

The International Community's Inaction Amidst the Rohingya's Suffering

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Abstract: *Despite continued democratization efforts in the country, the Rohingya in Myanmar continue to face severe persecution and ethnic cleansing at the hand of the military government with many calling for diplomatic intervention. During these human rights violations, foreign powers have stood by passively, yet they continue to decry the violence committed against the Rohingya. This article analyzes the current norms present within the international community that, due to their inherent conflict with one another, perpetuate the lack of humanitarian intervention currently seen. Smart sanctions enacted by all U.N. Member states are ultimately determined to be the most effective form of intervention due to their ability to significantly penalize the actions taken by the military and government of Myanmar while maintaining respect for state sovereignty.*

Introduction

On September 2, 2017, a news headline read: “Hundreds are dead in Myanmar as the Rohingya crisis explodes *again*” (emphasis added).¹ The story was the same as it has been in the past: violence escalated between Rohingya insurgents and Myanmar’s security forces, and many innocent civilians became collateral damage, most of them Rohingya. While many members of the persecuted group fled the country, others remained behind to face atrocious human rights violations, including homelessness, starvation, dehydration, sexual violence, and murder. Horrifying images of such violations against the Rohingya have surfaced in the media, with countries around the globe refusing to acknowledge the situation. Following decades of revival of the violence between Myanmar’s forces and the Rohingya, we still have no substantial solution for this problem. The international community must tackle this problem in two ways. They must first acknowledge the actions taken by Myanmar’s government as ‘ethnic cleansing’ against the Rohingya people. The second step is to recognize that international pressure in the form of economic sanctions may be the only viable intervention capable of de-escalating the current Rohingya crisis in Myanmar due to state actors’ independently-constructed ideas of sovereignty and the responsibility to protect their populations from human rights violations. The legal context pertaining to the current situation and possible intervention in Myanmar as well as the normative environment of the international system writ large will be analyzed in order to highlight a possible avenue through which humanitarian action can be taken.

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¹ Joe Freeman, “Hundreds are dead in Myanmar as the Rohingya crisis explodes again,” *Chicago Tribune*, September 2, 2017, accessed September, 28, 2017, <http://www.chicagotribune.com/news/nationworld/ct-rohingya-myanmar-20170902-story.html>

History of Violence and Budding Democracy

Even though we have recently seen a spike in the brutality in Myanmar, the country has always had a violence-filled past, albeit less concerning than the levels seen today. For over 60 years, Burma had been under British rule before gaining its independence in 1948. Despite its newfound independence, the Burmese government was taken over by a military junta just 14 years later. This military junta, known as the Tatmadaw, has held power for almost 70 years through coercion following a complicated civil war, where only the military had the means to subdue the competing parties for power.² Since gaining independence in 1948, the military has espoused the view that “parliamentary government [cannot] prevent the disintegration of the country; only the military stands between the nation and chaos.”³ The military junta outlawed political parties, used group organizations including youth and work groups to indoctrinate and control citizens, suppressed political protest with extreme violence, and detained political prisoners they deemed a threat, all in its effort to maintain control over the state.

Despite its long history of military rule and suppression of opposing views, Myanmar in 2011 saw sweeping political reforms from President Thein Sein, including the return of debate into parliament, liberalization of the press, and release of political prisoners, most notably Aung San Suu Kyi.⁴ Ms. Suu Kyi is the daughter of General Aung San, who helped Burma gain its independence, and she had previously been under house arrest for 20 years for her protests against government suppression. On the occasions that she had been released from her house arrest, she acted in opposition to the repression imposed by the Burmese government and was returned to house arrest.⁵ She also won the Nobel Peace Prize in 1991 for her non-violent efforts to protect human rights and bring democracy to Myanmar.

After the first national vote held in Myanmar since a civilian government was introduced in 2011 and an overwhelming victory by Aung San Suu Kyi’s National League for Democracy (NLD) party, Myanmar has seen an increase in foreign aid, a more open political environment, and generally more optimism than it has been accustomed to since it gained independence.⁶ Due to a clause in its constitution, Ms. Suu Kyi is unable to be president due to her children being foreign nationals, but she has assumed the newly created role of State Counselor and is now Myanmar’s de facto leader. Since the civilian government came into power, it has made moves to streamline bureaucratic decision-making, amended and broadened anti-corruption laws for government officials, extended agricultural loans to farmers, and begun the process of returning confiscated land to individuals.⁷ Yet, even though the civilian government has taken steps towards creating a more efficient, thriving, and peaceful state, it still faces many obstacles.

High level positions in the government were filled mostly with NLD sympathizers, but the military continues to wield significant influence due to a constitutional mandate allocating to it 25% of all parliament seats, both nationally and regionally.⁸ It maintains control over the three

² Williams, David C. 2011. "Cracks In The Firmament Of Burma's Military Government: From Unity Through Coercion To Buying Support". *Third World Quarterly* 32 (7): 1199-1215. doi:10.1080/01436597.2011.596753.

³ Ibid.

⁴ Aspinall, Edward, and Nicholas Farrelly. 2017. "Myanmar's Democratization: Comparative And South East Asian Perspectives.". *South East Asia Research* 22 (2).

⁵ "Profile: Aung San Suu Kyi". 2017. *BBC News*. <http://www.bbc.com/news/world-asia-pacific-11685977>.

⁶ Thawngmung, Ardeth, and Gwen Robinson. 2017. "Myanmar's New Era: A Break From The Past, Or Too Much Of The Same?" *Southeast Asian Affairs*.

⁷ Ibid.

⁸ Ibid.

cabinet positions for security: home affairs, border affairs, and defense, in addition to the nomination and appointment of one of the two vice presidents.⁹ The influence that the military still holds in the government requires more compromise and “meeting in the middle” than the previous relationship of confrontation between the two groups. Despite the impact they still have within the government, military lawmakers rarely oppose NLD-sponsored legislation in parliament, and both groups (the Tatmadaw and the NLD) avoid publicly criticizing one another.

Recently, Aung San Suu Kyi and the government of Myanmar have faced international criticism for the treatment of the Rohingya in the Rakhine state, which is situated on Myanmar’s western coast. The Rohingya are a Muslim ethnic minority group who have been settled in the Rakhine state since the early 7th century when Arab Muslim traders moved into the area.¹⁰ Since 1962, the military-run government has held anti-Muslim views and has engaged in activities to erase their ethnic identity. In textbooks, official government documents, and state media, the Rohingya are referred to derogatorily as “Bengali” and portrayed as illegal migrants despite the international community recognizing them as an ethnic group whose history and “rightful home” can be traced back to Myanmar.¹¹ In 1982, Myanmar’s government passed the Citizenship Act, which stripped citizen status away from most of the Rohingya and has served as the mechanism for the military to continue justifying the human rights abuses inflicted upon the ethnic minority group because they are deemed “illegal.”¹²

Although Myanmar has been undergoing democratic reforms and has a more open political environment, the democratization process has created more confusion regarding whether the increasingly democratic civilian government or the Tatmadaw wield legitimate political authority. Jack Snyder, in his book *From Voting to Violence: Democratization and Nationalist Conflict*, argues in favor of the democratic peace theory, where democratic countries hold the same ideals and tend to be peaceful towards one another, but he highlights the dangers of the democratization process in creating conditions ripe for ethnic and national conflict. Snyder’s argument is particularly relevant to the contemporary situation in Myanmar, where the democratic transition has only added fuel to the fire to the human rights abuses committed against the Rakhine state.¹³ Therefore, violence against the Rohingya people in the newly democratic Myanmar is a continuation of past practices, with conflict between the Muslim minority and the Buddhist majority continuing to resurface.

Contemporary Situation and Legal Discussion

In the most recent revival of the crisis, a few Rohingya insurgents attacked 30 police stations and an army base in late August 2017. This attack resulted in the death of 12 members of the armed forces and 59 members of the insurgent group, which consists of approximately 1000

⁹ Ibid.

¹⁰ Parnini, Syeda Naushin. 2013. "The Crisis Of The Rohingya As A Muslim Minority In Myanmar And Bilateral Relations With Bangladesh". *Journal Of Muslim Minority Affairs* 33 (2): 281-297. doi:10.1080/13602004.2013.826453.

¹¹ Zarni, Maung, and Alice Cowley. 2014. "The Slow-Burning Genocide Of Myanmar's Rohingya". *Pacific Rim Law & Policy Journal* 23.

¹² Ibid.

¹³ Snyder, J. (2000). *From Voting to Violence: Democratization and Nationalist Conflict*. W. W. Norton & Company.

rebels.¹⁴ However, the military's response, according to U.S. Deputy Assistant Secretary of State, Patrick Murphy, was "disproportionate."¹⁵ Although Myanmar's government has denied any ties between the military and the recent violence against Rohingya, the attacks on Rohingya were most likely not carried out by civilians alone. Many villages were set ablaze using helicopters that fired petrol bombs, while front forces prevented the Rohingya from escaping.¹⁶ The civilians also assisted the security forces, and many have told their Muslim neighbors to leave or be killed.¹⁷ The death toll remains uncertain; however, the refugee toll is certainly high, as approximately 422,000 Rohingya have arrived in neighboring Bangladesh since August.¹⁸

While these people are either fleeing or dying, the world is scrambling for a term to identify this crisis. Is this ethnic cleansing, or worse, genocide? The primary issue is that ethnic cleansing is not considered a crime under international law, whereas genocide is. The United Nations (U.N.) states that because "ethnic cleansing has not been recognized as an independent crime under international law, there is no precise definition of this concept or the exact acts to be qualified as ethnic cleansing."¹⁹ However, a United Nations Commission of Experts which was asked to look into the case study of Yugoslavia described ethnic cleansing as "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 geographic areas."²⁰ Further, the U.N. defines genocide as:

[A]ny 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.²¹

¹⁴ Wa Lone and Shoon Naing, "At least 71 killed in Myanmar as Rohingya insurgents stage major attack," *Reuters*, August 24, 2017, accessed September 28, 2017, <https://www.reuters.com/article/us-myanmar-rohingya/at-least-71-killed-in-myanmar-as-rohingya-insurgents-stage-major-attack-idUSKCN1B507K>

¹⁵ Antoni Slodkowski and Rahul Bhatia, "U.S. seeks urgent action on Myanmar, U.N. eyes \$200 million for refugees," *Reuters*, September 22, 2017, accessed September 28, 2017, <https://www.reuters.com/article/us-myanmar-rohingya-un/u-s-seeks-urgent-action-on-myanmar-u-n-eyes-200-million-for-refugees-idUSKCN1BX0UM?il=0>

¹⁶ Hannah Beech, "Desperate Rohingya Flee Myanmar on Trail of Suffering: 'It Is All Gone,'" *New York Times*, September 2, 2017, accessed September 2, 2017, <https://www.nytimes.com/2017/09/02/world/asia/rohingya-myanmar-bangladesh-refugees-massacre.html?action=click&contentCollection=Asia%20Pacific&module=RelatedCoverage®ion=Marginalia&pgtype=article&r=0>

¹⁷ Max Bearak, Laris Karklis and Tim Meko, "The 'ethnic cleansing' of the Rohingya" *Washington Post*, September 18, 2017, accessed September 28, 2017, https://www.washingtonpost.com/graphics/2017/world/rohingya/?utm_term=.72ba0c0a07d9

¹⁸ Slodkowski and Bhatia, "U.S. seeks urgent action on Myanmar, U.N. eyes \$200 million for refugees," September 22, 2017.

¹⁹ "Ethnic Cleansing," *The United Nations Office on Genocide Prevention and the Responsibility to Protect*, The United Nations, accessed September 30, 2017, <http://www.un.org/en/genocideprevention/ethnic-cleansing.html>

²⁰ Ibid.

²¹ "Genocide," *The United Nations Office on Genocide Prevention and the Responsibility to Protect*, The United Nations, accessed September 30, 2017, <http://www.un.org/en/genocideprevention/genocide.html>.

It can be extremely difficult to identify a genocide because it is difficult to objectively determine “intent.” The issue of intent is constantly debated in the international community because it is one of the few factors that separate genocide from other crimes. Furthermore, Myanmar’s government has repeatedly denied accusations of the military’s involvement in violence against the Rohingya, even going as far as accusing the Rohingya of burning their own houses for international attention.²² In this case, since the government denies any intent to destroy the ethnic group, the crisis cannot be categorized as genocide. If it is believed that the government of Myanmar is not being truthful about revealing its actual intent, proving intent is still extremely difficult. As Katherine Goldsmith noted in *Genocide Studies and Prevention*, “Intent refers to a person’s state of mind, a private thought process that, unless explicitly stated, is very difficult, if not impossible, to prove.”²³ In order to classify the Rohingya case as genocide, the international community needs conclusive evidence of intent to commit genocide. Once again, obtaining proof “beyond reasonable doubt” remains a daunting task, which is impossible without either a confession from the government of Myanmar or some form of international intervention.

Still, of the five characteristics listed by the U.N. to identify genocide, the first four have been met by Myanmar’s military for their treatment of the Rohingya people. Around 140,000 Rohingya have been forcibly relegated to Internally Displaced Persons (IDP) camps, where they are subject to conditions and restrictions not present elsewhere in the Rakhine state. Such impoverished, discriminatory, and under-developed IDP camps constantly allow for human rights abuses to occur. Control of Rohingya marriages and prevention of births within these camps are also common measures in an effort to destroy the Rohingya ethnic identity.²⁴ Another example of such government sanctioned effort is the anti-Rohingya campaigns conducted by local political parties that entail violence. These campaigns usually include boycotts, where those involved avoid interaction with Muslims, while those who do interact with them face public humiliation and persecution.²⁵ As a result, many of the Rohingya people have died although the exact number remains uncertain. Even if the Rohingya crisis is not yet severe enough to be classified as genocide, it can certainly expand from ethnic cleansing to genocide if Myanmar’s government does not stop its anti-Rohingya campaigns.

On September 11, 2017, the U.N. High Commissioner for Human Rights, Zeid Ra’ad al-Husseini, did accuse Myanmar of carrying out “a textbook example of ethnic cleansing.”²⁶ The informal definition of ethnic cleansing clearly fits the Myanmar case, which involved the violent removal of one ethnic group by another from the geographic area of Myanmar. However, because ethnic cleansing is not considered a crime according to international law, this accusation is of no use because it does not guarantee any action on behalf of the international community to retaliate against the ethnic cleansing.

²² Nick Cumming-Bruce, “Rohingya Crisis in Myanmar Is ‘Ethnic Cleansing,’ U.N. Rights Chief Says,” *New York Times*, September 11, 2017, accessed September 28, 2017,

<https://www.nytimes.com/2017/09/11/world/asia/myanmar-rohingya-ethnic-cleansing.html?mcubz=1>

²³ Katherine Goldsmith, 2010, “The Issue of Intent in the Genocide Convention and Its Effect on the Prevention and Punishment of the Crime of Genocide: Toward a Knowledge Based Approach,” *Genocide Studies and Prevention: An International Journal* 5, no. 3, 241.

<http://scholarcommons.usf.edu/cgi/viewcontent.cgi?article=1092&context=gsp>.

²⁴ Zarni, Maung, and Alice Cowley, 2014, “The Slow-Burning Genocide Of Myanmar's Rohingya,” *Pacific Rim Law & Policy Journal*, 10.

²⁵ Ibid.

²⁶ Cumming-Bruce, “Rohingya Crisis in Myanmar Is ‘Ethnic Cleansing,’ U.N. Rights Chief Says,” September 22, 2017.

In addition, the status of Rohingya in Myanmar and as refugees in neighboring countries remains uncertain, which has additionally problematic implications for the standard of living of the Rohingya people. In Myanmar, the minority group is denied citizenship based on claims that they are illegal immigrants from Bangladesh, even though they have been in Myanmar for centuries.²⁷ In 1982, the military dictator General Ne Win enacted the Burma Citizenship Law, which recognized 135 minority groups, excluding Rohingya. Staff Writer for Harvard International Review, Alexandra Phillips, describes the application of this law as follows: “Immigrants that settled in Myanmar before independence in 1948 are considered legal immigrants; all others are considered illegal immigrants unless they can prove their ancestors immigrated to Burma before 1948.”²⁸ Since many of the Rohingya people lacked proof of their ancestors’ migration because they had settled in Myanmar centuries ago, the Rohingya are treated as illegal immigrants in their own country. Absence of official citizenship or legal migration status usually translates into an absence of basic rights. Thus, the Rohingya do not have property rights or identification cards; they are denied access to higher education or government positions; and they are subject to curfews, high marriage fees, and laws limiting their reproduction.²⁹

Furthermore, as the Rohingya flee persecution and seek refuge in the neighboring country of Bangladesh (their supposed country of origin), they are unwanted there as well. Of the 1.1 million Rohingya that lived in Myanmar, approximately 420,000 fled to Bangladesh.³⁰ Even while they are attempting to flee, they continue to encounter problems such as capsized boats and land mines “planted along the border, presumably aimed at killing escapees.”³¹ Many of those arriving in Bangladesh are detained at the border and forced to return to Myanmar, because Bangladesh does not recognize the Rohingya as refugees.³² Even those who are allowed to enter the country face terrible conditions because Bangladesh is not able to provide for them. When Bangladesh pressured Myanmar to deal with the persecution of the Rohingya, Myanmar’s officials proposed to take back 500,000 of the Rohingya refugees.³³ If according to this agreement, refugees are returned to Myanmar against their will, this agreement would be in violation of refugee rights, which prevent forcible return of refugees to the country from which they had originally escaped.

Such actions of the governments of Myanmar and Bangladesh, as well as the current conditions in both countries, are in conflict with international law pertaining to the rights of refugees. According to Article 14 of the Universal Declaration of Human Rights, everyone has a right to seek refuge from persecution.³⁴ Thus, as security forces in Myanmar prevent Rohingya from fleeing and security forces in Bangladesh prevent them from entering, the security forces

²⁷ Alexandra Phillip, “The World's Blind Spot: Shedding Light on the Persecuted,” *Harvard Business Review*, 35 no. 2, (Fall 2013), accessed September 28, 2017, <http://www.jstor.org.proxy-tu.researchport.umd.edu/stable/pdf/42763572.pdf>

²⁸ Ibid.

²⁹ Ibid.

³⁰ Bearak, Karklis and Meko, “The ‘ethnic cleansing’ of the Rohingya,” September 18, 2017.

³¹ Ibid.

³² Kevin Ponniah, “Who will help Myanmar's Rohingya?” *BBC*, January 10, 2017, accessed October 3, 2017, <http://www.bbc.com/news/world-asia-38168917>.

³³ “Bangladesh: Myanmar proposes Rohingya refugee return,” *Al-Jazeera*, October 2, 2017, accessed October 3, 2017, <http://www.aljazeera.com/news/2017/10/bangladesh-myanmar-proposes-rohingya-refugee-return-171002114238000.html>

³⁴ International Justice Resource Center, “Asylum and the Rights of Refugees,” *ijrcenter.org*, accessed October 3, 2017, <http://www.ijrcenter.org/refugee-law/>.

are violating the Rohingya's right to freedom of movement. In addition, the principle of non-refoulement prevents the forcible return of refugees to the country that they fled from.³⁵ Therefore, Bangladesh cannot force the Rohingya refugees to return to Myanmar even if Myanmar agrees to accept them. While current actions of Bangladesh and Myanmar violate international law pertaining to refugees, neither country is a signatory to the 1951 Convention Relating to the Status of Refugees or its 1967 Protocol, which are the primary sources of international law on refugees.³⁶ This implies that the U.N. cannot force these countries to comply with international law on the rights of refugees.

Non-Intervention and Responsibility to Protect

Although there is a legal basis for action and intervention towards Myanmar, namely through Article 48 of the UN Charter, which allows the Security Council to carry out decisions to promote and preserve international peace, the international community is currently undergoing a normative transition that could offer a more ethical basis for intervention in these types of situations.³⁷ The traditionally held notion of non-intervention has historically led to paralysis on the part of state actors considering whether to respond to human rights abuses due to their shared respect for state sovereignty. Despite this, the newly emerging norm of responsibility to protect can be seen as a way to redefine the traditionally understood primacy of state sovereignty in a way that would allow outside states, within bounds and for humanitarian reasons, to violate the territorial sovereignty of a state to protect its populace when it fails to do so.

In the past, a number of disturbing atrocities and human rights abuses have been committed against ethnic minority groups without any action taken by witnessing countries to condemn or "punish" the perpetrators due to respect for state sovereignty. In her book, *A Problem From Hell*, Samantha Power argues that when faced with genocides in countries such as Iraq, Bosnia, and Rwanda, the United States has had credible information of these human rights abuses, yet has pursued a policy of non-intervention.³⁸ For example, throughout the Rwandan genocide, the United States seemed increasingly hesitant to intervene or even label the atrocities as genocide. This lack of humanitarian intervention has been attributed to the loss of American lives during the humanitarian intervention into the Somali crisis in 1993; Somali militias had shot down two Black Hawk helicopters with US troops in 1992, and in June 1993, the militias had also killed two dozen UN peacekeepers.³⁹ The lack of action in the face of human rights abuses is not specific to the United States, as it has occurred in countries across the globe. France, even though it took no stance on the Rwandan regime's racial discrimination, had equipped the armed forces responsible for the ethnic cleansing only weeks before.⁴⁰ The United Nations had removed 75% of its peacekeeping forces from Rwanda despite knowledge that the

³⁵ Ibid.

³⁶ UNHCR, "States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol," *UNHCR*, 2015, accessed October 3, 2017, <http://www.unhcr.org/en-us/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html>

³⁷ *Social, Humanitarian And Cultural Questions*. 2017. Ebook. https://web.archive.org/web/20130927221000/http://unyearbook.un.org/1948-49YUN/1948-49_P1_CH5.pdf.

³⁸ Power, Samantha. 2013. *A Problem From Hell*. New York: Basic Books.

³⁹ Sarkin, Jeremy. 2017. "The Responsibility To Protect And The Duty To Prevent Genocide: Lessons To Be Learned From The Role Of The International Community And The Media During The Rwandan Genocide And The Conflict In The Former Yugoslavia". *Transnational Law Review* 33: 35.

⁴⁰ Ibid.

Rwandan government was planning genocide. The inaction of the UN Secretariat and Security Council, even with information regarding the impending genocide, has been referred to as “[A] failure of international will—of civic courage—at the highest level.”⁴¹

Following the aftermath of the genocides committed in Rwanda and Srebrenica, Francis Deng, a scholar from the Brookings Institute and eventual UN special advisor on the prevention of genocide, published “Sovereignty as Responsibility,” which argues that states are not defined solely by their borders but rather by their obligation to protect their citizens.⁴² In 2000, Canada’s International Commission on Intervention and State Sovereignty, with UN support, published their report, “The Responsibility to Protect,” as guidelines for humanitarian intervention. It was the first time the emerging norm “responsibility to protect” or “R2P” appeared on paper.⁴³

Despite the emergence of responsibility to protect (R2P), nonintervention in the affairs of other states has been the prevailing norm in the international community for almost 400 years. The norm of non-intervention in other states’ affairs began with the birth of sovereignty and the modern nation-state following the Peace of Westphalia in 1648. This series of peace treaties ended the Thirty Years War in the Holy Roman Empire and established the notion of traditional, or “Westphalian,” sovereignty. According to Max Weber, sovereignty in the international community refers to “[A state] that successfully claims the monopoly of the legitimate use of physical force within a given territory.”⁴⁴ Sovereignty can also be understood in a legal context as “the basic international legal status of a state [which is] not subject, within its territorial jurisdiction, to the governmental, executive, legislative, or judicial jurisdiction of a foreign state or to foreign law other than public international law.”⁴⁵

The norms of both non-intervention and self-determination arose out of respect of state sovereignty within the international community and are enshrined as core principles of international law. Article 2 of the United Nations Charter highlights the norm of non-intervention and respect for state sovereignty; where it holds that member states, “shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state” and codifies the respect of equal rights and self-determination of peoples in the international legal system. The norm of non-intervention is based on the respect of state sovereignty and right of self-determination. States have overarching authority within their own borders and have the right to develop and govern themselves in the ways they see fit.

Despite the traditional norm of non-intervention in the Westphalian international system, the responsibility to protect (R2P) norm has gained increasing traction in the international community. This new norm was first highlighted following the Rwandan genocide, when UN Secretary General Kofi Annan called for a “[decisive] response to gross human rights violations.”⁴⁶ At the 2005 UN World Summit, the United Nations formally highlighted the responsibility of states to protect their populations from genocide, war crimes, ethnic cleansing,

⁴¹ Benjamin, Dave O. 2010. "Rethinking Nonintervention". *Public Integrity* 12 (3): 201-218. doi:10.2753/pin1099-9922120301.

⁴² Homans, Lynch, Luce, Kester, Gramer, Boot, Walt, and Traub. 2017. "Responsibility To Protect: A Short History". *Foreign Policy*. <http://foreignpolicy.com/2011/10/11/responsibility-to-protect-a-short-history/>.

⁴³ Ibid.

⁴⁴ Weber, Max. 1919. "Politics As A Vocation". Presentation, Munich, 1919.

⁴⁵ H Steinberger, 'Sovereignty', in Max Planck Institute for Comparative Public Law and International Law, *Encyclopedia for Public International Law*, vol 10 (North Holland, 1987) 414.

⁴⁶ Ibid, 38.

and crimes against humanity.⁴⁷ According to R2P, the international community has the responsibility to intervene in humanitarian means (i.e. economic sanctions, conflict mediation, and minimally violent military action) when states fail to protect their populations from these crimes.

Although responsibility to protect is typically viewed as having evolved from humanitarian intervention norms, it can also be seen as a new era of “sovereignty-building,” where the notion of sovereignty is reconceptualized and transformed.⁴⁸ Responsibility to protect as “sovereignty-building” can be understood to be distinct from typical humanitarian intervention doctrine due to its focus on promoting the long-term protection of state populations. Humanitarian intervention doctrine focuses on short-term solutions to end human suffering, whereas the goal of responsibility to protect can be seen as transforming the informal institutions and society within a state to achieve the goal of protecting populations in an ongoing, durable fashion. Even in this view of R2P as an emerging reconceptualization of sovereignty, it still conflicts with the traditional view of sovereignty and its norm of non-intervention. The traditional view remains focused on territorial sovereignty of states, whereas R2P focuses on popular and positive sovereignty, which emphasize the population of a state and its right to be protected and pursue domestic and foreign policy goals.⁴⁹

The conflict between the non-intervention norm and the emerging responsibility to protect norm has largely been fought among Western countries, typically those in North America and Europe, and non-Western countries, most notably the BRICS (Brazil, Russia, India, China, and South Africa). The reasoning behind the contestation of the R2P norm can fall into two overarching categories: the country’s conceptualization of sovereignty and suspicion of Western attempts at implementing the norm.⁵⁰ Russia and China remain loyal to the traditional concept of sovereignty and territorial integrity, with Russia expressing reservations about R2P in its 2013 Foreign Policy Concept as follows:

Attempts to represent violations of international law as its “creative” application are dangerous. It is unacceptable that military intervention and other forms of interference from without, which undermine the foundations of international law based on the principle of sovereign equality of states, be carried out on the pretext of implementing the concept of ‘R2P.’⁵¹

Russian scholars have also suggested that many of the real reasons behind Western interventions have had to do with advancing their strategic interests and enacting regime change.⁵² These types of suspicions are in line with the fears of Brazil, India, and South Africa given their history of colonialism; these countries mutually fear that Western culture attempts to dominate the non-Western world. Although much of the West has accepted the R2P norm, concerns regarding the motives of R2P and preservation of state sovereignty among non-Western

⁴⁷ *Resolution Adopted By The General Assembly*. 2005. Ebook. UN General Assembly. <http://www.un.org/womenwatch/ods/A-RES-60-1-E.pdf>.

⁴⁸ Piiparinen, Touko. 2013. "Responsibility To Protect: The Coming Of Age Of Sovereignty-Building". *Civil Wars* 15 (3): 380-405. doi:10.1080/13698249.2013.842750.

⁴⁹ Ibid.

⁵⁰ Ziegler, Charles E. 2016. "Contesting The Responsibility To Protect". *International Studies Perspectives* 17 (1): 75-97. doi:10.1111/insp.12085.

⁵¹ Ibid.

⁵² Ibid.

countries have put the international community at an impasse in terms of implementation. This impasse holds implications for intervention in the current Rohingya crisis in Myanmar. With both Russia and China holding permanent seats on the United Nations Security Council, their views on sovereignty and the responsibility to protect populations from human rights breaches hold considerable weight on whether there will be direct intervention from the United Nations in Myanmar. The use of the veto within the Security Council can be expected to impede efforts at direct humanitarian intervention, and as such may leave the use of indirect intervention or international pressure by individual states as the only worthwhile options to pursue in attempting to alleviate the suffering and harm done to the Rohingya.

International Response and Economic Sanctions

As of now, the future of the Rohingya Muslims appears bleak. They are unwanted in both Myanmar and Bangladesh, and thus, disenfranchised in both countries. Perhaps one of their last hopes, the U.N., has been barred by Myanmar's government from entering the country. The international community has responded to the crisis by condemning the persecution of the Rohingya, but it should not stop here. U.N. member states should combine their efforts to pressure Myanmar's government into reversing its practices and providing for the Rohingya minority. Both Myanmar and Bangladesh should be pressured to sign the 1951 Convention and the 1967 Protocol. Myanmar should abolish its discriminatory Burma Citizenship Law and recognize the rights of the Rohingya people as humans and as citizens. However, without a permanent peaceful solution for this problem, Myanmar will remain divided and unstable in the years to come. Learning from the example of previous genocides, such as those in Germany, Rwanda, Bosnia, and Darfur, the world cannot remain silent and let another case of ethnic cleansing occur or expand into a genocide.

Perhaps the best way to increase pressure on Myanmar is through economic sanctions. While under military rule, Myanmar did face sanctions, placed on 800 of its companies and 500 Burmese individuals, from the U.S. and the European Union. Many of these sanctions were lifted when the country had a democratic transfer of power in 2012.⁵³ However, despite the election of a democratic regime and the lifting of sanctions, violence against the Rohingya has continued. Thus, it can be concluded that western countries lifted the sanctions prematurely. Furthermore, an arms embargo remains in place even though other sanctions have been removed, which indicates a lack of trust in the newly elected democratic government of Myanmar to stop or prevent the human rights violations that occur in the country.⁵⁴

While international condemnation can psychologically influence Myanmar's government to change its actions, placing sanctions will hurt the country in a more tangible way, and the consequences for human rights violations will become more real. As Vladislav Inozemstev notes, "The purpose of sanctions is to generate economic pain for political purposes."⁵⁵ Thus, hopefully renewing a set of more severe sanctions on Myanmar, or even the threat thereof, can impact the country's economy to the extent that, in order to avoid a complete destruction of its economy,

⁵³ Phillip, "The World's Blind Spot: Shedding Light on the Persecuted," 33.

⁵⁴ Ibid

⁵⁵ Vladislav Inozemstev, "Yes, Sanctions Work," *American Interest*, 10 no. 4 (Mar/Apr 2015), 33. <http://proxy-tu.researchport.umd.edu/login?ins=tu&url=http://search.ebscohost.com.proxy-tu.researchport.umd.edu/login.aspx?direct=true&db=a9h&AN=101123888&site=eds-live&scope=site>

Myanmar is forced to yield and stop the atrocious human rights violations occurring against the Rohingya.

Even though economic sanctions have become a popular tool of foreign policy after the Cold War, their effectiveness remains disputed. The literature on economic sanctions contends that sanctions are not effective for a few reasons. Some scholars have argued that in cases of human rights violations, sanctions have actually led to a deterioration of human rights conditions in target countries.⁵⁶ Others believe that sanctions impact the innocent civilians more than the political elites who are making the decisions that the sanctions aim to change.⁵⁷

However, there is a way to place sanctions strategically in order to prevent negative impact on civilians. One way to do so is by implementing smart sanctions, defined as follows:

Ostensibly, smart or targeted sanctions are the precision-guided munitions of economic statecraft. They are designed to hurt elite supporters of the targeted regime, while imposing minimal hardship on the mass public. By altering the material incentives of powerful supporters, the argument runs, these supporters will eventually pressure the targeted government into making concessions.⁵⁸

Smart sanctions, when implemented, have alleviated the negative impacts of sanctions on civilians as they reduced the humanitarian costs in target countries.⁵⁹ Furthermore, a few scholars claim that sanctions have been effective in many cases, both humanitarian and non-humanitarian. For example, sanctions were effective in the case of South Africa, as they increased pressure on the government to end Apartheid. In addition, in a non-humanitarian case, "Iran would not be negotiating with the West had powerful sanctions not forced it to the table."⁶⁰ Thus, according to Inozemtsev, Moscow's Director of the Center for Post-Industrial Studies and Washington's Non-resident senior associate at the Center for Strategic and International Studies, sanctions can be effective despite the contrary consensus in western academic literature.⁶¹

Furthermore, even though the effectiveness of sanctions is disputed, placing economic sanctions on Myanmar remains the best policy option to deal with this humanitarian crisis. Because the international community is currently undergoing a transition from the norm of non-intervention to the new norm of right to protect, direct intervention on behalf of the Rohingya people is currently not considered an option due to the need to respect Myanmar's sovereignty. Furthermore, the U.N. Charter specifically states that "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state."⁶² Thus, even the original U.N. law prevents direct intervention if one considers the Rohingya crisis a domestic one. While, as recently as

⁵⁶ Dursun Peksen, "Better or Worse? The Effect of Economic Sanctions on Human Rights," *Journal of Peace Research*, 46, no. 1 (Jan, 2009) 59. <http://www.jstor.org.proxy-tu.researchport.umd.edu/stable/pdf/27640799.pdf>.

⁵⁷ Daniel W. Drezner, "Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice," *International Studies Review*, 13, no.1 (March, 2011) 96. <http://www.jstor.org/stable/23016144>

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Vladislav Inozemtsev, "Yes, Sanctions Work," *American Interest*, 10 no. 4 (Mar/Apr 2015), 34. <http://proxy-tu.researchport.umd.edu/login?ins=tu&url=http://search.ebscohost.com.proxy-tu.researchport.umd.edu/login.aspx?direct=true&db=a9h&AN=101123888&site=eds-live&scope=site>

⁶¹ Ibid.

⁶² Jayshree Bajoria and Robert McMahon, "The Dilemma of Humanitarian Intervention," *Council on Foreign Relations*, June 12, 2013. <https://www.cfr.org/backgrounder/dilemma-humanitarian-intervention#chapter-title-0-2>.

2005, international law has been reinterpreted to include the right to protect in cases of genocide, ethnic cleansing, and war crimes, many countries, most notably Russia and China, are reluctant to intervene in humanitarian crises based on claims of sovereignty.⁶³ Therefore, sanctions can be a sort of middle ground that many countries can agree upon, and “as tools of international pressure that fall between diplomacy and armed force,” they can achieve “political ends while avoiding the costs and destruction of war.”⁶⁴ Sanctions are also appealing because they can send across a stronger message of disapproval to the targeted state than condemnation alone. This policy tool is a form of indirect intervention that maintains the sovereignty of the targeted country, does not require a military commitment from the international community, and reveals with a sense of urgency that the targeted state needs to change its action.

Thus, multilateral economic sanctions coupled with diplomatic dialogue might be able to induce Myanmar’s government to terminate the ethnic cleansing campaign against the Rohingya. There is a desperate need for all countries to come together and act because action taken only by Western countries will not impact Myanmar as severely as action taken by all U.N. states. The primary reason for this is that Myanmar’s top trading partners include China, Thailand, India, Singapore, and Japan.⁶⁵ As a result, sanctions placed by western countries do not affect at least 82.24% of the country’s imports and 76.48% of its exports.⁶⁶ Multilateral sanctions placed by all U.N. countries can impact Myanmar’s economy and reveal international consensus on the need for Myanmar’s government to protect the Rohingya. Furthermore, these actions will be in compliance with international law, which makes all states responsible to act in cases of ethnic cleansing.

However, two things must be kept in mind while placing sanctions. Firstly, these sanctions should be “smart” and they should be targeted so that they do not harm innocent civilians if possible. Secondly, the U.N. and other countries with whom Myanmar shares a diplomatic relationship should maintain open dialogue with leaders of Myanmar as a way to reinforce the purpose of the sanctions and to further pressure the government to end its human rights violations. Coupled with diplomatic discussion, smart economic sanctions can potentially be effective in bringing peace to the country of Myanmar and diminishing the suffering of the Rohingya people.

Conclusion

The bottom line is that the international community cannot remain silent anymore. Myanmar’s government has violated the human rights of the minority Rohingya population many times in the past, and it continues to do so today. As a result of these acts, the Rohingya people are disenfranchised in their own country, and even when they try to flee their country, they do not receive refugee rights in countries such as Bangladesh. Even though the crisis meets almost all of the requirements of genocide, the international community needs to at least collectively identify it as ethnic cleansing. Acting upon this identification, however, becomes a little troubling for states due to the conflicting norms of non-intervention based on respect for state sovereignty and responsibility to protect (R2P). Since many countries remain skeptical

⁶³ Ibid.

⁶⁴ Richard Garfield, “Economic Sanctions, Humanitarianism, and Conflict After the Cold War,” *Social Justice*, 29, no.3 (2002), 94. <https://www.jstor.org/stable/pdf/29768138.pdf>.

⁶⁵ World Integrated Trade Solution (WITS), “Myanmar Trade at a Glance : Most Recent Values,” *WITS* (2016). <https://wits.worldbank.org/CountrySnapshot/en/MMR>

⁶⁶ Ibid.

about the use of direct intervention in humanitarian cases due to the resulting infringement of Myanmar's sovereignty, all U.N. member states should impose economic sanctions on Myanmar to pressure the government to change its inhumane policies against the Rohingya people. The effectiveness of such sanctions can only be determined after the fact, but by acting against this case of ethnic cleansing, the international community can at least hold Myanmar's government accountable and send a message to future generations that crimes such as ethnic cleansing and genocide will not remain unpunished.

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