

Article

The Ineffectiveness of UNHCR in Handling Rohingya Refugee in Southeast Asia

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Abstract

UNHCR has a history of success in managing humanitarian issues and ultimately contributing to the birth of a new consciousness to consciously end conflicts. However, in the context of the conflict in Myanmar, UNHCR, which has systematically conducted humanitarian interventions to build a new consciousness to end the conflict, has failed to manage the humanitarian interventions to build a new consciousness to end the conflict. This article will explain the factors of failure in ending the conflict in order to see how deep the value of peace consciousness of peace consciousness can influence decisions in the conflict. This article finds that the Myanmar government's lack of political awareness of a number of ratified humanitarian conventions has made UNHCR's humanitarian interventions hit and run, so that peace values do not grow into core values. UNHCR's failure to transform the Refugee Convention into a new value in the ASEAN normative structure has rendered double contingency ineffective.

Keywords: Peace value, Humanitarian, Intervention, Myanmar, Coup d'état.

INTRODUCTION

The displacement issue is significant and presents challenges for both national governments and international organizations in handling the rising number of refugees. Urgent action is necessary for effective cooperation between national governments and international organizations in addressing the concerns related to refugees. In accordance with UNHCR's stance, though as an international organization committed to safeguarding and accountable for aiding refugees in the situation of Rohingya refugees, the mandate must be a shared concern between UNHCR and the states. States strengthen their respect for their responsibilities to protect refugees internationally through global solidarity, and protection regimes for refugees are enhanced by committed international cooperation, in the spirit of effective responsibility and burden sharing among all states (UNHCR, 2011). One of UNHCR's significant mandates is to address statelessness, and in certain situations, resettlement could be deemed as a suitable long-term solution for stateless individuals. States are urged to collaborate with UNHCR to develop approaches for resolving statelessness cases and to explore the option of offering resettlement locations in instances where the circumstances of stateless individuals are highly concerning (UNHCR, 2011).

By mid-2020, there were an estimated 1.9 million people of concern to UNHCR from Myanmar in the Asia-Pacific region. The vast majority some 1.6 million people - are Rohingya, a minority group from Myanmar who have been forcibly displaced across the region. Myanmar's discriminatory citizenship laws have stripped almost all Rohingya of their citizenship, making them the largest stateless community in the world (Bepler, 2018). UNHCR has registered nearly one million Rohingya refugees and asylum seekers, mostly in Bangladesh (860,000), Malaysia (101,000) and India (18,000), with smaller numbers in Indonesia, Nepal, Thailand and other countries (South, 2020).

In 2020, UNHCR continued to seek solutions for all refugees from Myanmar, emphasizing the need to provide a clear pathway to citizenship for Rohingya and to end discriminatory restrictions on movement, as recommended by the Rakhine State Advisory Commission. (UNHCR, 2021). In May 2020, the Government of Myanmar, UNDP and UNHCR extended a tripartite Memorandum of Understanding (MoU) to improve conditions in Rakhine State. First signed in 2018, the MoU establishes a framework for cooperation aimed at creating conditions for the voluntary, safe, dignified and sustainable return of refugees to their place of origin or choice (UNHCR, 2021). To date, UNHCR and UNDP have conducted needs assessments in 130 locations and implemented 95 quick impact projects aimed at improving livelihoods, education and social cohesion in local communities in the northern townships of Rakhine State, where the majority of Rohingya refugees live (Bepler, 2018).

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However, the partnership between the UNHCR and the Myanmar government has had little impact on Myanmar's political decisions. Even the ratification of international conventions related to civil rights: out of 14 conventions, the Myanmar government is only willing to ratify 4 conventions and is not willing to ratify the Convention against Torture. The Myanmar government has only ratified the conventions on discrimination against women's political rights and the use of children in military mobilization. This choice clearly has no positive impact on improving the protection of human security in Myanmar or for the stateless Rohingya. (Mukherjee, 2019). Studies of the humanitarian and human rights crisis in Myanmar are dominated by the strong military junta, which tends to have a political platform that is not friendly to civil liberties. As a study by Parnini, the military junta's logic of prioritizing political stability leads to partial policy decisions that have the potential to cause humanitarian problems (S. Sidhu & Parnini, 2020). The military government's repressive policies aimed at creating civil order will ultimately lead to a deeper social crisis in Myanmar (Zahed, 2021).

The study on the humanitarian crisis in Myanmar examines how some countries have become transit countries for Rohingya refugees and the role played by UNHCR, given that most of the countries surrounding Myanmar are countries that have not ratified the 1951 Refugee Convention. Similarly, a study by Ludfiani (et.al) analyses how Thailand manages the Rohingya refugee issue to avoid creating security problems, and the dilemma of Thailand's choice not to optimally implement its responsibility to protect (Ludfiani et al., 2017). Majid's (et.al.) study also explains how Malaysia is managing the Rohingya refugee problem in the context of Malaysia's non-ratification of the Refugee Protection Convention. Malaysia also faces a significant dilemma between providing optimal protection to refugees and the socio-political and economic risks it faces (Ayoade Ahmad et al, 2016). Sholeh's study focuses on the steps taken by Indonesia to manage the Rohingya refugee issue in Indonesia. According to Sholeh, Indonesia has many opportunities to communicate effectively with the Myanmar government. However, the existence of the ASEAN Way norm in ASEAN will be a structural problem to suppress Myanmar's political choices. (Sholeh, 2019).

A recent study conducted by Hilman (et.al) analyzed the opportunities for UNHCR to play an important role in peace amidst the stagnation of ASEAN's role in managing humanitarian crises (Ma'arif & Maksum, 2022). In his analysis, UNHCR, which has received official permission from the Myanmar government to deal with humanitarian issues, can play a more important role by building a narrative of peace from within Myanmar. This article will evaluate Hilman's findings on the possibility that UNHCR can effectively play a peacekeeping role in Myanmar. This evaluation will use a constructivist approach that positions identity variables, norms and ideas as supra-structures that can shape the actions and behavior of international actors. Kessler's research shows that constructivists such as Onuf, Kratochwil and Wendt on the phenomenon of multiple contingencies in both domestic and international spaces will create a moderate space for the birth of decisions (Kessler, 2016).

Huelss's work adds an important variable on how international norms are operationalized. In his view, the most important issue is the operationalization of norms into binding decisions at the national level (Huelss, 2017). The political will of the national government to implement the norms agreed upon in an international forum is the variable that most determines whether an international norm can work. This study is based on the phenomenon in the European Union organization, which is able to build regional and national norms productively. However, Huelss is pessimistic that the lessons from the EU can be replicated in regional or international organizations.

This article attempts to trace UNHCR's structural constraints in addressing the humanitarian crisis in Myanmar through the lens of norms that respect civil and ethnic minority rights. There is no denying that UNHCR is an international organization that is officially allowed to operate in Myanmar, and that it has a very large number of staff compared to the UNHCR's allocation of expatriate staff in Myanmar. There is ample room for UNHCR to educate on the value of respecting civil rights, and to raise awareness that policy choices that address civilian security will have a positive impact on the quality of humanitarian assistance in Myanmar.

RESULT AND ANALYSIS

UNHCR is a United Nations agency that plays an important role in solving a range of humanitarian problems in a number of countries, particularly in dealing with refugees, as reflected in the 1951 Refugee Convention. In addition, UNHCR has a moral ethic to work with governments to strengthen institutions and civil protection through advocacy and intensive communication with its partners, so that state-level actors can engage in rule-making processes to develop national policies that are civil protection friendly. (UNHCR. 2023).

UNHCR has been present in Myanmar since 1993 and has more than 200 staff in 10 locations. We respond to the needs of vulnerable populations in Chin, Kachin, Kayah, Kayin, Mon, Rakhine and Shan States, as well as in Bago, Magway, Sagaing and Tanintharyi regions. This figure shows that UNHCR is paying more attention to humanitarian and refugee issues in Myanmar. By way of comparison, UNHCR in Indonesia has only 60 staff to support its operations (UNHCR, 2022). Meanwhile, Indonesia also has a number of humanitarian issues related to refugees who choose to make Indonesia a transit point before reaching their destination country (Sholeh, 2019).

Norm Contestation and State Stability

The humanitarian problems in Myanmar continue even though Myanmar is under the civilian government of Suu Kyi, which was previously expected by the international community to bring significant changes for the civil recovery of the Myanmar people, including the Rohingya community who do not yet have citizenship status. (Zahed & Jenkins, 2022). As long as Suu Kyi was in power, the fate of the Rohingya refugees did not change much; the Myanmar government still kept the Rohingya in the dark. The Myanmar government has no moral and political obligation to give the Rohingya the opportunity to do some things that will allow them to become Myanmar citizens. A number of international calls for Suu Kyi to change her policy towards the Rohingya have received little meaningful response from Myanmar. Even the threat to revoke Suu Kyi's Nobel Peace Prize failed to change Suu Kyi's decision. (Bowcott, 2019).

When the Myanmar government returned to military rule, the humanitarian crisis against the Rohingya became more widespread, so the issue of ethnic cleansing in Myanmar continued to be raised by international civil society (Ashadi, 2022). A number of international organizations and European countries exerted political and economic pressure on the military government, but even this pressure was unable to change the political decision to include the Rohingya as part of the Myanmar nation entitled to civil protection (International Crisis Group, 2021).

The UNHCR, as the organization with the main responsibilities and functions in dealing with refugees, has indeed carried out a number of humanitarian interventions in Myanmar. Both in providing humanitarian assistance in the form of health, economic and social infrastructure improvements to carry out the social and economic recovery of the Rohingya community. However, a number of political obstacles in Myanmar are very closed, making UNHCR's activities in Myanmar very limited and sporadic. This situation

requires UNHCR to further enhance its response to the Rohingya humanitarian crisis in a number of countries in Southeast Asia (Chowdhory & Mohanty, 2020), South Asia (Li et al., 2022) and Indochina (Song, 2018).

UNHCR as a humanitarian organization has the space to raise collective awareness about the importance of peace and collective protection for humanity (Ma'arif & Maksum, 2022). The Myanmar government has followed the drafting process of a number of civil protection conventions, and out of the 14 conventions, it has ratified 4 civil protection conventions such as CRC (Convention on the Rights of the Child) in 1991, CEDAW (Convention on the Elimination of All Forms of Discrimination against Women) in 1997, CRC-OP-AC (Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict) in 2019 and CRC-OP- SC (Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography) in 2012.

Table 1. Ratification Status for Myanmar

Treaty	Assigned date	Legalization
CAT - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment		
CAT-OP-Optional Protocol to the Convention		
CCPR - International Covenant on Civil and Political Rights		
CCPR-OP2-DP - Second Optional Protocol to the International Covenant on Civil and Political Rights aimed at abolishing the death penalty		
CED - Convention for the Protection of All Persons from Enforced Disappearance		
CED, Article 32 - Procedures for interstate communications under the International Convention for the Protection of All Persons from Enforced Disappearance		
CEDAW - Convention on the Elimination of All Forms of Discrimination against Women		22 July 1997 (a)
CERD - International Convention on the Elimination of All Forms of Racial Discrimination		
CESCR - International Covenant on Economic, Social and Cultural Rights	Thursday, 16 July 2015	Friday, 06 October 2017
CMW - International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families		
CRC - Convention on the Rights of the Child		15 July 1991 (a)
CRC-OP-AC - Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	Sunday, 28 September 2015	Friday, 27 September 2019
CRC-OP- SC - Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography		16 Jan 2012 (a)
CRPD - Convention on the Rights of Persons with Disabilities		

Source: (OHCHR, 2020)

The table shows that the Government of Myanmar has socialized a number of conventions on anti-torture and civil protection, but has not progressed to the level of ratification. UNHCR Myanmar has carried out a number of activities so that Myanmar's status can be more progressive in the adoption of regulations that provide civil protection, including refugee protection conventions. However, to date, the Myanmar government has only been willing to ratify refugee conventions relating to the rights of women and children engaged in dangerous activities such as war or prostitution.

Myanmar's decision not to ratify CAT (Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment) and CAT-OP (Optional Protocol to the Convention Against Torture) is closely linked to Myanmar's interest in maintaining its sovereignty from international intervention. This political choice is very rational in relation to a number of facts that officially the Myanmar government is actually acting contrary to the Convention. Acts of violent torture against a number of ethnic Rohingya as an instrument of Myanmar's sovereignty to create national stability (Qader et al., 2022).

Table 1 illustrates Hendrik Huelss's analysis that identity fails to manage behavior in smaller units because the problem is operationalized ideas that need to be translated simultaneously (Huelss, 2017). UNHCR's long presence in Myanmar, with UNHCR's good practices, is not enough evidence for the Myanmar government that ratifying the Refugee Protection Convention or ratifying the general idea of the Anti-Torture Convention would be the best way forward for Myanmar's future security.

UNHCR Fails to Convince ASEAN

It is undeniable that the humanitarian crisis in Myanmar has caused security instability in Southeast Asia, South Asia and the Indo-China region (Mutaqin, 2018), which is characterized by the large number of Myanmar refugees who settle, temporarily settle and then await the repatriation process to countries willing to accept them permanently. The large number of Myanmar refugees in the region has also led a number of countries not to ratify the 1951 Refugee Convention. This is due to the consequences of having ratified it, as the country is then obliged to accept in order to provide greater access to resettlement, up to and including naturalization policies (McConnachie, 2022).

Although ASEAN countries are accommodating the social, economic and security burdens associated with the presence of Rohingya refugees (Manurung, 2021). ASEAN prefers not to solve the refugee problem at its source, namely by intervening in the Myanmar government's policies. ASEAN also does not intensively discuss the Refugee Convention as part of ASEAN's internal mechanism to resolve a number of acute refugee problems. In the context of migration, ASEAN has only concluded an agreement on the Regional Action Plan on the Implementation of the ASEAN Declaration on the Rights of the Child in the Context of Migration.

UNHCR itself has indeed worked intensively with a number of ASEAN countries and has been given a mandate to operate in a number of ASEAN countries (Rishanti et al., 2022). However, UNHCR as a humanitarian agency faces very serious obstacles from

ASEAN's policy decisions, known as ASEAN Ways. ASEAN Ways is a platform of norms of ASEAN governance not to interfere or intervene in the political decisions of other ASEAN countries. ASEAN Ways becomes a dilemmatic norm in the context of humanitarian issues in Myanmar; indeed, in Rosyidin's analysis, ASEAN becomes a crucial reason for the continuation of the humanitarian crisis in Myanmar. ASEAN's insecurity due to being held hostage by the ASEAN Way actually makes ASEAN an organization that does not respond to humanitarian issues in ASEAN's own area of competence (Rosyidin, 2017). Rosyidin's analysis is supported by Manurung, who believes that the issue of ASEAN's lack of clarity in responding to Myanmar's repressive policies against the Rohingya ethnic group will affect ASEAN's existence in the future. (Manurung, 2021b). From the perspective of civil society and humanitarian activists in particular, it is very clear that Myanmar's policies have created domestic and regional problems in Southeast Asia that affect human security, even state security.

The problem of UNHCR's inability to manage the dual contingency between the norms of the refugee protection convention and ASEAN's ways is, as Kessler points out, not simultaneous (Kessler, 2016). Ideally, ASEAN should have norms on respecting global humanitarian values that are compatible with the Refugee Convention. In fact, UNHCR is in a strategic position to bring together the refugee protection convention and ASEAN Ways norms to be more progressive. UNHCR also has experience of interacting with ASEAN member states over the years. UNHCR also has an adequate infrastructure in terms of human resources, institutional networks and funding. However, UNHCR's social capital has not been able to convince ASEAN member states to opt for a progressive operationalization of ASEAN Ways.

In order to build an effective and productive double contingency, it turns out that the length of interaction between actors does not guarantee the fulfilment of a set of collective consciousness in viewing humanity. The UNHCR has not been able to instil refugee protection norms in ASEAN member states, which still have a closed mind more than 80 years after the Convention was born. Understandably, ratifying the Refugee Convention and institutionalizing it as a convention in ASEAN would be a disaster for the future of ASEAN. The conventional view of humanitarian issues and conflicts between UNHCR and ASEAN has led both organizations to engage only in rehabilitation activities, with no desire to further mitigate and prevent humanitarian problems in Southeast Asia.

In the context of refugee protection, the UNHCR in Southeast Asia seems to prefer to solve the refugee problem, largely caused by the conflict in Myanmar, by merely reducing the depth of the humanitarian problem. Or to put it more simply, the UNHCR prefers to engage in placebo activities, where humanitarian crises are only solved by solving peripheral problems. ASEAN's choice is also relatively the same, solving humanitarian problems with a regressive and conservative approach. Its lack of courage to make a breakthrough in resolving the conflict in Myanmar will ultimately affect ASEAN's image as representing the interests of the elite rather than the interests of the people.

CONCLUSION

Peace consciousness is a long social interaction guided by shared values about what peace means. UNHCR's experience is not strong enough to convince the Myanmar government that adherence to human rights conventions will make Myanmar a country that can solve human and state security issues simultaneously. Nor has UNHCR been able to engage in political communication and advocacy with ASEAN to press Myanmar's political choices, which are linked to the values of the ASEAN Charter, which sees national political choices as autonomous decisions that cannot be interfered with. ASEAN's very conservative choice of operationalizing norms has led to a number of humanitarian issues in Southeast Asia being overlooked. Similarly, UNHCR, which operates under the 195 Refugee Convention, is still using conventional operationalization principles and is unable to make breakthroughs to effectively address structural refugee protection issues. A new convention is needed that can revitalize UNHCR into a progressive and productive refugee protection agency for humanity.

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