

ROHINGYAS AND THE PRICE OF INACTION

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ABSTRACT

The persecution of Rohingyas in Myanmar is not an issue that is unheard of by the international community. The question that arises is that why is no action being taken by any of the states to rescue this ethnic group from their tribulations or are they waiting for the conflict to flood the international borders and turn into a mammoth complication before it should be helped. The doctrine of R2P was introduced for this reason that the world does not have to go through the aftermath of inaction in Kosovo de novo or experience the consequences of Rwandan genocide. The paper seeks to manifest the fact that the principle of R2P is applicable in the case of this conflict between the Rohingya Muslims and the Rakhine Buddhists and that it is the duty of the international community, and not something that the states step up for according to their whims, wishes, political interest etc., to aid and abet the end of war of races on the Burmese land.

Rohingya is a controversial terminology in Myanmar. The conflict between the Rohingya Muslims and the Rakhine Buddhists was brought to light in the year 2012 after the clashes between the two ethnic groups, which led to mass violations of human rights. However, the struggle has been going on since the 1980's when under the new citizenship law they were denied recognition as an ethnic minority and thus denied citizenship. These people have been living on the Burmese soil for years but the new law rendered them stateless and thus, prone to violations of basic human rights and other fundamental rights. This paper looks into the conflict and puts forth reasons as to why the doctrine of Responsibility to Protect should be brought into effect in Myanmar and why the international community needs to step up to

BACKGROUND

The Rohingyas have faced a long history of maltreatment in Myanmar because of their refugee status and the loss of citizenship in 1982 was a major setback to their rights, but it does not end there. This loss has led to other laws becoming derogatory to their peaceful existence in the country and has impinged on other fundamental rights such as right to movement, right to education, right to work and employment and others, which stand in violation of the international law and particularly the Universal Declaration of Human Rights.¹ They have been the target of Nasaka's discriminatory policies and their implementation. Nasaka is a force comprised of local police officers and the paramilitary border forces, which works towards the implementation of policies in the Arakan region and are also in charge of the security.

Nasaka forced many of these Rohingyas into labor, irrespective of their age, gender, and health condition. Even though they are paid, the labor is nonetheless forced into labor for

¹ Anamika Gupta, *Myanmar's Rohingya Muslims- Whose Responsibility to Protect*, 16th October 2016
https://www.academia.edu/4917472/Myanmars_Rohingya_Muslims_-_Whose_Responsibility_to_Protect

meager wages. The Rohingyas also need to seek permission to get married, which is not easily granted and also have to pay an amount ranging between 50,000- 300,000 kyats and even then the permit is not guaranteed. The properties and lands of many have been seized and several have been evicted without any valid reason, which leaves them homeless. Additionally, they have been subjected to arbitrary taxation where the officials have extorted high amounts of money by placing taxes on essential functions like collecting firewood, birth and death registration etc.

RESPONSIBILITY TO PROTECT

The concept of Responsibility to protect (R2P) emerged after the massacre in Kosovo and Rwanda occurred which led to mass loss of human life equaling to genocide. This concept was introduced in 2005 at the World Summit of the United Nations. The underlying motive of this principle was to prevent the scourge of four crimes that are genocide, ethnic cleansing, war crime and crimes against humanity. It also stems from the belief that it is the responsibility of the nations at large to protect human life and liberty. This principle stands on three pillars: *Pillar I*- it is first and foremost responsibility of the state to protect its citizens from any human rights violations; *Pillar II*- it is the responsibility of the international community to assist the states in fulfilling their responsibility to protect their citizens; *Pillar III*- it is the responsibility of the international community to take timely and decisive action against the crimes being perpetrated if the national authorities are unable or unwilling to do it. But first we need to establish that one of the four crimes is being committed in the state of Myanmar. We can see it in the laws stated above and how much of an anti Rohingya sentiment they contain.

An internal armed conflict denotes to a scenario of violence where prolonged showdown between government forces and one or more organized armed groups, arising on the territory of a state.² In this case, the Myanmar government is not manifestly carrying out acts of violence against the Rohingyas, but is indirectly in collaboration by not investigating and not punishing the people responsible for their acts. So the question of war crimes does not arise on this case. But many have termed it as genocide. The definition of genocide according to Article II of the Convention on Prevention and Punishment of Crime of Genocide says, “In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: a) Killing members of the group;(b) Causing serious bodily or mental harm to members of the group;(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;(d) Imposing measures intended to prevent births within the group;(e) Forcibly transferring children of the group to another group.”

Rohingya Muslims are an ethnic group, even though not recognized by the government of Myanmar. The state has adopted policies and plans that are derogatory to the growth of Rohingya community and these policies, more than doing any good, are destructive and vituperative. Professor William Schabas, the former president of the International Association of Genocide Scholars, says: "*When you see measures preventing births, trying to deny the identity of the people, hoping to see that they really are eventually, that they no longer exist; denying their history, denying the legitimacy of their right to live where they live, these are all warning signs that mean it is not frivolous to envisage the use of the term genocide.*"³ These events have been termed as slow genocide, as it has been taking place over

² Kathleen Lawand in an interview on 10th February, 2012
[inteonhttps://www.icrc.org/eng/resources/documents/interview/2012/12-10-niac-non-international-armed-conflict.htm](https://www.icrc.org/eng/resources/documents/interview/2012/12-10-niac-non-international-armed-conflict.htm)

³ Al Jazeera Investigative Unit, *The Hidden Genocide*, AL JAZEERA, Dec. 9, 2012, <http://www.aljazeera.com/programmes/aljazeerainvestigates/2012/12/2012125122215836351.html>

a number of years unlike in the case of Sudan where in a short period of time there were mass killings. Four out of the five events listed in for a conflict to be termed as genocide have been fulfilled in this case.

The violence did not just begin only in 2012 but has been going for innumerable years. This had all begun when, due to the colonialism in Bangladesh, this ethnic minority had fled to Burma for refuge. And the non-democratic military junta had since been quite prejudicial and brutal in their treatment towards Rohingyas. During the years of the rule of the military, the Rohingya areas had been very inaccessible to the press and media due to the system that blocked the access of outsiders to those areas, which explains the lack of coverage of this issue.⁴ The political and religious leaders in Arakan (Rakhine) state incited attacks against the Rohingyas and other Muslims with the intention to drive them away from the areas they had been residing in.⁵ There were no indications that the Burmese government had taken any strict legal action or even investigated with regard to the people responsible for the violence in any of the events that have occurred and the government has even hampered the provision of aid to the internally displaced camps which led to a large number of preventable deaths.⁶ The Rohingya refugees in these camps are forced to live in sub-human conditions, vulnerable to diseases, exploitation and abuse.⁷ Secretary General Ban-ki-Moon also called upon the government of Myanmar to take quick action to stop the “vigilante attacks, targeted threats, and extremist rhetoric” in northern Rakhine state.⁸

⁴ Maung Zarni and Alice Cowley, *The Slow Burning Genocide of Myanmar's Rohingya*, 23 PACIFIC RIM LAW AND POLICY JOURNAL ASSO. <http://www.corteidh.or.cr/tablas/usuario/2.pdf>

⁵ *All You Can Do Is Pray*, HUMAN RIGHTS WATCH, April 22, 2013 <https://www.hrw.org/report/2013/04/22/all-you-can-do-pray/crimes-against-humanity-and-ethnic-cleansing-rohingya-muslims>

⁶ Ibid

⁷ Ian Robinson, and Iffat Rahman, *The Unknown Fate of the Stateless Rohingya*, 2 OXFORD MONITOR OF FORCED MIGRATION, 683, 747 (2014) <http://oxmofm.com/wp-content/uploads/2014/01/IAN-ROBINSON-AND-IFFAT-RAHMAN-%E2%80%98The-Unknown-Fate-of-the-Stateless-Rohingya.pdf>

⁸ *Secretary General calls for end to lawlessness in Myanmar's Rakhine state following latest violence*,” UN NEWS CENTER, 25 October 2012, <http://www.un.org/apps/news/story.asp?NewsID=43383>, accessed 8

The government of the state of Myanmar refuses to take responsibility of the Rohingyas as they are not legal citizens and are not one among the 135 ethnic groups recognized by the government and stated under the citizenship law. But the state is still responsible because nonetheless, the Rohingyas still live on the Burmese soil, by virtue of which the state is responsible to protect them against the four crimes. So by not complying with their duty, they breach the responsibility under pillar I of R2P. In fact, there are many instances of the government perpetrating violence. The long-standing discrimination has helped in further execution of brutality with impunity. The then president, Thein Sein, had clearly stated that the protection of Rohingyas is not their responsibility and they can only be protected if they move to the UN managed camps of the other countries who are willing to accept them in their countries. We can only imagine the boost the statement by President Sein must have given to anti- Rohingya groups to keep up their actions violating the rights of the Rohingyas. Another such instance is of Myanmar rejecting the UN resolution, which asks for granting of citizenship to the Rohingyas, as statelessness is the root cause of the violence against them, stating that it is an invasion of their sovereignty.⁹ What is sovereignty and to what extent does it provide immunity to a state? Does it provide immunity from interference even when the nation is harming its citizens, even when it is unwilling to protect them and give them basic rights? What exactly is the scope of sovereign immunity?

The ICISS report on Responsibility to Protect talks about state sovereignty and it says that sovereignty is a two-way responsibility, i.e. external and internal sovereignty. External sovereignty entails respect for the sovereignty of other states and internal sovereignty implies

November 2012.

⁹Jared Ferrie, *Myanmar rejects resolution on Rohingya Muslims*, REUTERS, November 21, 2013 <http://www.reuters.com/article/us-myanmar-rohingya-un-idUSBRE9AK0P120131121>

respecting the dignity basic rights of all people within the state.¹⁰ It also states that sovereignty by no means endows unlimited power on the state to do anything it pleases to its people. It is not a defense but an obligation. SA point to be noted is the usage of the word ‘people’ and not ‘citizens’, which implies that citizens or not, the state is supposed to protect anybody living within its borders, and connecting it to the case at hand, Rohingyas should be provided with the required protection under this norm. But instead the government seems to be complicit in the execution of crime. When the Rakhines performed the felony and even if the police officers were around, they made no effort to stop the barbarity and stood as if nothing was happening.¹¹

The responsibility to protect under pillar II and Pillar III are the only options; more so pillar II because pillar III talks about intervention and also military force if needed. Pillar III is still under controversies as to what is the criteria for allowing intervention and what about UN preaching non-intervention all this while and under what circumstances can use of force be allowed and what is the source of this responsibility. The ICISS report derives its source by talking about human rights and human security:

“Millions of human beings remain at the mercy of civil wars, insurgencies, state repression and state collapse. This is a stark and undeniable reality, and it is at the heart of all the issues with which this Commission has been wrestling. What is at stake here is not making the world safe for big powers, or trampling over the sovereign rights of small ones, but delivering practical protection for ordinary people, at risk of their lives, because their states are unwilling or unable to protect them.”¹²

The logic is that even though the crisis begins with harm to individual rights, the scale of the atrocities affects us collectively through the international harm principle, and to commit

¹⁰ International Commission on intervention and state Sovereignty, *Responsibility to Protect*, (2001)

¹¹ Supra 5

¹² Supra 10

genocide or engage in ethnic violence is to fail the people as humans thereby threatening humanity's values and interests, and this is what generated the moral 'responsibility' for the international community to act in ways that would have otherwise been seen as infringement of non-intervention.¹³

The application of R2P was first seen in Libya, where the corrupt Gaddafi regime and its barbaric ways had given rise to the uprising in 2011. The methods used there were intervention and use of force. All the other methods under Pillar II could not be used because what pillar II propounds is that the international community should assist the state in protecting the civilians, and the members of international community cannot do much if the government is perpetrating crime and is not ready to take an initiative to address the problem in the state. Thus in this case, the international community through intervention and if required, use of force, should help in curbing the inhumanity in Burma. Under the doctrine, use of force should only be allowed if there is large-scale loss of life, actual or apprehended, which is the result of deliberate action of the state or its inability to prevent the loss from occurring. Another circumstance under which intervention is permitted is when there is large scale ethnic cleansing.¹⁴ There are also some precautionary principles that need to be kept in mind such as the intention to intervene should not be maligned with personal interest, that all other means to reconcile should be exhausted and military intervention should be the last resort, that the intensity of the military intervention should be proportional and there should be a reasonable chance of success. Another thing to be kept in mind is that the intervention be mandated by the UNSC, which is very important for the intervention to be termed as legal.

¹³ Rain Liivoja, *Crimes Against Humanity- A normative Account*, EUR J INT. LAW, 373, 373-376 (2007)

¹⁴ Supra 10

Intervention under pillar III is not only limited to military intervention but also other means such as embargoes; diplomacy can also pressurize the state into giving in and forcing them to stop the violence. The ICISS report also requests the permanent five members to not use their veto powers in such grave cases where military intervention is imperative. But there have been times when this happened for e.g. in 2007, Russia and China vetoed a draft resolution which demanded the end of political repression and human rights violation in the military led Myanmar and the reason was that it does not constitute as a threat to international peace and security and that the Security Council was not the platform to discuss this issue.¹⁵

RECOMMENDATIONS

In my opinion, the member nations can begin by asking the state of Myanmar to grant the Rohingyas the requisite citizenship by amending the 1982 Citizenship Act, which is the major underlying cause of this conflict. If the government does not comply then the international community can start by issuing a warning regarding further actions that are impending. If there is still no compliance, the aggressive measures should be imposed. But one thing that we should keep in mind is that there are times when the effect of these aggressive measures directly affects the citizens, like in case of Iraq where because of the embargo there was inadequate supply of food and other material and the government increased taxes to compensate and continue its activities which created a lot of problem for the people. Even in Yugoslavia, the oil embargo led to a led to a lot of pollution as they cut trees to provide as fuel in the absence of oil. So effects of such measure should be pre-calculated. As mentioned above, the use of force should be proportionate and should be for the protection of civilians. At no point should the force be used in furtherance of personal

¹⁵Edith Lederer, *China, Russia veto Myanmar Resolution*, WASHINGTON POST, January 14, 2007 <http://www.washingtonpost.com/wp-dyn/content/article/2007/01/13/AR2007011300296.html>

interest of any kind or no such measure should be taken that is meant for anything other than the protection of civilians.

Other such measures that can be taken are provision of proper care material to the people in internally displaced peoples camp, and also take much needed action against the Rakhine Buddhists who are being given immunity time and again. The government should also make plans for rehabilitating and rebuilding process for the internally displaced. The discriminatory policies and laws should be scrapped and the Rohingyas must be given equal rights just like the other ethnic minorities. What also needs to be taken care of is that, there is effective implementation of the new policies and for that there should be legislations that must be brought into effect to give way to equality and fair treatment. Provisions should be made in such a manner so that the aid by UN agencies can be delivered to the camps without any difficulties. Nations like Australia, the United States and the members of EU, in their capacity as dialogue partners of ASEAN, can help Myanmar in capacity building in law enforcement.¹⁶ ASEAN can be a very powerful force in driving the Burmese government to review its policies against Rohingyas and move to wards more liberal policies. It can propose the amendment of the citizenship, which is a critical factor that can assist the Rohingyas in attainment of rights.

The European Union had removed their economic sanctions against Myanmar at the time that the violence was at its peak in 2013.¹⁷ This was a wrong move by the EU it gave out the message that it is acceptable to perpetrate violence and there will be no serious consequences

¹⁶Noel Morada, *ASEAN, the Rohingyas and Myanmar's Responsibility to Protect*, AP R2P Vol. 2 No.9, 2012, at 1, 4-5.

¹⁷ Chris Morris, *EU lifts sanctions against Burma*, BBC News, Apr 22 2013, <http://www.bbc.com/news/world-asia-22254493>

of the government's actions or rather inaction.¹⁸ Even though EU, very strategically might I add, did not lift the arms embargo against Myanmar so that the government does not use it for internal repression,¹⁹ it would be more pressurizing for the government to take action against the crimes being committed against the Rohingyas.

CONCLUSION

The Rohingya-Rakhine conflict is one of the most long drawn conflicts of our time. Unlike what the representatives of China and Russia said after they torpedoed on the draft resolution, that it does not constitute as threat to international peace and security, then one could ask as to what in the case of Haiti was a threat to international peace- that the Haitians were migrating due to failure of democratic machinery and the Rohingyas are migrating due to widespread violence is not enough to call for intervention or even have the attention of the international community. This conflict is in great need for intervention as there has been no real change even after the election of the Suu Kyi government. The responses given in this regard are very diplomatic so that the newly elected government can retain the support of the Rakhine community. On the bright side, there are baby steps being taken in this direction like the constitution and establishment of an advisory committee on Rakhine state chaired by Kofi Annan which led to beginning of investigation by various human rights agencies and the final report is due August, 2017, but this is not sufficient if we take a look at the complexity of the issue.²⁰ It is very important to take informed decisions to curb the violence and have a unified state of Myanmar with Rohingyas and Rakhines living in harmony. Every human has the

¹⁸ Alexandra Phillips, *The World's Blind spot- Shedding light on the persecuted*, HARVARD INTL. REV, 31, 32 (2013)

¹⁹ Michael O'Kane, *EU Renews Burma/ Myanmar Sanction for 1 year*, EUROPEAN SANCTIONS (Apr. 26, 2017), <https://europeansanctions.com/2017/04/26/eu-renews-burmamyanmar-sanctions-for-1-year/>

²⁰ Advisory Commission on Rakhine State, *Advisory Commission on Rakhine State : Interim Report and Recommendations*, RELIEF WEB, (Mar . 16, 2017) <http://reliefweb.int/report/myanmar/advisory-commission-rakhine-state-interim-report-and-recommendations-march-2017>

right to live freely without the fear of war and its time the international community takes steps towards providing that to all.