent Peoples Tribunal, Kuala Lumpur, Malaysia," last modified September 18, 2017, <https://tribunalonmyanmar.com/wp-content/uploads/2017/09/Crimes-Against-theRohingya-and-Kachin-of-Myanmar-by-Dr-Gregory-Staton.pdf>.

21. Staton, "Prosecution, Forced Displacement and Genocide of Rohingya, Kachim, Shan, Karen and other Minorities of Myanmar."

22. Muang Zarni and Alice Cowley, "The Slow Burning Genocide of Myanmar's Rohingya," *Pacific Rim Law & Policy Journal* 23, no. 3 (May 2014): 681–682.

23. Md Kumruzzman, "New Study Finds Long-Term Rohingya Marginalization," *World Asia-Pacific*, last modified on October 8, 2020, <https://www.aa.com.tr/en/asia-pacific/new-study-finds-long-term-rohingya-marginalization/2000157>.

While prominent international actors and even security experts have collectively expressed their sadness on the lingering crisis, they have failed to hold the international community accountable. Essentially, the crimes against Rohingyas and other minority groups have ended at mere emotional expressions, and the attention such a crisis deserves has not been given. For this reason, the Myanmar-Rohingya crisis only goes to suggest that the RtoP is bedeviled with a series of contending issues; all of which have ensured that actualizing the third stage of the normal life cycle remains a far cry.

UNDERSTANDING THE ROHINGYA-MYANMAR CRISIS: AN HISTORICAL TRAJECTORY

One of the most prominent groups within this region is the Rohingyas. However, in understanding the current Myanmar crisis, there is a need to critically examine the historical place of the Rohingyas in Myanmar, which continues to generate debate. This consideration must necessarily cover how they derived their name “Rohingyas,” why the Myanmar state continues to deny their identity and existence, and how they remain the world’s most persecuted people. The term *Rohingya* is derived from *Rohang*, which translates to “inhabitants of Rohang.” The Rohingyas trace their ancestry to the Arakan region, which was independent from the fifteenth century until the late nineteenth and early twentieth centuries when the state of Rakhine fell to British Imperial rule.²⁴ Predominantly Muslims who subscribe to the Sunni variant of Islam, their ancestral home ranks as one of the poorest states in the country.²⁵

The history of the country, along with the subsequent alienation and discrimination against the Rohingyas and other minority groups, is traceable to the long history of invasions by external powers. Specifically, the third British invasion in 1886 led to the total annexation of the country and the consequent surrender of the central political authority.²⁶ A major fallout of the British invasion was the preferential treatment extended to different sections of the country based on perceived levels of loyalty from the various peoples. This seemingly established status quo was upset by Japan’s invasion, further entrenching sectional divisions and hatreds as the Karen, Karin, and Rohingya remained loyal to the British, while the majority of the Burmese (who dominate Myanmar’s present government) threw their support behind the Japanese. The resultant conflicts have persisted to the present day,²⁷ with the Rohingyas’ support for the British and their sustained call for an independent Rohingya state forming the basis for their designation as noncitizens and sustained persecution by the Myanmar state.

24. Azeem Ibrahim, *The Rohingya: Inside Myanmar’s Hidden Genocide* (New York: Hurts & Company 2016), 26.

25. Special Megan, “The Rohingya in Myanmar: How Years of Strife Grew into a Crisis,” *The New York Times*, last modified on September 13, 2017, <https://nytimes.com/2017/09/13/worldasia/myanmar-rohingya-muslim.html>.

26. Nehginpao Kingpen, “Addressing the Rohingya Problem,” *Journal of Asian & African Studies* 49, no. 2 (October 2016): 11, <https://doi.org/10.1177/0021909613505269>.

27. Samuel Farris, “From Citizen to Stateless,” accessed on May 14, 2019, <https://sites.lsa.umich.edu/umich-upr/wp-content/uploads/sites/421/2017/02/SFarrisPaper.Pdf>.

The Rohingyas have been subjected to various forms of discriminatory policies by successive military and civilian regimes, targeted at erasing their history. Instructive here is the 1958 declaration by the president that all Muslims who had hitherto belonged to the Arakan henceforth belonged to the indigenous group of Burma.²⁸ Successive military regimes sustained these patterns of violence against the Rohingyas. Following the military coup of 1962, the Rohingyas not only experienced unprecedented violence but were also declared “aliens from Bengal” via the nationalization of their businesses.²⁹ Though the controversy surrounding Rohingya identity was resolved with the issuance of both government and British-issued identity cards, these cards were eventually withdrawn under controversial circumstances because the identification cards did not increase the security of the Rohingyas. The previous introduction of the 1982 Citizen Law had also escalated the predicament of the Rohingyas. The Citizen Law not only led to the Rohingyas’ loss of citizenship, but also of protection.³⁰ The act’s categorization of citizenship ensured Rohingyas did not in any way qualify as citizens, setting the stage for the statelessness of the Rohingyas.

Hence, under brutal military clampdowns, systematic rights abuse, and violence against the Rohingyas, calls for a transition to civilian governance gained traction among human rights activists and groups. On August 8, 1998, the country witnessed a large number of protesters calling for improved social conditions and abolition of military rule. While the protests were met by massive military repression causing the death of several persons, the events helped to increase political consciousness among civilians, attracting popular support for Aung San Sun Kyi to emerge as the leader of the National League for Democracy (NLD),³¹ later to be arrested and placed on fifteen years house arrest, following the annulment by the military of civilian elections in which the NLD won by landslide.

The eventual transition to the civilian democratic government did not in any way improve human rights violations against the Rohingyas. Rather, old anti-Muslim sentiments continued to fuel the denial of access to basic life necessities, there was a government clampdown, and increased violent attacks, particularly between 2012 and 2013, causing the displacement of about 120,000 Rohingyas.³² A key fallout of the renewed violence is the annihilation and segregation that took place thereafter among the Buddhist Burmese and Rohingya Muslims,³³ paving the way for the increased vulnerability of the Rohingyas. Against expectations, new attacks against the Rohingyas occurred in 2014 at the onset of a census exercise in which they were denied access to accreditation and

28. Green, et al., “Countdown to Annihilation.”

29. Kingpen, “Addressing the Rohingya Problem,” 20.

30. Nick Chessman, “How in Myanmar ‘National Races’ Came to Surpass Citizenship and Exclude Rohingya,” 461–462.

31. Myriam François and Souris Bethsabée, “The Plight of the Rohingya in Myanmar: Root Causes of the Crisis and Durable Solutions, Defence Foreign Policy and Security,” New Direction, accessed December 11, 2019, <https://newdirection.online/2018-publications-pdf/ND-Report-Rohingya->

32. Simon Adams, “‘If Not Now, When?’ The Responsibility to Protect, The Fate of the Rohingyas and the Future of Human Rights, Global Centre for the Responsibility to Protect,” *Occasional Paper Series* no. 8, 7, accessed on January 5, 2020, https://reliefweb.int/sites/reliefweb.int/files/resources/adamsrohingya_opaper_final.pdf.

33. Francis Wade, “Myanmar: Marketing a Massacre,” last modified October 17, 2017, <https://www.nybooks.com/daily/2017/10/myanmar-marketing-a-massacre>.

registration facilities unless as Bengalis.³⁴ The Myanmar government adopted the “Protecting Race and Religion Law,” which placed a harsh and discriminatory restriction on Rohingya and other non-Buddhist women. The law aims to justify the continuous clampdown on the Rohingyas through restriction of their religious and reproductive rights.³⁵ Beyond the conventional narrative, evidence suggests that the crisis is multifaceted; comprised of the conflict between the ethnic Rakhine and the Muslim community, the ethnic Rakhine against the military government and, a section of the Muslims against the state security forces.³⁶

Consequently, the formation of the Arakan Rohingya Salvation Army (ARSA) and their attacks on military formations have only aggravated matters for the Rohingyas. On October 9, 2016, the ARSA carried out a series of coordinated attacks on three police posts in Maungdaw and Rathedaung. The attacks led to the seizure of sixty-seven military-grade weapons and 10,930 ammunitions, also leading to the death of ten policemen and seven soldiers. Incited by these actions, the Myanmar government embarked on an onslaught that lasted for about five months.³⁷ On August 15, 2017, the ARSA executed another deadly attack on selected police installations across the cities of Maungdaw and Rathedaung. In the aftermath of which the Myanmar government responded by labeling the ARSA a terrorist group leading to securitization and the application of maximum force against the civilian population, causing the deaths of many Rohingya Muslims. Apart from the unprecedented number of deaths, more than half a million Rohingyas have fled their homes to Bangladesh in anticipation of reprisal attacks from the Myanmar military.³⁸ While the renewed state-sponsored violence has generated criticisms within and outside Myanmar, it remains likely that Rohingyas will remain victims of mass atrocity. Despite the global criticisms and condemnations of Myanmar’s government’s religious persecution and genocidal acts against Rohingya Muslims, the government has refuted all such claims on the grounds of maintaining peace and stability.³⁹ In essence, the character of the Rohingya humanitarian crisis makes it one of the worst cases of mass atrocities after the horrific events of Bosnia and Rwanda.

While mass atrocity against the Rohingyas persists, questions have been raised about the big letdown of suffering populations. Specifically, the role of Aung San Sun Kyi

34. Yin Kyaw Le, “Census Data Shows Myanmar Muslim Population has Fallen: Muslim Population Down from 3.9 to 2.3 Percent in 35 Years, But Figure does not Include Around 1.2 Million Rohingya Muslims,” *World Asia-Pacific*, last modified July 21, 2016, <https://www.aa.com.tr/en/asia-pacific/census-data-shows-myanmar-muslim-population-has-fallen/612764>.

35. Adams, “If Not Now, When?”

36. Anthony Ware, Vicky-Ann Ware, and Laoutides Costas, “Understanding and Responding to Conflict in Rakhine State: Conflict Analysis & Conflict Sensitive Program Advice for Grace Works Myanmar, Responding to the Rohingya-Rakhine-Burman Conflict,” 4, accessed January 11, 2020, <https://www.graceworksmyanmar.org.au/blog/wp-content/uploads/2018/05/Understanding-and-Responding-to-conflict-in-Rakhine-State-FINAL-Ware-Ware-Laoutides-2018-1.pdf>.

37. Anthony Ware and Laoutides Costas, *Myanmar’s Rohingya Conflict* (New York: Oxford University Press, 2018), 19; Ware, et al., “Understanding and Responding to Conflict in Rakhine State,” 13.

38. Global Conflict Tracker, “Rohingya Crisis in Myanmar, Council on Foreign Relations,” accessed on January 6, 2021, <https://www.cfr.org/global-conflict-tracker/conflict/rohingya-crisis-myanmar>.

39. Albert Eleanor, “The Rohingya Migrant Crisis,” *Council of Foreign Relations*, last modified on January 12, 2017, <https://www.cfr.org/Burmamyanmar/Rohingyan-Migrant-Crisis/P36651>.

remains disappointing to the international community. This is premised on four factors: (i) her being a Nobel Peace Laureate having sacrificed personal life and career in extended incarceration for advocating for a transition to popular democracy as necessary to global peace and justice, (ii) her position as the daughter of Aung San, founder of Myanmar, (iii) her position as leader of the NLD, and (iv) her connections to the University of Oxford and the United Nations.⁴⁰ It, therefore, comes as a surprise that even with her in charge of Myanmar's new democratic administration, the genocidal acts have not abated. All this even as UN Special Adviser on the Prevention of Genocide, Adama Deng, and UN Special Adviser on RtoP, Ivan Simonovic, have raised fears about the pervasiveness of mass atrocity against Rohingyas in Myanmar, and charged the government to take necessary actions to halt further violence.⁴¹

Apart from the UN, other countries have attempted to address the plights of the Rohingyas at individual levels. While some have pushed for sanctions on the Myanmar government, including Aung San Sun Kyi,⁴² others such as Bangladesh, Turkey, and the United States, have focused on the provision of humanitarian aid. However, these efforts have proven inadequate, a situation further permitted by the unwillingness of neighboring countries to condemn the actions of the Myanmar government. As such, the posture of the Myanmar government grows more complicated beyond exacerbating the Rohingya crisis and makes it even more difficult to address.

THE MYANMAR-ROHINGYA CRISIS, MASS ATROCITY AND THE RESPONSIBILITY TO PROTECT: A CRITICAL ANALYSIS

The RtoP resonated as a critical framework for responding to the mass atrocity in Rwanda and Kosovo. Noble as the doctrine, its formation and institutionalization have suffered severe criticisms, particularly in reference to its legality and practice. In the wake of the global war on terrorism in Iraq, the idea that the RtoP will be abused was greatly emphasized. Though evidence abounds to suggest that the Iraqi government murdered and committed other mass atrocities against Kurds, Shias, and other ethnic minorities, justifying the authorization of the RtoP, experts argue that for all its achieved since inception, the invasion of Iraq on the grounds of humanitarian intervention defeats the intention and prospects of the RtoP doctrine.⁴³ Thus, while the events of the invasion of Iraq dealt a heavy blow on the RtoP, subsequent deliberations and including the High-Level Panel led to the adoption of the doctrine in 2009.

40. Re Ty, "The Rohingya Refugee Crisis, Contexts, Problems and Solutions," *International Journal of Human Rights* 16, no. 29 (August 2019): 54.

41. Adama Dieng and Ivan Simonovic, "Notes to Correspondents on the Situation in the Northern Rakhine State," Myanmar, last modified October 18, 2017, <https://www.un.org/sg/en/content/sg/note-correspondents/2017-10-18/note-correspondentsstatement-adama-dieng-un-special>.

42. Steve Shaw, "Myanmar's Shadow Industry Costs More Lives as Aung San Sun Kyi Turns Another Blind Eye," last modified on July 20, 2020, <https://bylinetimes.com/2020/07/20/myanmar-shadow-industry-costs-more-lives-as-aung-san-suu-kyi-turns-another-blind-eye/>.

43. Jeremy Moses, Babak Bhadoe, and Tessa Wright, "The Iraq War and the Responsibility to Protect: Uses, Abuses and Consequences for the Future of Humanitarian Intervention," *Journal of Intervention and State Building* 5, no. 4 (October 2011): 1, <https://doi.org/10.1080/17502977.2011.595606>.

Specifically, the Secretary-General, Ban Ki-Moon's report "Implementing the Responsibility to Protect" at the meetings of the United Nations General Assembly not only led to further deliberation, but also the eventual adoption of the RtoP. Accordingly, Paragraphs 138–140 discuss the role of states in averting mass atrocity, the assistance of the international community, and the inevitable need for intervention should the state fail in upholding human rights. Building on the World Summit Document Outcome of 2005, the RtoP rests on three pillars: (i) states have a duty to protect their citizens from war crimes, ethnic cleansing, crimes against humanity and genocide; (ii) the international community should assist the states in achieving this goal; and (iii) if the states seem unable or unwilling to protect its citizens, the international community may intervene using force.⁴⁴ The RtoP has three equal guiding principles: responsibility to prevent, responsibility to react, and responsibility to rebuild.

In line with the law setting up the RtoP, the four conditions upon which the doctrine may be applied include war crimes, crimes against humanity, ethnic cleansing, and genocide. There is the need to interrogate the extent to which these conditions are present in the Myanmar crisis and how this impacts the consolidation and institutionalization of the RtoP.

ACTS OF GENOCIDE AND THE MYANMAR-ROHINGYAN CRISIS

The term *genocide* refers to whichever of the following acts are perpetrated with the aim to annihilate, in whole or in part; a national, ethnic, religious, or racial group, such as the killing of members of a group; causing bodily or mental damage to members of a group; consciously inflicting on the group conditions of life with the intention to bring about its physical destruction in whole or part; or commanding measures anticipated to prevent births within the group, forcibly transferring children of the group to another group.⁴⁵ It is instructive to note that genocide must always be understood beyond the legal definition. This is because physical atrocities and murder against the civilian population are key elements to understanding genocide. Thus, genocide could also be discussed within the cultural context upon which such acts are carried out. Accordingly, Converse⁴⁶ points out that cultural genocide may encompass a physical dimension of murder such as the elimination of the intellectuals and professional cadres. Others see it as acts aimed at the deliberate dwindling and consequent destruction of the cultural values and practices of a group by another.⁴⁷

44. United Nations General Assembly, "Report of the Secretary-General: Implementing the Responsibility to Protect," (2009), accessed November 19, 2019, <https://www.un.org/ruleoflaw/blog/document/report-of-the-secretary-general-implementing-the-responsibility-to-protect/>.

45. "Convention on the Punishment of the Crime of Genocide," 1948, accessed November 19, 2019, https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.I_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf.

46. Daniele Converse, "Genocide, Ethnic Cleansing and Nationalism," in *The Sage Handbook of Nations and Nationalism*, eds. Gerald Delanty and Krishan Kumar (London: Sage Publications, 2006), 326.

47. Lawrence Davidson, *Cultural Genocide* (New Brunswick, NJ: Rutgers University Press, 2012), 18–19.

It must be noted that the Rohingya Muslims are not new to genocidal acts (physical or cultural) carried out by the governments of Burma and Myanmar. Despite consistent denials of the systematic annihilation of the Rohingyas by both governments, experts have argued that the premeditated and historical destruction of the Rohingya Muslims has been largely state-sponsored. This was initiated and institutionalized in a bid to attack the identity, social formation, culture, and history of the Rohingya people. The goal of the Myanmar government is, therefore, to destroy or eliminate the Rohingyas through the physical attack of their identity, killings, as well as bodily and mental harm to disrupt the reproductive processes of the Rohingyas.⁴⁸ More recently, while testifying before the Permanent Peoples Tribunal, the Head of International Alliance to End Genocide, Gregory Stanton, submits that the ten thresholds of identifying genocide acts have been crossed. Hence, he concludes that the Myanmar government, security forces, and the Munks should be held and prosecuted for committing genocide against the Rohingyan and other minority groups in Myanmar.⁴⁹

From the preceding arguments, it is clear that the history of systematic genocide against minority groups such as the Rohingya, Kachin, Shan, Karen, and other minorities in Burma and Myanmar is not new. It, however, assumed a violent dimension in the 1990s despite wide condemnations from human rights movements, and sustained its tempo with renewed intensity up until 2016. Thus, the violent attacks on the Myanmar police by a set of Rohingya groups in 2012 ushered in a new phase of genocidal attacks that aims to eradicate the Rohingyas entirely. Undoubtedly, Rohingyas and other small ethnic groups under the Myanmar government have endured diverse forms of genocide outlined in Table 1.

CRIMES AGAINST HUMANITY AND THE MYANMAR-ROHINGYAN CRISIS

Regardless of the unsettled debate on what constitutes crimes against humanity, the Rome statute has furnished useful indices upon which such crimes may be identified. *Article 7* of the Statute identifies crimes against humanity to have occurred in a situation where any of the following acts are committed either as part of a widespread or systematic attack against a civilian population and with the knowledge of the attacks: (i) murder; (ii) extermination; (iii) enslavement; (iv) deportation or the compulsory transfer of a population; (v) imprisonment or other cruel denial of physical freedom, which contradicts basic international humanitarian laws; (vi) torture; (vii) rape; (viii) sexual slavery; (ix) enforced prostitution; (x) forced pregnancy; (xi) compulsory sterilization or any other form of sexual violence of high gravity; (xii) trial against a particular group or collectively on the grounds of political, racial, ethnic, national, religious, gender, and culture as exemplified in Para III; (xiii) enforced vanishing of persons; and (xiv) crime of apartheid and atrocious acts with the intention of causing bodily harm.

48. Zarni Muang and Alice Cowley, "The Slow Burning Genocide of Myanmar's Rohingya," *Pacific Rim Law & Policy Journal* 23, no. 3 (May 2014): 681–682.

49. Stanton, "Prosecution, Forced Displacement and Genocide."

TABLE 1. Historical Experiences of Genocide Acts against the Rohingyas and Other Minority Groups

Era	Type of Genocide	Nature or Means	Goal
1978s	Cultural genocide	(i) Manifested via sustained profiling and killings, forced migration, and illegalization of the Rohingyas; (ii) the introduction of Operation Nagamin in Rohingyas and Rakhine labeling Rohingya Muslims as prohibited migrants from Bangladesh leading to their detaining and subsequent torture	Forced migration and deliberate attempt at dehumanizing the Rohingya people
1980s	Physical genocide	Illegitimacy status of the Rohingyas through the Citizenship Act Right of 1982	Stripping the Rohingyas of their citizenship and causing physical harm
1990s and 2000s	Biological genocide	The continuous abuses and the apparent role of state-sponsored violence in suppressing the will and agitations of the people	To inflict mental and physical harm to the Rohingyas, with the sole aim of destroying their ancestral root
2012	Physical genocide	Atrocious crimes against the Rohingyas, leading to the incessant violence, social and economic boycott, hate campaigns, and the denial of aid	To maim, kill, and bring about mental and bodily harm; more importantly, mete out the conditions designed to annihilate the Rohingyas
Post 2012	Cultural genocide	Wide-scale abuses resulting in the ghettoization of the Rohingyas, by way of internal displacement camps, as well as carrying out apartheid practices among the Rohingyas	To maim, kill, and bring about mental and bodily harm; more importantly, mete out the conditions designed to annihilate the Rohingyas

Source: Authors (2020)

Since the escalation of hostilities, as an act of brutal revenge against the Rohingya Muslims, Myanmar governments in cahoots with the military have continued to commit various crimes against the Rohingyas. While the government refutes these claims, the dreadful crimes have drawn global criticisms. Navi Pillay, a United Nations High Commissioner for Human Rights reports that since the intensification of clampdowns, forty-eight Rohingyas were killed between January 9 and 13, 2014. Pillay expressed fears over the unmitigated human rights violations by security forces of the Thein Sein regime, calling for an independent investigation and on the global community for an urgent response to the situation.⁵⁰ Precisely, the very imposition of forced labor, sexual violence against females and female infants of Rohingya ancestry, and the forceful relocation and deportation of the Rohingya Muslims check the indices supplied by the Rome statute on

50. British Broadcasting Commission (BBC), "Burma Violence: UN Calls for Rohingya Deaths Inquiry," last modified on January 24, 2014, <https://www.bbc.com/news/world-asia-25866350>.

crimes against humanity. Suffice to say, this unveils the reality that large-scale crimes against humanity have been perpetrated against the Rohingya Muslims albeit state denial further complicating the humanitarian crisis in Myanmar.

WAR CRIMES AND THE MYANMAR-ROHINGYAN CRISIS

According to Canada's Crime against Humanity and War Crimes Act, "war crime" means "an act or omission committed during an armed conflict that, at the time and in the place of its commission, constitutes a war crime according to the customary international law or conventional international law applicable to armed conflicts, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission."⁵¹ Thus, for an action to count as a war crime, it must hold up against (i) contextual and (ii) mental elements. The contextual element includes those actions that were carried out in the context of an international or noninternational armed conflict. The mental element points to intent and understanding as it concerns the individual act and the contextual element.⁵² Furthermore, war crimes have various typologies including

- i. war crimes against persons that need some particular form of protection,
- ii. war crimes against humanitarian aid and peacekeeping officials providing necessary assistance in armed conflict scenarios,
- iii. war crimes against property and other rights,
- iv. outlawed method of warfare, and
- v. outlawed means of warfare.

The response of the Myanmar military to the invasion and subsequent killings of policemen by radical Rohingya groups such as the ARSA begs the question of the extent to which war crimes are being committed against the Rohingyas. Reflecting on the violent nature of the crisis, the Global Centre for the Responsibility to Protect (2010) noted that between July 27 and August 1, 2009, the military attacked and burned about thirty-nine villages precipitating an IDP and refugee crisis. The Independent Commission of Enquiry (ICE) set up by the Myanmar government corroborated this claim in their report. In the report, the ICE concluded that evidence including killings of civilians and the burning of their villages point to security forces being among "multiple actors" complicit of war crimes against the Rohingyas.⁵³ In essence, the acts of arson, torture, illegal arrest, and confining of the Rohingyas for easy identification and maiming point to a war crime against the civilian population.

51. "Canada, Crimes against Humanity and War Crimes Act," 2000, accessed on January, 11, 2020, <https://casebook.icrc.org/case-study/canada-crimes-against-humanity-and-war-crimesact#text=%E2%80%9Cwar%20crime%E2%80%9D%20Means%20an%20actcontravention%0f%20the%20law%20in>.

52. "United Nations Office on Genocide and the Responsibility to Protect, "War Crimes," n.d., accessed on January 13, 2020, <https://www.un.org/en/genocideprevention/war-crimes.shtml>.

53. Global Centre for the Responsibility to Protect, "Applying the Responsibility to Protect to Burma/Myanmar, Policy Brief," last modified on March, 2010, <http://responsibilitytoprotect.org/Applying%20the%20Responsibility%20%20Protect%20to%20Burma%Myanmar.pdf>.

TABLE 2.

Crime	Perpetrators	Manifestation
Crimes Against Humanity	Myanmar government	Forced labor, burning of Rohingya places of worship, blocking of humanitarian access, torture, raping of Rohingya women and girls, restriction on the freedom of movement
Ethnic Cleansing	Myanmar government, Security Officials	Citizenship Right Acts of 1982, restriction on childbirth, restriction on marriage rights, burning of homes, extrajudicial killings by the security agencies, denial of educational rights, arbitrary detention
Genocide	The Myanmar state officials, Buddhist Monks, Security agencies, and Rakhine civil society leaders	Campaign of hate against Rohingyas supported by government actions and policies, denial of basic health facilities, restriction of rights based on identity, dehumanization of the people, and continuous abuse and state repression
War Crimes	Myanmar Government	Burning of several villages including those suspected of housing fleeing Rohingyas, massacre of many Rohingyas, use of bamboo and barbed wire fence in blocking the Rohingyas so as to unleash mayhem on them, and reinforcement of several military battalions to carry out state-sponsored violence

Source: Authors (2020)

ETHNIC CLEANSING AND THE MYANMAR-ROHINGYAN CRISIS

Though ethnic cleansing is not entirely a recent phenomenon, academic opinions have varied in their interpretation and how it may be measured. This is because it relates to violence against ethnic or religious groups fueled by rabid nationalism. Still, scholars have been able to put forward some working definitions of what the concept connotes. Accordingly, ethnic cleansing can be understood as the expulsion of an “undesirable” population from a given territory due to religious or ethnic discrimination; political, strategic, or ideological considerations; or a combination of these.⁵⁴ In its “Final Report of the Commission of Experts,” the United Nations stated that ethnic cleansing involves “a purposeful policy designed by one ethnic or religious group to remove by violent and terror inspiring means the civilian population of another ethnic or religious group from certain geographical areas.”⁵⁵

Though the status of Rohingya Muslims has been subjected to various manipulations and understanding between the Myanmar government, elites, monks, and even political parties since the country’s independence, one undisputed fact is that acts of systematic annihilation have been identified by a crop of concerned individuals and groups. In its report, Human Rights Watch persistently made reference to the wanton destruction of

54. Andrew Bell-Fialkoff. “A Brief History of Ethnic Cleansing,” *Foreign Affairs* 72, no. 3 (1993): 110, <https://doi.org/10.2307/20045626>.

55. “Final Report of the Commission of Experts Established in Pursuant to the United Nations Security Council Resolution 780,” 19920, U. N. SCOR, U.N Doc. S/1994/674 (27 May 1994), Annex, at 3, 33.

homes, mosques, and Islamic schools belonging to Rohingya Muslims, forced displacement, extrajudicial killings of women and children, restricted humanitarian aids, and the initiated and encouraged hate speech against the Rohingya.⁵⁶ Also, the conscious denial of participation and voting rights in the 2015 elections via the Rakhine State Action Plan signaled the intensification of discriminatory policies against the Rohingya people.⁵⁷ More vociferous condemnation of the ethnic cleansing became discernible in the speeches of UN officials. On September 11, 2017, Zaid Razad Al Hussein refers to the violence against the Rohingya Muslims as a “textbook case of ethnic cleansing.”⁵⁸

The above analysis suggests that the Myanmar government has crossed the threshold of crimes that justify the need to invoke the RtoP. To this end, factual evidence abounds to implicate and declare the government complicit of genocide, crimes against humanity, and ethnic cleansing. This is further elaborated in Table 2.

While the presentation above clearly indicts the Myanmar government against, by virtue of the principle of “Never Again” and three pillars of the RtoP, it was expected the international community through the Security Council would push for the authorization of the RtoP to save the civilian population. However, the Myanmar government’s deliberate and untroubled posturing has not only increased the levels of mass atrocity but also created leeway for fresh waves of contestation and criticisms of the RtoP doctrine. The impact of the Rohingya crisis on the RtoP and norm life cycle theorizing are addressed in the subsequent sections of the study.

MYANMAR-ROHINGYA CRISIS AND THE RESPONSE OF THE INTERNATIONAL COMMUNITY

Despite the global commitment to preventing mass atrocity against civilian populations, the international response to the plight of the Rohingyas has thrown up challenges for powerful states, and regional and international bodies. One such regional organization is the Association of South East Asia Nations (ASEAN), whose guiding principles adopted in 2008 declare commitment to human security and upholding of human rights. Irrespective, it was only at a meeting held by member states that representatives of both Myanmar and Bangladesh permitted the issue of the Rohingya people to be mentioned even in a passive way.⁵⁹ It took the efforts of countries such as Thailand and Bangladesh to acknowledge the despicable situation of the Rohingyas at a second meeting with international organizations, United Nations officials, and twenty-five high-powered

56. Human Rights Watch, “All You can Do Is to Pray: Crimes against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma’s Arakan State,” New York, last modified April 22, 2013, <https://www.hrw.org/report/2013/04/22/all-you-can-do-pray/crimes-against-humanity-and-ethnic-cleansing-rohingya-muslims>.

57. United States Commission on International Religious Freedom, “Suspended in Time: Ongoing Persecution of Rohingya Muslims in Burma,” accessed on January 22, 2020, <https://www.uscirf.gov/publications/suspended-time-ongoing-persecution-rohingya-muslims-burma>.

58. Nick Cumming-Bruce, “Have You No Shame? Myanmar is Flogged for Violence against Rohingya,” *New York Times*, last modified on July 4, 2018, <https://www.nytimes.com/2018/07/04/world/asia/un-myanmar-rohingya-investigate.html>.

59. Joshua Lipes, “Rohingya Raised at ASEAN Meeting,” last modified on July 13, 2012, www.rfa.org/english/news/myanmar/rohingya-07132012163418.html.

representatives. Compared with previous meetings, scholars have argued this meeting marked the beginning of acceptance among members of ASEAN and other relevant key stakeholders of their duty to protect the Rohingyas.⁶⁰

Regardless of the concerns raised on the consequences of the spillover effect of the crisis, the Myanmar government's firmness on the nonexistence of a tribe or people referred to as the Rohingyas has left the ASEAN with no choice but to approach the mass atrocity against the Rohingyas as merely a problem of migration and illegal migrants.⁶¹ As such, besides the inability of ASEAN to stem the crimes against humanity committed by the Myanmar government, it has also failed in mobilizing member states to accept Rohingyas fleeing their homes for fear of persecution, or pressurizing them into adopting the 1951 Convention on Refugee and the 1967 protocol. Indonesia, for example, has expressed concerns not so much hinged on the challenge of accommodating Rohingya refugees, but of fear of radicalization of its own Muslim population by displaced Rohingya Muslims.⁶² Thailand has responded to the crisis of fleeing Rohingyas by providing safe passage to other countries or bases through its "Help on Policy." The policy made sure that boats were intercepted on the high sea and diverted to Malaysia and other neighboring countries.⁶³ This contradicts Thailand's earlier stance on the nonrejection of refugees, migrants, and asylum seekers.

Furthermore, China's response to the Rohingya crisis has largely been inconsistent. Despite its criticism of the atrocities, China maintains close ties with key Myanmar government officials. China's position is informed by its strategic, political, and economic interests including border stability and the long quest for access to the Indian Ocean to further its ambitions of economic imperialism centered on the Belt and Road Initiative (BRI).⁶⁴ This position has been worsened with China's vetoing of possible sanctions by the UNSC on Myanmar while hosting Aung San Sun Kyi and other key officials of the Myanmar government at its BRI.⁶⁵ Essentially, China's position is informed by perceived fears that other Western countries could leverage international intervention to undermine its economic interests in the region and particularly in Myanmar.

On the other hand, Turkey's engagement with Myanmar is largely conditioned by the impact of deadly conflict within the continent. This fear and its expanding power ensure

60. Irawan Jatti, "Comparative Study of the Roles of ASEAN and the Organization of the Islamic Cooperation in Responding to the Rohingya Crisis," *The Indonesian Journal Southeast Asian Studies* 1, no. 1 (2017): 23, <https://doi.org/10.22146/ikat.v1i1.27466>.

61. Ha Hoang Thi and Htut Ye, "Rakhine Crisis Challenge ASEAN's Non-Interference Principles, ISEAS-YUSOF ISHAK Institute Analyze Current Events," *Perspective*, no. 70, Singapore, last modified on December 21, 2016, www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2016_70.pdf.

62. Penelope Mathew and Harley Tristan, "Refugee Protection and Regional Cooperation in Southeast Asia: A Field Work Report," accessed on February 8, 2020 (Canberra: The Australian Nations University), <https://openresearch-repository.anu.edu.au/bitstream/1885/11662/1/Mathew%20%26%20Harley%20Refugee%20protection%202014.pdf>.

63. Mathew and Tristan, "Refugee Protection and Regional Cooperation in Southeast Asia."

64. Khriezo Yhome, "Understanding China's Response to Ethnic Conflicts in Myanmar," Occasional Paper No 188, *Observer Research Foundation*, last modified on April 1, 2019, https://www.orfonline.org/wp-content/uploads/2019/04/ORF_Occasional_Paper_188_china_Myanmar.pdf.

65. Bhibhu Prasad Routray, "Myanmar versus the Rohingya: The China Factor," *Mantaraya Analysis #29*, last modified on October 4, 2018, <https://mantraya.org/analysis-myanmar-versus-the-Rohingya-the-china-factor/>.

that Turkey mobilizes members of the Organization of Islamic Countries (now the Organization of Islamic Cooperation) in condemning the mass atrocity against the Rohingyas, while also accusing the Myanmar government of ethnic cleansing and genocide in the Rakhine state. Turkey's President Recep Erdogan personally ensured that mass atrocity against the Rohingyas received attention at the UNGA, while also meeting Myanmar leader, Suu Kyi, to express his displeasure and discuss the long-term implications of the crisis.⁶⁶

Canada, for its part, has remained sensitive to the plight of the Rohingyas, albeit in the area of humanitarian assistance. Canada has condemned the worsening human rights situation in Myanmar and imposed a series of sanctions even before the eruption on the 2017 crisis. These sanctions were lifted, however, after the country adopted some democratic reforms. In the wake of the 2017 crisis, Canada did not only condemn the mass atrocity against the civilian population but was also quick to term the act as genocide. This is in addition to the lead role the country has played through the efforts of its special envoy to Myanmar, Bob Rae. In all this, Canada ensured that it monitored closely the trends of the events surrounding the International Court of Justice hearing on the Rohingya-Myanmar crisis.⁶⁷ Also, in a reaction to the Seventeen (17) recommendations put forward by Bob Rae on the path to peace, the Canadian government demonstrated a commitment to addressing these recommendations with four core objectives that include the alleviation of the humanitarian crisis, inspire positive political development, ensure that those who perpetrated crimes against humanity are held accountable while committing to international cooperation.⁶⁸ Additionally, Canada has donated \$50 million toward the humanitarian crisis.

Regardless of the varying degrees of both local and international responses to the unprecedented violence against the Rohingyas, mass atrocity has persisted with the government in perpetual denial. This, therefore, calls for global awakening and particularly in the wake of the horrors of Bosnia and Rwanda killings that have led to the phrase "Never Again" and the compelling need to protect civilian population through the doctrine of the RtoP.

THE MYANMAR-ROHINGYA CRISIS, CIVILIAN PROTECTION, AND THE DILEMMA OF THE RtoP NORM CONSOLIDATION AND INSTITUTIONALIZATION

Apart from the Genocide Convention and the Universal Declaration of Human Rights, no other doctrine has received wider acceptance like the RtoP. Its near ubiquitous

66. Saeyd Rashed Hassan Chowdury, "Humanity and Security: Internal and External Dynamics Behind the Muslim Rohingya Refugee Crisis, the Role of Turkey and Bangladesh," *Journal of Balkan and Near Eastern Studies* 4, no. 4 (December 2018): 148.

67. Bruno Gelinus-Faucher, "Time for Canada to Intervene as World Court Tackles the Rohingya Crisis," last modified on May 15, 2020, <https://policyoptions.irpp.org/magazines/may-2020/time-for-canada-to-intervene-as-world-court-tackles-the-Rohingya-crisis/>.

68. Government of Canada, "Canada's Strategy to respond to the Rohingya Crisis in Myanmar and Bangladesh," last modified on April 3, 2018, https://www.international.gc.ca/worldmonde/issues_development-enjeux_development/response_conflict_response_conflicts/crisis-crises/rep_sem.aspx?eng.

acceptance stems from the fact that the doctrine is largely demand-driven,⁶⁹ as an effective framework for responding to situations of violent attacks or the threat of it against civilian populations by their own government. Yet, the authorization of the RtoP in armed conflict scenarios has been met with mixed reactions arising out of the controversy in which the doctrine is enmeshed. Consequently, the international community has succeeded in invoking the RtoP in a few cases such as Libya, Mali, and Cote d' Ivoire, while many others including Syria, Cameroun, India, China, and Myanmar, deserving an RtoP response, continue to lay bare the many issues encumbering it.

Accordingly, while certain experts argue that RtoP interventions in isolated cases in Africa after the Libya debacle suggest that the RtoP is still alive,⁷⁰ its failure to respond to active incidences of mass atrocities such as Myanmar exposes inconsistency in its application. This inconsistency highlights the realist versus idealist positions on international politics with the self-interest politics of realism seemingly triumphing over the morality of idealism. Compounding the situation is the notion of intervention fatigue among global actors. In this regard, their preference for a less messy option of humanitarian relief provisioning and protection of refugees, as opposed to armed intervention, belies the general functioning of the RtoP.

The Myanmar-Rohingyas crisis lays bare the many dilemmas of the RtoP regarding civilian protection. One is the inability of framers and advocates of the RtoP to agree on critical questions and to adequately conceptualize, for instance, who are threatened civilians, what is (are) the threshold(s) for identifying imminent genocide, at what point should intervention be authorized, and who has the right authority to intervene. In practical terms, while studies and investigations have established the status of the Rohingyas as the world's most persecuted minority by the virtue of the state-sponsored violence thus meeting the theoretical thresholds for the authorization intervention,⁷¹ the self-interested posturing of world powers and the conservative response of the international community negatively impacts the doctrine with particular regards to norm consolidation and by extension exacerbates the Myanmar-Rohingya crisis. Consequently, while the Myanmar-Rohingya crisis continues to spotlight the lack of political will and the inability of global stakeholders to compromise on veritable frameworks for identifying when civilians are threatened and the kind of intervention to follow, the prospects for other cases ripe for intervention such as that of the Uighurs in China or Kashmir in India becomes highly unlikely.

This probability of RtoP intervention in Myanmar is also impacted by the dynamics of international power politics as well as the institutional lapses of the UN Security Council made certain by the fallout of the Libyan intervention. A debacle that has come to encapsulate the central issues constraining, delegitimizing, and deconsolidating the RtoP norm. As such, even as evidence of atrocious crimes mount in Myanmar and other such

69. Ramesh Thakur, "The Responsibility to Protect at 15, Review Article," *International Affairs* 92, no. 2 (2016): 415, <https://doi.org/10.1111/1468-2346.12557>.

70. Gareth Evans, "R2P Down but Not Out After Libya and Syria," last modified on September 9, 2013, <https://www.opendemocracy.net/En/OpenGlobalRights-Openpage/R2P-Down-But-Not-Out-After-Libya-and-Syria>.

71. Adams, "If Not Now, When?"

sites, interest politics and mutual suspicion among great powers both within and outside the UNSC with the capacity and requisite infrastructure to stage interventions, coalesce to deprive the Rohingya crisis of the kind of attention and action(s) necessary to halt the violence. For instance, while Britain and France have remained aloof to the situation, the US has adopted an unstable policy toward the crisis. Thus, while the US, on the one hand, calls for sanctions against key military officials, it has on the other hand been keen on hobnobbing with key government officials.

Also, of worthy note is the manner in which proxies between nations have affected the application of the RtoP. Before the Myanmar-Rohingya crisis was thrust into the spotlight, such intricate scenarios had played out during the Syrian crisis between China and Russia on one hand and the US on the other.⁷² It, thus, comes as little surprise that China has continued to block calls for any form of intervention in Myanmar. Considering China's aspiration to global hegemony and current status as regional hegemon within the context of the experienced destabilizing effects of the intervention, sanctioning any intervention in Myanmar may be inimical to its long-term strategic interests in the region. It is, therefore, more likely that China will leverage its position in the UNSC to veto any UNSC resolution authorizing RtoP intervention in Myanmar. The critical implications here are that political realism, national interest, and perception of state actors continue to play a crucial role in deciding why, how, and when the RtoP is authorized as currently being demonstrated in Myanmar.

Remarkable of the Myanmar crisis and in the dilemma of mobilizing the RtoP, is the failure of regional organizations such as ASEAN's Political-Security Community and ASEAN's Intergovernmental Commission on Human Rights to engineer complementarity of roles in the institutionalization of the RtoP. While ASEAN has declared support for the RtoP, the key regional state actors remain suspicious of the ends to which other global actors may put the doctrine. Hence, a key concern of ASEAN is that of degraded sovereignty and solidarity when interventions are sanctioned for the sake of civilian protection. Hence, such issues such as human rights violations are low, relegated to the bottom ranks of the priorities of ASEAN countries. This highlights power politics among ASEAN members, which forestall the consensus necessary for humanitarian intervention and diminish the possibilities for the Rohingya crisis being resolved via RtoP. The impact here is the enabling of irresponsible state actions regarding human rights violations and the long-term eroding of moralist cosmopolitan arguments for interventions and global commitment to the "Never Again" mantra.

With Myanmar considered one of the poorest countries on the Asian continent and with high levels of poverty and devoid of globally in-demand mineral endowments, it has at both regional and international levels been perceived as holding little, if any, strategic value for major actors on the global stage. To a certain extent, this explains the nonchalance that has attended the response of major powers to the Rohingya crisis. Another aspect of the Rohingya crisis is the issue of religious labeling. In practice, Rohingyans

72. Nicholas Idris Eramch, "Humanitarian Intervention, Syria and the Politics of Human Rights," *International Journal of Human Rights* 21, no. 5 (April 2017): 11, <https://doi.org/10.1080/13642987.2017.1307829>.

subscribe to numerous religious beliefs ranging from Theravada Buddhism by a majority to Hinduism, Christianity, and Islam by a significant minority. Yet popular misconception tends to portray Rohingyas as mostly Muslims. Hence, the Rohingyas and other minority Muslims in Myanmar have become victims of a label that has cast the aspersion on individuals as potential terrorists. The paranoia unleashed, and the lack of empathy emanating from recent waves of Islamophobia and the global war on terror, may have caused advocates of the RtoP to be less passionate about the plight of Rohingya civilians.

This act of labeling can in itself be construed as an act of genocide against a people. Yet, the continuous toleration of the label slammed on Rohingyas as “Rebellious Muslims” betrays the international community’s outmoded interpretation and enmeshment in the politics of identifying and prosecuting acts of genocide as spelled out in the Genocide Convention and subsequent international human rights frameworks. This act of labeling must as a matter of urgency be condemned as it also illuminates the motives behind ongoing genocide against Uighurs in China and the Kasmirs in India.

From the foregoing, it can be surmised that despite the wide acceptance of the RtoP, experiences in Myanmar suggest that the doctrine is in dire need of norm entrepreneurs in the form of regional organizations as advocates. Unlike in Africa where the consequence of perennial armed conflict has thrust the African Union into the lead role of norm entrepreneur, such cannot be said for ASEAN. Thus, while it may seem that ASEAN is committed to averting mass atrocity within its jurisdiction, its response to the Myanmar crisis shows otherwise. As far as tangible action goes, ASEAN has done little beyond a reminder to the Myanmar government of its duty to protect its citizens and calling on member states to assist fleeing Rohingyas. Therefore, while associations continue to express support for the dictates of RtoP, lack of political will, geopolitics, and national interest have brought them short of intervention.

Furthermore, despite the controversy that has surrounded the citizenship status of the Rohingyas, Myanmar’s government, regional governments, and the international community have balked in their duty to protect this most vulnerable section of the country’s civilian population. This brings to question how well the advocates of RtoP have done in exhausting all aspects of the doctrine in view of an armed intervention being a tool of last resort. The seeming inaction in Myanmar suggests that the international community is yet to come to terms with the use of equally effective soft power mechanisms provided by the RtoP such as political and economic sanctions and the severing of diplomatic ties. Thus, while the use of force continues to take the flak, the excessive focus on it to the negligence of other RtoP-sanctioned tools exacerbates the Rohingya crisis. The greater implications of inaction besides the toll on Rohingya civilians are dire for the consolidation and institutionalization of the RtoP doctrine.

In summary, the Myanmar-Rohingya crisis represents the impasse between the moral cosmopolitan and the legalistic approach to civilian protection. While the authorization of the RtoP in armed conflict situations like in Libya comes off as triumph for the moralist position, the Rohingya situation in Myanmar is a reminder the debate is far from settled. More so, the character of the Myanmar-Rohingya crisis has further exposed the institutional, operational, end-state problem and expectation gaps that have become

associated with the RtoP. Hence, the inability of the international community to mobilize the RtoP in Myanmar is not only a setback for the protection of threatened civilian populations but also suggests that the RtoP is far from consolidation ultimately representing a setback for its institutionalization.

Regardless of these challenges, the Myanmar-Rohingya crisis presents still a unique opportunity for closing the gaps between theory and practice. First, there is a need to recognize that the crisis qualifies as a genuine RtoP case deserving prompt international action. Second, effective sanctions need to be placed on Myanmar's government and this should be followed by a well-monitored trial at the *International Court of Justice (ICJ)* to try persons indicted in the atrocities against the Rohingyas in line with the updated United Nations report on the crisis. The punishment and sanctioning of culpable individuals will serve as a deterrent to governments from future perpetration of mass atrocities against their own populations. The recent *ICJ* pronouncement mandating the Myanmar government to protect the Rohingyas from mass atrocity is a welcome development, there is an urgent need for monitoring and evaluation of the level of compliance.

Finally, while the Rohingya crisis has thrown up critical challenges for the RtoP, maintaining relevance and actualizing the third and final stage—norm internationalization—of the norm life cycle will depend largely on how the international community responds to these challenges going forward. Actualizing the third stage necessarily demands the resolution of conceptual and inconsistency problem dogging the RtoP as well as the adoption of clear rules for establishing when a mass atrocity has been committed and what necessary measures are to be adopted. Also urgent is to ensure that future RtoP interventions proceed by the principles of *Jus in Bellum* and *Jus ad Bello*. The international community must pursue greater synergy between regional security organizations and human rights advocacy groups who are expected to act as norm entrepreneurs and, rehabilitate the reputation of the UNSC. In conclusion, the international community in collaboration with ASEAN countries and the Myanmar government needs to initiate reforms encompassing inclusive policies that recognize and guarantee the rights, in all ramifications of the Rohingyas to forestall a future relapse into conflict. ■

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