

Contemporary Human Rights Oppression against the Rohingya: A Fiduciary Theoretical Analysis of Humanitarian Intervention Prospects

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Abstract

Human rights oppressions continue to take place against the Rohingya people in Myanmar. Despite the presence of crimes against humanity, genocide, and mass murders, the United Nations Security Council continues to display divergence in how to respond to the crisis appropriately. This article aims to illustrate the legal basis, structure, and extent of state authority in utilizing force in response to gross human rights violations against the Rohingya people by employing Criddle's 2015 fiduciary theory of humanitarian intervention. This article concludes the following steps to be undertaken; 1) collectively determine that the Rohingya people have been prosecuted in the form of genocide, crimes against humanity, and mass murder, to transfer the responsibility to protect towards the global community, 2) interventions need to honor the domestic preferences of the Myanmar people and government, to sustain an acceptable humanitarian intervention, and 3) construct clear parameters that would induce the imposition of humanitarian intervention.

Keywords

humanitarian intervention;
Rohingya; crimes against
humanity; human rights



I. Introduction

In the 21st century, humanitarian crisis continues to evolve into a widespread phenomenon all around the globe. As global norms progress among state leaders, in reality, state prosecutions of minorities have not faced any resolve. State actors in contemporary times seem to have misused state privilege of sovereignty to disseminate terror among its citizens. Among the most prosecuted ethnicity is the Rohingya people in Myanmar.

Since 1982, a citizenship law implemented in Myanmar stipulates that the Rohingya people are denied their Myanmar citizenship, leaving them to become stateless, or more familiarly known as 'Internally Displaced individuals' (MacLean 2018). The background of this can be traced by the fact that key political leaders of Myanmar have long embraced the view that the Rohingya people are illegal immigrants from Bangladesh, a neighboring country of Myanmar located in South Asia (Dussich 2018). Since 1982 thus, the Rohingya people have been subject to ongoing prosecutions by the military junta of Myanmar, even to the current 'democratically elected' Myanmar government. Unlike contemporary conflicts that tend to show certain periods of coerciveness then a time of stagnation, the conflict of Myanmar continues to rise in tension throughout the decades. In 1992, the worst crisis happened for the Rohingya people, as approximately 250,000 were forced to flee from the Rohingya State due to military operation raids (Dussich 2018). But the prosecutions of the Rohingya people only became mainstreamed in the media since 2016 due to a crisis involving attacks on military officials claimed to be conducted by the Rohingya people. What followed was a mass prosecution of approximately 1,000 individuals and an additional 90,000 displaced (Milton et al. 2017).

In the face of the decades-long humanitarian crisis, the Rohingya people took refuge in countries in South Asia and Southeast Asia. Since the recently occurring crisis, the issue has not faded away, as the current executive and legislative bodies of Myanmar continue to reject citizenship status for the Rohingya people. An immense spotlight has been directed to Myanmar's democratic advocate figure, Aung San Suu Kyi, the former State Counselor of Myanmar (Dussich 2018). She too has been silent throughout the recent prosecutions towards the Rohingya people. It is difficult to see a possible resolve if resolutions are based on the intention of domestic leaders of Myanmar. This begs the question; can global or regional forces respond to the crisis or not? It is worth noting that global norms have much evolved throughout the years to justify interventions to alleviate the human rights crisis. In 2005, the UN introduced the 'Responsibility to Protect' (R2P) as the legal framework to act in cases of crimes against humanity, genocide, and mass murders (Halakhe 2013). However, the implementation of the R2P has been far from ideal, as humanitarian crises such as those that have occurred in Myanmar continue to occur.

To respond to intervention prospects, we need to dive in to understand global norms on international interventions and regional organizations in Southeast Asia. State sovereignty is among the most respected norms in international relations and foreign policy (Putra 2021). However, with the constant rise in vertical conflicts (separatist groups, conflict between the government and certain ethnic/ religious groups, etc.), global norms have evolved to facilitate a certain degree of state intervention, which eventually derogates the core concept of state sovereignty.

Correlated to the crisis of what is happening in Myanmar, we could see that global norms should be able to conclude that the crisis is unacceptable. It violates the very core of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which specifically addresses in its article II, the issue of mass killings and physical and psychological destructions towards a certain ethnic group, which are violations of international law. As we now identify the violations that have occurred, can we thus intervene? The answer would be a yes and a no.

Since the establishment of the United Nations in 1945, states agreed through the UN Charter Article VII, that actions including invasions, forcibly taking territories, and invading countries are illegal in International Law (Evans and Sahnoun 2002). This, however, has not been the reality that we see. During the Cold War and in the late 20th century, we have seen a notable trend of countries implementing what was then known as 'Humanitarian Intervention,' which invades countries to end an inevitable humanitarian crisis (King 2021). Though the forms have varied, we have seen the UN somewhat directly and indirectly involved in violating state sovereignty in Somalia and Kosovo (Roberts 1999). We even have certain countries that unilaterally decided to take matters into their own hands, such as the United States in Afghanistan and Iraq. To simplify this point, the concept of state sovereignty in the 21st century is no longer absolute but with condition (Putra and Cangara 2018).

Exists a massive lack of clarity as to whether state actors can respond to crises related to genocides, mass killings, and crimes against humanity. As seen in the study case of the Rohingya prosecutions, this article attempts to address possibilities of humanitarian intervention in Myanmar based on existing juridical theories justifying interventions. This article employs Evan J. Criddle's fiduciary theory of humanitarian intervention in the article 'Three Grotian Theories of Humanitarian Intervention' 2015. Criddle, in his article, attempted to modify past theories on humanitarian intervention written by Grotian in the 17th century and attempts to elaborate a fiduciary theory aimed at justifying humanitarian interventions in responding to human rights violations abroad.

II. Review of Literature

There is an extensive amount of literature related to human rights oppressions in Myanmar, specifically towards the Rohingya people. To identify the research gap of this article, the following discourses will be discussed; 1) urgency of intervention in alleviating the human rights violations to the Rohingya people in Myanmar, and 2) prospects and challenges of implementing the R2P in Myanmar. It is worth noting that there are a mixed number of literatures addressing human rights violations in Myanmar. Democratization has been a long process in Myanmar, and with the rule of military junta, an autocratic-free Myanmar seems to still be distant. Despite so, academics have long argued that the forms of human rights abuses occurring towards the Rohingya people in Myanmar are unacceptable. Islam (2020), for example, illustrated how based on history, the Rohingya people have lived under endless tyranny. Forms and suppression cases were also pointed out, which attempted to gather a consensus on human rights violations in the country (Perla and Ullah 2019; Haque and Chambers 2020). In further identifying the issues against the Rohingya people, Maclean also illustrated how the violations towards the Rohingya constitute as a form of genocide and erasure of the ethnicity, indicating the presence of an ongoing cycle of prosecution (MacLean 2018). Human Resources (HR) is the most important component in a company or organization to run the business it does. Organization must have a goal to be achieved by the organizational members (Niati et al., 2021). Development is a change towards improvement. Changes towards improvement require the mobilization of all human resources and reason to realize what is aspired (Shah et al, 2020). The development of human resources is a process of changing the human resources who belong to an organization, from one situation to another, which is better to prepare a future responsibility in achieving organizational goals (Werdhiastutie et al, 2020).

As academics are in a consensus of the human rights violations towards the Rohingya people in Myanmar, the first discourse will focus on the urgency to intervene as means to resolve the issue. Past studies have argued the possible effectiveness of conducting a humanitarian intervention, with academics such as Kingston (2015) pessimistic on any possible desired outcome. Other studies have focused on utilizing regional platforms such as the ASEAN Regional Forum, and measures need to be taken to increase the forum's capacity to handle human rights abuses (Guilloux 2010). Nevertheless, Sarkin and Pietschmann (2003) made convincing arguments justifying the possible conduct of humanitarian intervention and how it is deemed legitimate based on existing international law.

The second discourse concerns the application of the R2P in Myanmar and towards the Rohingya people. The first level is R2P in Myanmar, as there is an abundance of literature that highlighted the need to enforce the R2P during the 2009 cyclone Nargis in Myanmar. As Myanmar authorities forcefully closed their borders from international humanitarian aid, what followed was the deaths of hundreds and thousands of citizens that did not have access to essential aid. The event ignited debates among academics, which all advocated the need to revisit the current regulations on R2P to include cases of public policies that leads to the deaths of thousands (Haacke 2009; Özerdem 2010; Junk 2015). Nevertheless, the most relevant discourse to this topic is the discourse on the enforcement of R2P to protect the Rohingya people. Kingston (2015) focused his arguments on the presence of structural violence that occurred against the Rohingya people. Several limitations on the R2P were elaborated by the works of Bellamy and Drummond (2011)

and Nishikawa (2018), arguing that regional norms in Southeast Asia and the label of non-citizens continue to become major reasons why the R2P is difficult to enforce.

Based on the discussions on past relevant literatures, this article will attempt to fill in the research gap of juridical justifications in implementing the R2P. This article will not purely focus on the R2P as one of the forms of interventions, as it will take a deeper look at current juridical challenges associated with implementing humanitarian interventions and possibilities of overcoming them in the future. Furthermore, none of the past studies have addressed this question by utilizing Criddle's 2015 fiduciary theory of humanitarian intervention, which should be able to shed light on new dynamics of feasibly implementing interventions in Myanmar to protect the Rohingya people.

III. Research Method

3.1 Juridical justification to humanitarian intervention in response to the contemporary human rights crisis towards the Rohingya people

The number of humanitarian oppressions currently taking place in Myanmar is staggering. The Rohingya people currently face constant prosecution by the Myanmar government and have neglected their citizenship rights under the constitution since 1982. As stateless people living in Myanmar, the Rohingya people have been subject to constant prosecutions, taking in the form of crimes against humanity, mass murders, even to genocide (MacLean 2018). The idea of implementing a global norm such as humanitarian intervention was introduced since many years ago. However, due to the lack of interest by states with the power to intervene, the problem continues to occur.

Interventions can happen in various forms, starting from economic sanctions to military interventions. As seen in past study cases, the decision of invading one country is purely based on the subjective decisions of the UNSC veto holders. Russia, China, UK, France, and the US have always been divided when it comes to humanitarian responses to an occurring crisis (Beddu, Cangara, and Putra 2020). On the factor of legality and international law, the UNSC has the full authority in launching interventions, whether it being special operations such as that which occurred in Libya or full humanitarian interventions like Somalia in the 1990s (O'donnell 2014). But International politics is not simply dictated by the factor of legality and international law. In many cases, the question of feasibility needs to be addressed as a priority compared to other factors. In a place such as Myanmar, not many countries are willing to invest their military resources in such a risky mission, let alone to invest finances in any form of intervention operation. Despite the derogation of state sovereignty, the world has been picky in determining crises that they wish to respond to. They would respond to Kosovo but put a blind eye on Rwanda. They would back up the US in fighting terrorism in Afghanistan but would leave Syria to solve its domestic issues alone. The same thing has occurred with Rohingya. It has only been several states that have decided to sanction Myanmar for its prosecutions of minorities, but organizations that matter have not been addressed appropriately. Global norms have evolved. States have even embraced the norm of R2P as a means to ensure state actors do not misuse their power. But the UN and states, in general, are only willing to protect if there is something that they can attain from an intervention.

It is worthy to note, though, that humanitarian intervention can also be conducted by regional forces, for example, regional organizations. African Union, for example, the most established regional organization comprising of African countries, has been involved in a number of humanitarian intervention operations after seeing the worst forms of human rights atrocities taking place in their continent (Sarkin and Pietschmann 2003). But when

we talk about Southeast Asia, the dynamics are quite complex. Unlike the African Union, the Association of Southeast Asian Nations (ASEAN) is not an organization that is willing to dive deep into the domestic affairs of its member countries.

Established in 1967, ASEAN is now the largest regional organization in Southeast Asia. It is unique in that the ASEAN Way leads the organization to embrace three major paradigms in its implementation of international politics: Consensus, Sovereignty, and Non-Interference (Acharya 2009). To conclude ASEAN in a nutshell, ASEAN is a 'Toothless Dinosaur.' Its networks are massive, with ministerial and presidential meetings conducted on a monthly basis among the Southeast Asian States and neighboring states in South Asia, East Asia, even to the inclusion of global powers such as the US and Russia (Putra 2021). However, they will not be able to interfere with domestic issues due to the non-interference policy stipulated in the ASEAN Charter.

This article views that regional approaches will only be limited to talks, not real action. The ASEAN charter embraces the norm of non-interference, meaning mass atrocities may be occurring in a country, and the only thing that ASEAN can do is to issue statements and discuss them in their ministerial meetings or in the ASEAN Summit. ASEAN was never built to respond to mass atrocities, as it prioritizes embracing the diversities that are evident among its members. Perhaps, ASEAN in this case, will continue to become a 'toothless dinosaur.'

Therefore, possible prospects of humanitarian intervention, for example, the invocation of the R2P norm, will be implemented based on an understanding of juridical justifications, specifically designated for global norm enforcers such as the UNSC. In justifying the act of humanitarian intervention, Hugo Grotius wrote in his pivotal treatise 'On the Laws of War and Peace,' two fundamental theories. The first theory asserts that all states have the authority to punish countries that violate the law of nations in order to conserve the coherence of international law (Criddle 2015). Following this is the second theory on humanitarian intervention that argues the justification of state intervention as temporary legal protectors of civilians suffering cruelties by their own state (Criddle 2015). Evan J. Criddle attempted to expand Grotius's existing theories on humanitarian intervention by introducing a third theory that is deemed relevant to the international politics of the 21st century. Criddle's theory assumes that (1) people have the rights to self-defense, and states can intervene to protect human rights abroad on behalf of the oppressed, 2) intervening states need to respect the preferences of the people that they protect and display respect over existing international laws (on sovereignty and the use of force), and 3) clarification of responsibilities of the UNSC and individual states for humanitarian intervention (in relation to the R2P) (Criddle 2015).

For the first point of Criddle's humanitarian intervention theory, it is pivotal to identify the human rights abuses to defend possible interventions to take place in the future. Interventions through the R2P principle have well been implemented and endorsed by world leaders in the UN World Summit 2005. The first pillar of the R2P focuses on the responsibility of state actors in protecting its citizens from gross violations of human rights (crimes against humanity, genocide, mass murders, etc.). The second and third pillars of the R2P elaborate how the responsibility falls to the international community's hand if state actors fail to protect their citizens from the human rights oppressions mentioned previously. Therefore, for future humanitarian intervention to take place, it is pivotal for all states to accept norms such as R2P, as it entails that citizen protection can be transferred to the international community when state actors fail to protect their own citizens. Any form of intervention in Myanmar seems unfeasible because of the divided opinions among the veto rights holders in the UNSC. The US, France, and the UK seem to be liberal in

decisions related to interventions in times of humanitarian crisis (Putra 2020). However, Russia and China have shown their discontent over humanitarian intervention and have continued to champion global norms of respecting state sovereignty over civil liberties.

With no doubt, forms of gross human rights oppression are currently taking place towards the Rohingya people in Myanmar. However, the difficulty here lies in unifying the perception that the responsibility of protection is supposed to be transferred to the international community and no longer in the hands of the Myanmar government. Therefore, despite actively responding to the humanitarian crisis taking place in Kosovo, Libya, and several others in the past, the case of Myanmar represents the classic issue of subjectivity in responding to humanitarian crisis. As previously discussed, it has also been difficult for ASEAN to act due to the limitations of its mandate when it comes to domestic issues within the Southeast Asian nations.

In order to make the humanitarian intervention work in the future, not only in the case of Myanmar, definitive parameters need to be followed by the UNSC without any compromises made. For example, statistical parameters that help illustrate the extent of a human rights violation in a country can assist in the process of determining whether the UNSC should respond to a humanitarian crisis or not. Therefore, it would strengthen Criddle's point of focus, which is the transfer of rights of self-defense represented by intervening states.

Criddle's second point relates to obligations held by intervening states to respect the preferences of those intervened and consider existing international laws. A major contributor to the decline of public support over humanitarian intervention is past experiences that never seem to favor countries that intervened. Another reason for this is because the idea of humanitarian intervention is supposed to be fundamentally different from invasions but has been intertwined in public discourses (Lewicki, Weiss, and Lewin 1992). For example, the US intervention in Afghanistan and Iraq, both framed under the war on terrorism. Despite so, the US rhetoric introduced in the early 21st century was not only to eradicate terrorism but to promote peace, harmony, and democracy to Afghanistan and Iraq, which were under autocratic governments that did not have respect over liberty and human rights (Hinnebusch 2007). Following the interventions, though, consisted of an even larger division among societies, lack of effective democratic rule, and continued threats occurring among the society leading to public insecurity and fear. It can thus be argued that the interventions only fueled more conflict and hatred, not leading to what the US initially promised in the early years of the intervention.

Another significant study case is the 1992-1993 Somalian humanitarian intervention, which involved US forces as part of the UN operation 'Restore Hope.' The intentions were clear, opening up logistical routes so that the Somalian people could access internationally-sent humanitarian aid for those suffering hunger in Somalia. However, what followed was a series of unprecedented events that tarnished global norms on humanitarian intervention. The Somalian people did not greet the US and allied forces well, as they perceived the humanitarian intervention as a form of invasion of the Somalian sovereignty (Recchia 2018). The operation did not last long and continues to be referenced by those opposed to the norm of humanitarian intervention. In most cases of humanitarian interventions, there seems to be a growing discontent among those that are intervened, which is effectively responded to by Criddle.

Criddle believes that a fundamental element in understanding the scope of state authority in responding to the humanitarian crisis is the voices of those who intervened. This constitutes as an element that has been highly neglected in the policymaking process of regional organizations and the UNSC, in which foreign countries can heavily

misinterpret the situation in the field. Peacebuilding, which is the intention to construct positive peace in areas of conflict, tends to be difficult to implement due to subjective cultural norms and differences in democratic views. Therefore, future interventions need to consider the voices of locals and government officials to better understand the cultural dynamics in the designated country.

Criddle's last point is a clarification of the responsibilities of the UNSC and individual states for humanitarian intervention. Criddle wrote this theory in 2015, a time in which R2P was embraced by the majority of the UN members and implemented in a number of humanitarian crises. In contemporary times, the global community seems to have developed a pessimistic opinion when it comes to the UNSC's capacity and intention of responding to humanitarian crises worldwide. Only a handful of cases have been effectively responded to by the UNSC, with others left to rot through time. This is a major concern, especially in relation to Criddle's theory on the success of the humanitarian intervention, depending on whether UNSC's responsibilities are clearly disseminated or not. Veto rights holders and non-permanent members of the UNSC will need to stop their subjective decisions of responding to certain humanitarian crises while neglecting the other cases. They will need to display their commitment as the only council having the exclusive authority to order humanitarian interventions to be fair in the process of protecting those oppressed, such as that of the Rohingya people in Myanmar.

IV. Conclusion

In conclusion, the humanitarian crisis in Myanmar among the Rohingya people will not find a resolve by itself. The Rohingya people have been desperate since 1982 to be free from the gross human rights violations taking place in Myanmar, in the form of crimes against humanity, genocide, and mass murders. In this situation, global norms have asserted that Myanmar's failure in protecting its citizens now leads to the situation in which the global community holds power to protect those citizens. However, global institutions in the form of the UNSC and regional organizations in the form of ASEAN have not shown any effective resolution to respond to the crisis.

This article assesses prospects of implementing humanitarian intervention through juridical justifications. It employs Criddle's 2015 theory on humanitarian intervention, which argues that; (1) people have the rights to self-defense, and states can intervene to protect human rights abroad on behalf of the oppressed, 2) intervening states need to respect the preferences of the people that they protect, and display respect over existing international laws (on sovereignty and the use of force), and 3) clarification of responsibilities of the UNSC and individual states for humanitarian intervention (in relation to the R2P). As a result, in order for global institutions such as the UNSC to enforce humanitarian intervention in responding to human rights violations abroad, the UNSC will need to; 1) collectively determine that the Rohingya people have been prosecuted in the form of genocide, crimes against humanity, and mass murder, in order to transfer the R2P towards the global community, 2) interventions need to honor the domestic preferences of the country intervened, to sustain an acceptable humanitarian intervention, and 3) construct clear parameters that would induce the imposition of humanitarian interventions.

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