

ASEAN's Absence in the Protection of Rohingya Refugees in Myanmar

-- Roles and Challenges of Regional International Organizations

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Abstract

The purpose of this paper is to explore the current status and challenges of governance of the Rohingya refugee problem in Southeast Asia, particularly the role and limitations of ASEAN in this context. One of the main reasons why the Rohingya refugee issue has not been effectively addressed for a long time is the lack of a targeted refugee protection framework. It is generally viewed by neighbouring countries as an internal matter of Myanmar or a historical legacy between Myanmar and Bangladesh, which has led to the absence of international cooperation and governance mechanisms for the issue. Against this backdrop, one of the options is to seek the help and intervention of ASEAN, a regional international organization, in order to adopt alternative modes of protection governance at the national level and to strengthen the governance capacity of the countries concerned through joint efforts. ASEAN's involvement in this issue has not yet been institutionalized into a systematic governance model, and most of the current refugee governance work is led by the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM), and ASEAN's roles and functions have not yet been fully utilized. Therefore, this paper will further explore the roles and challenges of ASEAN in regional refugee governance in light of this particular situation and try to provide some solutions to better realize the international refugee problem of the Rohingya people in Myanmar, as well as in other regions.

Keywords

International Organizations; Refugees; Myanmar; Rohingya; ASEAN.

1. Overview of the Rohingya Refugee Crisis

The Rohingya refugee problem in Myanmar is one of the legacies of British colonialism. After the First Anglo-Burmese War from 1824 to 1826, the British colonial government relocated a large number of Bengali Muslim laborers to the Rakhine region of Burma. The descendants of these Bengali Muslims are the Rohingyas of today's Myanmar[1]. Their ethnic identity is not recognized by the Burmese government, and they cannot legally obtain citizenship, so most of them are regarded as "stateless people", causing a serious refugee crisis. To gain a deeper understanding of the historical background of the Rohingya refugee crisis and its evolution, it is first necessary to understand how the Rohingyas as an ethnic group came into being and survived. The Rohingyas are not an ethnic group that has existed since the origin of civilization. Their origins are based on "fixed titles", "common cultural characteristics and religious beliefs", "unique geography", and "a strong sense of national identity"[2].

Regarding the origin of the ethnic name "Rohingya". According to Myint Thein, former Deputy Director of the Department of Historical Research of the Ministry of Culture of Myanmar, "the

name 'Rohingya' did not exist during the British colonization of Rakhine State. Nor is there any mention of the Rohingya in the history books of Myanmar and Rakhine State written by historians during the colonial period. They only referred to the workers who came to Burma from the Chittagong region and the prisoners of war captured during the Rakhine dynasty as 'Bengali Indians'. From this, it can be inferred that there is a degree of confusion about the ethnic identity of the Rohingya. This also stems from the fact that East Pakistan (now Bangladesh) was a British Indian colony along with Myanmar during the British colonial period, which made it difficult for the community to form a separate national identity, and ultimately, they were caught in the middle between India, Bangladesh and Myanmar.

Since the 1970s, the Rohingya refugee crisis has begun to gradually affect the whole of Southeast Asia, and scholars at home and abroad have had a long discussion on the Rohingya refugee issue. Judging from the current state of research in China, scholars have been more comprehensive in studying the history, current situation and crux of the Rohingya in Myanmar. For example, the historical attitude of the Myanmar government towards the Rohingya refugees is presented by Tim Zhang in his article "Parallax of the Rohingya Problem in Myanmar - Analysis of History, Current Situation and Symptoms" [3].

The role of international organizations in the governance of the Rohingya refugee crisis - the cooperation between UNHCR and IOM as an example" by Song Wanzhen has also partially studied the involvement of international organizations in the refugee crisis. However, the international organizations mentioned here refer to the global intergovernmental organizations, namely UNHCR and IOM [4]. In addition, Yang Chao in "Analysis of Various Relevant Actors on the Governance of Refugee Problems - A Case Study of Rohingya Refugees in Myanmar" mentions that the Rohingya refugee problem needs to be solved by ASEAN organizations through the creation of a new mechanism for the governance of refugee problems in the region, but this paper does not focus on the analysis of the participation of a specific actor in the issue of international refugee protection [5], but rather "the roles and functions of various relevant actors such as states, international organizations, regional organizations, international NGOs, etc. in the process of refugee governance", which is essentially an overview of the roles and functions of various refugee protection actors.

At the same time, foreign scholars also focus on the problem of refugees at sea [6], and UNHCR and IOM in the Asia-Pacific region in the refugee crisis to take active action to coordinate the refugee problem [7]. However, Untari Narulita Madyar Dewi's paper mentioned that "it is necessary to create a legal framework for the protection of refugees in the Southeast Asian region and comply with international refugee law in the region and comply with international refugee law in order to realize safe international migration flows and protect refugees" inspired this paper [8], that is, to create a new regional refugee settlement mechanism under the ASEAN framework.

The purpose of this paper is to study the absence and inadequacy of ASEAN as a regional international organization in resolving the Rohingya refugee crisis in Myanmar, so as to provide new ideas and methods for regional international organizations to participate in the governance of the refugee issue in the region. Specifically, it includes the study of ASEAN member states' attitudes, resolution mechanisms and policy practices towards the Rohingya refugee issue since the 1970s, as well as the active participation of UNHCR and IOM in the issue and their practical measures, in order to provide inspiration and reference for ASEAN, as a regional international organization, to further strengthen cooperation among its member states in resolving the ongoing refugee crisis and safeguarding human rights.

2. Relevant Policy Measures of the Government of Myanmar

The first large-scale Rohingya exodus or Forced Migration from Myanmar occurred in the late 1970s, and has now occurred four times [9]. These four refugee crises have occurred over a period of more than 40 years (see Table 1), making the Rohingya refugee problem a historical legacy. It not only affects Myanmar, but also has immediate and long-term economic, political, and security implications for regions such as Southeast and South Asia. However, despite the migration and forced relocation of Rohingya refugees in Southeast Asia, ASEAN has remained relatively passive and has not yet put the issue on the agenda of any formal meeting [10].

Table 1. List of major events on the "Rohingya issue" in Myanmar (1977 - 2018) [11-13]

Years	Causes of the event	Issues arising	Result
1977-1979	Myanmar government's "Operation Nagamin" against illegal immigrants	200,000 Rohingya flee from border to Bangladesh	The vast majority of Rohingya were repatriated to Myanmar in six phases over a period of two years (1978-1979).
1991-1996	Myanmar Government's "Operation Prosperous Country" against illegal immigrants	About 250,000 Rohingya have fled from the border to Bangladesh, most of whom were last repatriated.	In 1993, the Government of Myanmar signed a Memorandum of Understanding (MoU) with UNHCR to provide a legal framework to support and facilitate the voluntary return of refugees. As of 1996, only some Rohingya had returned to Myanmar, and return efforts ceased after 1996.
2012-2014	Communal conflict in Rakhine State	More than 120,000 Rohingya have been rendered homeless, some fleeing across the border to Bangladesh.	Only a very small number of people have returned to Myanmar
2016 to present	An attack on the headquarters of the Rakhine State Border Police Command by the Rohingya Salvation Army has prompted Myanmar government forces to launch a "Clearance Operation" in the border region.	About 650,000 Rohingyas fled from the border to Bangladesh	In June 2018, Myanmar's Ministry of Labor, Immigration and Population signed a MoU with the United Nations Development Programme (UNDP) and UNHCR to assist the government of Myanmar in hosting refugees fleeing to Bangladesh [14]; as of November 2018, not only have no Rohingya been repatriated through official channels, but 16,000 have fled from the border of Rakhine State to Bangladesh.

3. ASEAN's Absence in Rohingya Refugee Governance

In addition to Myanmar, the Southeast Asian countries more affected by the Rohingya refugee crisis are Indonesia, Malaysia, and Thailand, which have cooperated with UNHCR and IOM in governance at the national level. This cooperation is mainly an "Alternative Protective Governance" (Alternative Protective Governance) model, i.e., UNHCR and IOM act as alternative actors to the three countries and remain relatively independent [15]. In the Rohingya refugee crisis, the cooperation between UNHCR and IOM is mainly in the form of joint actions. Through official and unofficial channels, the two organizations speak out from a common position and form a consensus on solutions and perceptions, thus enhancing the effectiveness of cooperation [4]. From the results, the cooperation between UNHCR and IOM has promoted the international

community to pay continuous attention to the Rohingya refugee crisis and implement actions, which has largely saved the lives of Rohingya people and led to the realization of more coordination between the relevant countries, and played a certain role in stabilizing the situation in an exceptionally difficult situation. With the assistance and protection of UNHCR and IOM, refugees and Southeast Asian people have been able to live together to a certain extent [16]. However, the effectiveness of their cooperation in addressing the Rohingya refugee crisis is still constrained by the considerations of the countries concerned in terms of maintaining sovereignty, social stability and economic development, as well as by the limitations of UNHCR and IOM in terms of culture and organizational structure. As a regional organization in Southeast Asia, ASEAN should be involved in solving contemporary problems, including the Rohingya refugee crisis. However, after the end of the Cold War, ASEAN has undergone a restructuring of its role, and its ability to address the complex migration issues in the region is constrained by the principle of non-interference in the "ASEAN ways" [17], which has led it to act more in the form of policy coordination than direct intervention. The ASEAN Commission on Human Rights (AICHR), as a regional human rights institution, should theoretically coordinate member states' response to the crisis, but its role is limited in practice, and the lack of a complaint mechanism and enforcement power of the AICHR has prevented it from effectively intervening in the human rights issue in the Rohingya.

Untari Narulita Madyar Dewi cites scholarly opinion (Kimberly Ramos Gamez) that the AICHR is limited by the "ASEAN Way" and the principle of sovereignty override, and relies more on the voluntary cooperation of member states than on coercive measures [18]. In addition, ASEAN suffers from regional legal gaps, lacks a harmonized legal framework for refugee protection, and has yet to develop a binding regional refugee policy. Although the ASEAN Charter refers to the promotion of human rights, specific articles (e.g., the ASEAN Human Rights Declaration) do not explicitly address the rights of refugees, leading to the fragmentation of policies across member states. The combination of these reasons has led to the absence of ASEAN in the governance of the Rohingya refugee crisis.

4. Possible Solutions to the Absence of ASEAN

The first is the humanitarian aid channel. Although Singapore is not a major refugee-hosting country, it provides support to Rohingya refugees in Rakhine State through the ASEAN Humanitarian Assistance Center (AHA Center). For example, in 2017, Singapore provided material assistance worth US\$270,000 through ASEAN channels and advocated for the voluntary repatriation of refugees through the ASEAN framework[19]. This demonstrates that the protection of refugees through humanitarian assistance under the existing ASEAN framework is feasible and worthy of further development and replication.

In addition, the paper argues that ASEAN needs to strengthen cooperation, promote the establishment of a regional migration governance framework, and coordinate the signing of international refugee conventions (such as the 1951 United Nations Convention relating to the Status of Refugees) by member States. At the same time, it is recommended that ASEAN strengthen human rights protection through mechanisms such as AICHR, breaking through the limitations of the "principle of non-interference". Lastly, the AICHR should focus on institution-building, strengthen national capacity building, and influence refugee policies and policy advisory systems in relevant countries. For example, it should be responsible for overseeing the identification, resettlement and repatriation of refugees, as well as the provision of day-to-day assistance (including food, shelter, medical care, and ensuring access to education and the right to work), and should also be responsible for the resettlement of Rohingya refugees within ASEAN member states. It should also work to increase the willingness of Southeast Asian

countries to allow Rohingya refugees to work and to encourage the refugees to become self-sufficient and self-reliant.

5. Conclusion

Going back to the essence, ASEAN's own vision of human rights protection and even refugee protection, and the reality that the "ASEAN way" will continue, can be found in many of its own documents, such as the ASEAN Charter or the ASEAN Human Rights Declaration. As a regional international organization established in 1967, ASEAN has always been guided by the principle of respect for the different cultures, languages and religions of the peoples of ASEAN while emphasizing the common values in unity and diversity. This reflects ASEAN's consistent position on human rights that universal human rights should be based on national and regional particularities, as well as various historical, cultural and religious traditions. Therefore, in the future development of ASEAN, it seems that the focus should not be on abandoning the "ASEAN Way", but rather on overcoming its shortcomings while enriching and developing this unique system, so as to better realize the ASEAN's three pillars of the Socio-Cultural Community, which are "people-oriented and socially responsible, pursuing the creation of a common identity and the development of a humanistic, cultural and religious identity". The socio-cultural community in the three ASEAN pillars "is people-oriented and socially responsible, and seeks to build a common identity, as well as a caring and sharing society".

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