

Displacement of the Rohingyas in Southeast Asia

The 1978 “Operation King Dragon” was a watershed moment in the history of the Rohingya people. While tensions have always existed since the 1950s where ethnic Rakine and Muslim communities demanded autonomy from the Myanmar government (Smith, 1999), “Operation King Dragon” culminated in legislative action that stripped all Rohingya of citizenship in 1982. Since then, there have been intermittent moves by the Myanmar state to impose forced labour, inflict violence and enforce policies of discrimination on the Rohingya. Such patterns of persecution have continued till today, and have actually worsened as Myanmar undertakes democratic reforms. This has resulted in many Rohingya being targeted for killing and increased the number of refugees seeking refuge in Thailand, Malaysia and Indonesia (Singh, 2014).

Research into the plight of Rohingya refugees is diverse in its specific areas of interest, as in its viewpoints. There has been much work done on issues such as gender-based violence, historical origins of conflict, responsibility to protect and the international refugee regime (Akhter, & Kusakabe, 2014; Ullah, 2011; Southwick, 2015; Hathaway, & Neve, 1997). A significant amount of research into the Rohingya crisis has focused on the tension between state interests and international refugee law (Tran, 1996), articulating a state's fear in committing to refugee flows that are unpredictable in magnitude (Tran, 1996). Studies of this type often focus on variations in asylum policies as a function of national security concerns, tracing refugee approaches in countries such as Malaysia (Van Selm, 2015, Singh, 2014).

By examining the comparative responses of selected Southeast Asian states such as Thailand, Burma, Malaysia and Indonesia, this paper discusses possible implications for refugee protection in an Asian regional context where few countries are signatory to the 1951 Refugee Convention and its 1967 Protocol. It is also worth noting that that there is a corresponding lack of domestic legal frameworks to deal with refugees and asylum seekers. As a result, the treatment of Rohingya refugees is not shaped by

official state policies but rather by *ad hoc* institutional practices which are informed by fluctuating domestic sentiments towards migration. There is a general reluctance to offer formal durable solutions for the resolution of protracted refugee situations. Although most of them are generally safe from *refoulement*, having sought sanctuary in refugee camps or as part of the illegal migrant population in their host states, they have suffered from the lack of formal, consistent policies that affords them certainty with regards to their refugee status. In fact, the Rohingya seldom have access to education and health services and are often subjected to arbitrary arrest and detention, where an increasing securitisation of the state's immigration policies inevitably results in greater levels of insecurity for these people.

On the other hand, it can be argued that the Association of Southeast Asian Nations (ASEAN) has undergone radical transformations in terms of how it approaches humanitarian challenges in the last decade. Today, concepts such as “human rights” and “human security” are no longer alien to ASEAN. The ASEAN Charter was signed in 2008, promoting a commitment to human security. It was envisioned that the Charter would eventually establish an ASEAN human rights body (ASEAN Charter, 2008). In 2009, the ASEAN Intergovernmental Commission on Human Rights (AICHR) was created, with the ASEAN Human Rights Declaration (AHRD) following barely three years later. It is within this context Southeast Asian countries' responses to the Rohingya crisis must be considered, in order to gain valuable insights on how refugee crises can be better managed. In this article, I argue that the range of responses offered by Burma, Thailand, Malaysia and Indonesia are largely inconsistent, and that the move to embrace human security concerns in ASEAN has been largely unsuccessful. While such documents sound promising and optimistic, events of the Rohingya refugee crisis have not indicated the development of a human security framework in Southeast Asia. Rather, human security concerns such as the refugee crisis has been largely securitised.

History of the Rohingyas

The history of the Rohingya in Myanmar is in itself a controversial topic. The United Nations has often described the Rohingya as the most persecuted ethnic minority in the world. The term “Rohingya”

commonly refers to Muslims from Northern Rakhine (formerly Arakan) who speak a language closer to Bengali spoken in Bangladesh's Chittagonian district. During the British Raj, the Rakhine region was managed from Chittagong and Rohingya were able to move freely between these two regions. After Myanmar's independence from the British, the historical circumstances surrounding the status of the Rohingya allowed the Myanmar government to label them as 'illegal migrants' and forced them out on several occasions (Human Rights Watch, 2000).

In 1974, the Myanmar Emergency Immigration Act was signed into law, seeking to curtail immigration from Bangladesh, China and India. All citizens were required to carry identity cards (National Registration Certificates), but the Rohingya were downgraded to carrying Foreign Registration Cards (Human Rights Watch, 1996). In 1978, "Operation King Dragon" was put into force, "taking action against foreigners who have filtered into the country illegally" (Smith, 1991). Eventually, this operation escalated into abusive attacks on the Rohingya by local army forces. During the period of military rule, there were no attempts to assimilate the Rohingya into the wider Myanmar population while they were often subjected to violence. Their lands were stripped, people forced into labour and the 1982 revised Myanmar Citizenship Law excluded Rohingya from the list of national ethnic groups, effectively turning them into stateless persons while leaving the question of nationality unresolved.

After the disputed elections in 1991, the Myanmar military commenced a campaign called *Pyi Thaya* (Operation Clean and Beautiful Nation), designed to reduce the political fallout from a controversial election where the military junta refused to accept Aung San Suu Kyi's National League for Democracy's win. Aware of the anti-Muslim sentiments among Buddhist Rakhine's, the military junta sought to leverage the ill feelings created by Myanmar's brutal oppression in the region in a directed campaign against the Rohingya who were being used as scapegoats (Linter, 1991). This created an exodus of around 250000 Rohingya refugees who fled to Bangladesh and Malaysia.

Burma's Response to the Rohingya crisis

At the time of current writing, Myanmar has not ratified the 1951 Refugee Convention and its 1967 Protocol. On the 2015 Southeast Asian boat crisis in 2015, the Myanmar government describes the fleeing Rohingya as Bangladeshis who are fleeing poverty. Former Myanmar Foreign Minister Wunna

Maung Lwin completely rejects the claim that the maltreatment of the Rohingya in Myanmar is the leading cause of the crisis (Hookway, 2015). His successor, the Nobel Prize Winner Aung San Suu Kyi remains extremely reticent about on the Rohingya issue, torn between the need to maintain legitimacy with the Rakhine Buddhist majority and the pressing need to deliver a humanitarian solution to the Rohingya.

The June 2012 clashes between Buddhists and Muslims in Rakhine state created a new wave of Rohingya refugees fleeing to neighbouring countries. While a government statement released on 30 July 2012 stated that it “exercised maximum restraint in order to restore law and order” (Petty, 2012), Myanmar military forces tasked to re-establish order have been accused of ignoring atrocities, committing acts of rape and ethnic cleansing. Evidence suggests that political and religious leaders “planned, organised and incited attacks against the Rohingya with the intent to drive them from the state or at least relocate them from areas in which they have been sharing with the majority Buddhist population” (Human Rights Watch, 2013). Some Buddhist monk organisations called for the deportation of all Rohingya and attempted to block the delivery of humanitarian assistance to displacement camps (Global Centre for the Responsibility to Protect, 2015). Furthermore, at the All-Arakanese Monks’ Solidarity Conference in 2012, calls were made to denounce those advocating for the protection of the Rohingya’s human rights as “national traitors”.

In response to the events in Rakhine State, the former President of Myanmar Thein Sein remarked in July 2012 that the “only solution” (May, 2012) to the troubles in Rakhine were to send stateless Rohingya to third countries or contain them within United Nations High Commissioner for Refugees (UNHCR) -administered camps. Subsequently, the Rakhine Investigation Commission was established to investigate the communal violence. Upon conclusion of the Commission’s findings in 2013, the government developed the Rakhine State Action Plan that promised a path towards development and post-conflict reconstruction. However, this plan continued to refer to the 1982 Citizenship Law as a basis for citizenship assessment. At a speech at the United Nations (UN) General Assembly in 2013, Former Myanmar Foreign Minister Wunna Maung Lwin stated that the population in Rakhine would be divided into three categories: Those previously recorded or registered, the unrecorded who are willing to undergo

registration in accordance with Burmese national laws, and those who refuse to be categorised as ‘Bengali’; the third category would be denied the right to be considered for citizenship (Human Rights Watch, 2014). As Myanmar continues to refer to the Rohingya as Bengalis, Robertson argues that those who agree to be called Bengali are basically admitting to being undocumented immigrants and could be denied naturalized citizenship and subject to future deportation (Human Rights Watch, 2014). This proposal would reinforce efforts to discriminate against Rohingya by forcing them to repudiate their ethnic identity, and accept the label of a Bengali that does not offer them any guarantees at statehood. As for those who continue to assert their status as Rohingya, the possibility of being trapped in detention camps awaits them.

During Myanmar’s parliament sitting in January 2015, Thein Sein sent a legislative package of four bills to parliament for debate. These bills include regulations and restrictions on religious conversion, interfaith marriage, family planning and polygamy (Rahman & Zeldin, 2015). All four bills were subsequently passed into law by Parliament. Not surprisingly, these four bills were proposed by the Association for the Protection of Race and Religion, a Buddhist organization with ties to Movement 969 to the Ministry of Religious Affairs. It is evident that such a move by the government would place even more restrictions on non-Buddhists, directed at the Rohingyas.

Myanmar’s response to the problem has generally revolved around the denial of citizenship to the Rohingya people. Such acts have often put it in violation of the ASEAN Charter, where issues such as well-being, equitable access to opportunities for human development, human rights and justice have not been given their due consideration when it comes to the Rohingya. The denial of the Rohingya as a problem also complicates and undermines any attempt for an effective regional solution in Southeast Asia.

Malaysia’s Response to the Rohingyas

Malaysia has hosted refugees since the 1970s, with influxes from Aceh and Burma following the Indochinese refugee crisis of the 1970s and 1980s. There is presently a continuous flow of refugees into Malaysia, where it hosts about 154140 refugees (UNHCR, 2016). The vast majority of the refugees are from Myanmar, comprising of some 53410 Rohingya. This does not take into account the number of people who are not registered by the United Nations Refugee Agency (UNHCR), where figures could

easily push the total up to 271,973 persons of concern (UNHCR, 2015). Malaysia is not a party to the Refugee Convention or the 1967 Protocol and therefore does not recognise the status of refugees. Penelope Mathew and Tristan Harley reports that the Malaysia's government refusal to sign the treaty is "due to the heavy financial burden it will impose upon Malaysia" and "that the huge presence of "refugees" or "asylum-seekers" may be a threat to national security" (Mathew & Harley, 2014). Consequently, asylum seekers have also been viewed with animosity by the Malaysian public and local political parties because of their 'foreign status' (Vas Dev, 2009).

Since there are states party to the Convention that do not implement it, Malaysia has question the need for ratifying the Convention, arguing that they have done more than these states by hosting refugees in their country (Mathew & Harley, 2014). Instead it sees the provision of assistance to refugees and asylum-seekers to be done on a case by case basis with the UNHCR (Mathew & Harley, 2014).

Ethnic conflict in Rakhine has forced tens of thousands of Rohingya refugees to seek safety outside of Myanmar. By virtue of geographical proximity, Malaysia is often an attractive location because it is close by and also is an Islamic country. In the early 1990s, Rohingya who arrived in Malaysia were issued limited documentation in the form of protection and attestation letters by UNHCR. This allowed them to achieve a level of unofficial integration that granted them entry into the informal labour market and limited access to health and education services (Cheung, 2011). However, this period of relative shelter and safety ended when Malaysia introduced the Immigration Act in 2002, subjecting the Rohingya to arrest, detention and *refoulement*. After negotiating with the UNHCR, the government decided to grant temporary residence permits to 10000 Rohingya residing in Malaysia, allowing them to work and attend school. The current Prime Minister who was Deputy Prime Minister in 2004, Najib Razak has hailed it as a 'way to resolve a human rights issue and resolve the labour crunch in the country' (Agence France-Press, 2005). However, due to allegations of corruption where permits were being granted to non-Rohingya, the programme was halted (Abdul Aziz, 2006). Refugee rights were again eroded when former Prime Minister Abdullah Ahmad Badawi affirmed that Malaysia's had to be firm in turning back Rohingya refugees as the 'problem has been about people who come without permits' (Associated Press, 2009).

In March 2010, the Ministry of Home Affairs announced plans that would issue government identification cards to refugees, regularising their temporary stay but without the right to work (Amnesty International, 2010). However, such plans were eventually abandoned when a Home Ministry spokesman said ‘no law allows us to issue a card to an illegal’ (Zappei, 2010). Attracted by the promise of securing safe residency in Malaysia despite such plans being cancelled, many Rohingya continue to arrive in Malaysia by boat or an overland journey, subject to the exploitation of human traffickers (US Committee on Foreign Relations, 2009).

In October 2011, Malaysia reached a deal with Myanmar in an immigration swap deal, deporting up to 1000 Burmese being held in immigration detention to Myanmar (Agence France-Presse, 2011). Despite Malaysian assurances that refugees would not be deported, Rohingya refugees working illegally are often arrested as ‘illegal migrants’, which may result in their inclusion in the deportation of ‘illegal migrants’.

Asylum seekers who attempt to enter Malaysia illegally are often arrested and denied their rights as asylum seekers. Suara Rakyat Malaysia (Voice of the Malaysian People), a Malaysian civil and political rights group has said that trafficking victims are often sent to detention centres in violation of the Anti-Trafficking in Persons Act 2007, which stipulates that such individuals be placed in shelters as opposed to detention centres (Mizzima, 2010). Such developments actually run counter to the Malaysian government’s policy on how they were actually “most humane” to Rohingya refugees despite not signing the Refugee Convention.

During the 2015 Southeast Asian Boat Crisis, Malaysia’s often responded to asylum seeker arriving by boats with punitive measures. On the 11th of May, 2015, 1018 Bangladeshi and Rohingya refugees were arrested after arriving at Langkawi Island (BBC, 2015). Two days later, Malaysia turned away a boat with more than 500 Rohingya Muslims and Bangladeshis off the coast of Penang. The United Nations High Commissioner for Human Rights urged governments in Southeast Asia to respond to the crisis from the premise that “migrants, regardless of their legal status, how they arrive at borders, or where they come from, are people with rights that must be upheld” (UNHCR, 2015). Malaysia’s seat at the United Nations Security Council also compelled it to respect international treaties on the status of

refugees. On the 19th of May, local Malaysian makers have said that there was a legal obligation under international maritime law to rescue people in distress at sea, if the rescuing country does not put itself in imminent danger by doing so (Santiago, 2015). Not long after, the Malaysian Foreign Ministry stated that they would offer “temporary shelter provided that the resettlement and repatriation process will be done in one year by the international community” (Al-Mahmood & Rachman, 2015).

The only form of consistency characterising the Malaysian response to the Rohingya refugee crisis is only found in its backpedaling efforts. Issues with refugee status determination, inconsistent application of domestic laws in human trafficking and domestic political considerations all pose issues to any meaningful resolution to the protracted refugee situation in Malaysia.

Thailand’s Response to the Rohingyas

Like Malaysia, Thailand is also not a party to the Refugee Convention. Thailand shares similar concerns over how ratifying the treaty will result in increased numbers of refugees. For Thailand, accepting refugees into the local population often entails the right to work and possibility of citizenship (Mathew & Harley, 2014). There are also perceived security issues such as border skirmishes and mortar attacks in the area of the Thai border where Burmese refugees are sheltered, although not in the last few years (Mathew & Harley, 2014). Generally, Thailand does not return refugees or asylum seekers. In 2015, Thailand hosted around 109800 verified Myanmar refugees (UNHRC, 2016).

Over the years, over a million refugees have sought refuge in Thailand, by far the largest refugee burden of any Southeast Asian state (Loescher and Milner, 2005). Subsequently, it would be helpful to remember that the Thai position towards refugees may have been shaped by this influx of people, creating ‘compassion fatigue’. The long term presence of Myanmar refugees in Thailand is rooted in the weakness of the Myanmar state and the patterns and consequences of conflict in Myanmar (Loescher and Milner, 2005). This has yielded differing approaches in how Thailand treats its refugees. For example, the persecution of politically active dissidents from Myanmar’s National League for Democracy by the Myanmar government resulted in thousands of them fleeing to Thailand. Recognising that there was a fear of persecution, the Thai authorities called them ‘students’, allowing UNHCR to register them and provide assistance.

On the other hand, ethnic minorities such as the Rohingya were termed as ‘temporarily displaced people’ and UNHCR access to them was limited. Compared to the ‘students’ who were fleeing for reasons of political persecution, such conditions did not apply to the majority of persons coming from the ethnic minority regions of Myanmar (Human Rights Watch, 2012). They are often seen as a drain on local resources, threatening social cohesion. Thailand sees refugees as “competitors for jobs, resources; and they perceive Myanmar to be the cause of increased crime and health risks” (Loescher and Milner, 2005). However, Sciortino argues that the jobs performed by refugees are often too low or considered too badly paid by Thai workers (Voice of America, 2009). It is not surprising that the practices of the Thai government in refugee protection have been ad hoc, depending on the evolving security and political interests involved, with a variety of inconsistent labels for categories of displaced people.

In 1999, the Thai government established Provincial Admissions Boards (PABs) to screen asylum seekers who would be allowed to enter the refugee camps. Such camps were to admit only “people fleeing fighting” (UNHCR, 2006), but did not include people fleeing the effects of fighting and civil war, nor did it consider people fleeing due to a “well founded” fear of persecution. This narrow criterion applied by the PABs ensured that only a limited number of persons would be admitted into the camps, excluding thousands of asylum seekers from protection (Moretti, 2015). This has allowed Thailand to deal with refugees as it sees fit.

Generally speaking, the Thai authorities have been inhospitable to the arrivals of refugees from Myanmar. In 2008, former Prime Minister Samak Sundaravej was quoted as saying Thailand would relocate Rohingya refugees to an immigration facility on a deserted island (Chambers, 2015). Phuketwan journalists and the Arakan Project, a Bangkok-based monitoring organisation, later brought to the world’s attention where Thai military forces were detaining Rohingya refugees on the remote Ko Sai Deang Island, before towing them out to shark infested waters and abandoning them (Head, 2009). In February 2009, Rohingya refugees found by Indonesian fishermen said that they spent three weeks adrift at sea after the Thais beat them and dumped as many as ten wooden boats far out to sea with no motors and engines (Agence France-Presse, 2009). The National Security Council of Thailand has also said that Thailand should not accept the Rohingya as long term refugees as this would encourage a flood of

refugees (Bangkok Post, 2013). In July 2007, 40 Rohingya Muslims were deported back to Myanmar, where Supreme Commander Boonsang Niampradit was concerned that the large numbers of illegal immigrants might undermine national security (BBC Monitoring Asia Pacific, 2007).

After a significant reduction in boat arrivals between 2009 and 2001, boats began to arrive in Thailand again in 2012. Due to the increased violence in Myanmar's Rakhine state, Rohingya refugees started entering Thailand's waters in greater numbers. Responsible to protect the boat people has not been forthcoming; Thailand has generally attempted to push the burden to others while arguing that they cannot be held responsible for all of the Rohingya people. In 2013, Senator Jate Sirataranont argued that Thai authorities must send the Rohingya refugees to a third, Muslim country as fast as possible (The Nation, 2013). In 2015, Thai Deputy Prime Minister Prawit Wongsuwon stated that if refugees decided to enter Thai waters, they will be prosecuted by law as illegal immigrants. If they decide to continue to a third country, the Thai authorities will provide engine maintenance, fuel, foods, drinks and medicine required to the refugees (Sangiam, 2015). This was part of their 'Help On Policy' which officially involved escorting boats onwards to Malaysia (Mathew & Harley, 2014). The policy is inherently restrictive in nature, its logic resting on a blanket assumption where all boat people as illegal immigrants, without assessing if they have grounds for asylum. In addition, there have been reports that Thai authorities have collaborated with human traffickers and sold Rohingya refugees to the traffickers (Mathew & Harley, 2014).

In summing up Thailand's response to the Rohingya crisis, restricting standards placed on refugee status determination are often accompanied by the inflicting of violence by the Thai state on the Rohingya. While the narrative of refugees as a threat to national security features heavily in the Thai refugee protection discourse, it is the precarious manner in which they dealt with the boat push-backs that creates unnecessary dangers for the Rohingya.

Indonesia's Response to the Rohingya refugees

As a co-chair of the Bali Process, Indonesia has promoted efforts in combating human trafficking in Southeast Asia. However, it is not a party to the 1951 Refugee Convention or 1967 Protocol. As with Malaysia and Thailand, Indonesia cites the reasons for non-ratification as economic costs of

hosting refugees, threats to social cohesion and national security. The connection with national security arises due to a perception of refugees and asylum seekers being linked with the drug trade, even though it appears not to involve them (Mathew & Harley, 2014). Indonesia's concerns over the Rohingya refugee situation are linked to a potential radicalisation of Rohingya and other Muslims (Mathew & Harley, 2014). Despite such concerns, Indonesia is increasingly leaning towards a ratification of the 1951 Convention and 1967 Protocol, as indicated in its last two Human Rights Action Plans (Mathew & Harley, 2014). Indonesia is currently host to 13829 refugees and asylum seekers (UNHCR, 2016).

While Malaysia is largely a destination for Rohingya refugees, Thailand trying to push boats towards a third country, Indonesia has been characterised as a transit country. Since Indonesia lacks a formal legislative framework governing the treatment of refugees, most of them are generally classified as illegal migrants unless they come under the 2001 Regional Cooperation Mode, an agreement between Australia, Indonesia and the International Organisation for Migration (IOM). The aim is to support refugees to prevent them from onward movement to Australia. Such individuals are then directed to the IOM which will assess them before referring them to make an asylum claim to UNHCR.

In 2010, the Director General of Immigration for Indonesia issued a directive that allows illegal migrants to stay in Indonesia temporarily if they have either an Attestation letter or a letter verifying that they are seeking asylum with UNHCR, or have received recognition of refugee status from UNHCR (Crock, 2014). This directive protects such individuals from *refoulement* by offering them a temporary stay pending a permanent decision. Registered refugees and asylum seekers will not be detained under the provisions of the directive. However, the registration process with UNHCR is often lengthy, with gaps of over a year not uncommon between the time a person first presents to UNHCR and obtaining the proper documentation (Crock, 2014). During this period, the lack of documentation may cause refugees to be detained.

In April 2006, 77 Rohingya Muslims were stranded on an island in Aceh. The Aceh Provincial Executive Council of the Indonesian Islamic Missionary Council requested that the refugees be protected. There were sentiments that as Muslims, they were obligated to help one another (BBC Monitoring Asia Pacific, 2006). In May 2009, Indonesia criticised Thailand's boat push backs, accusing them of human

rights violations (ABC News, 2009). In 2009, in response to a group of Rohingya stranded on a small island off Aceh, the government stated that should the purpose of the Rohingya be an economic motive, they would have no choice but to repatriate them (BBC Monitoring Asia Pacific, 2009). This policy position appears to be more discriminating and does not represent an all-out rejection of boat people, allowing genuine refugees to seek asylum.

In 2012, Indonesia expressed its commitment to the protection of Rohingya Muslims through international channels. This commitment came in the form of discussing the Rohingya issue at various international forums such as the United Nations and the Organisation of Islamic Conference (BBC Monitoring Asia Pacific, 2012) Indonesian Foreign Minister Marty Natalegawa reiterated the Indonesian government's stand by saying despite the Rohingyas being regarded as stateless "ethnic Rohingyas must be given their basic rights wherever they are and regardless of whether they citizens of stateless" (BBC Monitoring Asia Pacific, 2012). In May 2015, in response to the Rohingya refugees stranded in Sumatra and Aceh waters, the Indonesian House of Representatives called on the government that as a civilised country, Indonesia should not be likened to neighbouring countries that for various reasons had refused to take in the boat people (The Jakarta Post, 2015). In July 2015, there were calls for the UNCHR to go to Aceh and identify refugees (Antara News, 2015). However, it is worth noting that Indonesia was also complicit in the boat-push back policy (Al Jazeera, 2015).

Upon first examination, Indonesia's approach to the Rohingya refugee crisis reflects that Indonesia has a closer working relationship with the UNHCR than Thailand. Furthermore, its partnership with the IOM shows that there is a somewhat coherent and systematic process in place where refugees can be assessed. However, the lack of resources continues to be a factor in prolonging situations of displacement for the Rohingya. Preliminary evidence also suggests that despite boat push-backs, there is greater support for the temporary resettlement of the Rohingya at government level as compared to the other countries discussed in this study so far.

A Regional Response under ASEAN?

The regional response to the Rohingya refugee crisis has often come in the form of discussions at conferences and meetings. A summary of a regional migrant conference emphasised the need to tackle

the reasons why so many people are leaving both Myanmar and Bangladesh (Hookway, 2015). At the 2009 ASEAN Summit meeting, ASEAN leaders took up the Rohingya issue, expressed their concern and urged Myanmar to cooperate. They tasked the ASEAN Secretariat to oversee the issue of future humanitarian efforts in the region. However, it is important to note that in the Chairman's Statement of the 2009 ASEAN summit, the Rohingya people were referred to as "illegal migrants" (ASEAN, 2009). Later, it was agreed that the Rohingya issue was to be referred to the Bali Process (IRIN, 2009). This coincided with bilateral efforts between Thailand and Indonesia agreeing to tackle the Rohingya issue at the Bali Process.

After a long hiatus of six years, the Bali Process concluded with a final statement detailing the challenges faced by the international community in addressing irregular movements of people. However, the Rohingya issue was not "discussed at the plenary session, nor was it explicitly mentioned in the concluding statement" (IRIN, 2009). It also remains unclear what an international forum could do for the Rohingya, since they are stateless and no one has claimed them (Asia News Monitor, 2009). As the Bali Process primarily deals with human trafficking, it does not adequately cover situations where some Rohingya may not have been trafficked.

On a separate note, former Thailand Prime Minister Abhisit Vejjajiva in Feb 2009 insisted that the Rohingya issue should be jointly solved between Indonesia, Malaysia, Thailand and Myanmar, adding it was the common problem between these nations, and not Thailand's alone (Relief Web, 2009).

Former ASEAN Secretary General Surin Pitsuwan acknowledged that ASEAN cannot press the government to grant citizenship to the Rohingya (Hindstrom, 2012). In 2014, The ASEAN Interparliamentary Caucus has made several statements condemning discrimination and violence against Rohingya (Global Centre R2P). The ASEAN Parliamentarians for Human Rights have released numerous statements criticising the "dangerous, discriminatory and unnecessary" draft law proposing restrictions on interfaith marriage.

In 2015, ASEAN made an emergency ASEAN Ministerial Meeting on Transnational Crime Concerning Irregular Movement of Persons in Southeast Asia held in KL, pledging to set up a task force and trust fund to respond to the irregular movement of refugees and migrants in the region. Most

regional governments have argued that they cannot shoulder the burden alone. When asked about Malaysia's boat turn-back policy, Malaysian Deputy Home Minister Wan Junaidi Jaafar said, "if we continue to accept them, then hundreds of thousands will come from (Burma) and Bangladesh" (Popham, 2015). In 2012, efforts to organise an ASEAN meeting on Rohingya refugees at sea collapsed in August 2012 after being rejected outright by Myanmar's Foreign Ministry (Kassim, 2012). A commentator has noted that "this is another reflection of ASEAN's ineffectual cohesion" (Tharoor, 2015).

Concluding Statements

As members of ASEAN, Myanmar, Malaysia, Thailand and Indonesia have violated the ASEAN Charter to varying degrees. They have not fulfilled the Charter's aim of strengthening "democracy, good governance and enhance the rule of law... (and) promote and protect human rights and fundamental freedoms" and to enhance the well-being and livelihood of the peoples of ASEAN by providing them with equitable access to opportunities for human development, social welfare and justice"

At a rhetorical level, there are provisions for the protection of refugees in various ASEAN documents such as the ASEAN Political-Security Community Blueprint and the AHRD. For example, Articles 15 and 16 are principles enshrined in international refugee law, referring to the right of movement and right to seek and receive asylum (AHRD, 2013). It is not the purpose of this paper to debate about the actual usefulness of the AHRD, but the regional response has been largely inconsistent with official documents that provide guidelines on the treatment of the Rohingya.

The Southeast Asian response to the Rohingya derives from a number of factors, but it highlights many of the region's limitations. I will conclude with 2 important implications of the findings in this paper. Firstly, despite the presence of ASEAN, there has been no coordinated response to the Rohingya problem. The nature of the response indicates a divided region. Till now, there remains a notable lack of pressure on Myanmar. Unlike the 1989 Comprehensive Plan of Action on Indochinese Refugees, which oversaw cooperation between recipient countries of 275000 Vietnamese refugees, no agreement has been made among the 4 largest destination countries of refugees from Myanmar. Multilateral issues cannot be strengthened unless they are addressed at their root cause – the violation of human rights. The ad hoc and

variable nature of state responses to irregular migration flows reflects the absence of regional frameworks for addressing challenges of displacement, allowing states to maintain flexibility in dealing with them.

Finally, perhaps the most important point is the ASEAN's continued use of the term 'irregular migrant'. The use of such a term frames the Rohingya as victims of smuggling and trafficking rather than that of state persecution. The Bali Process is unable to deal directly with the causes of Rohingya displacement from Myanmar. Labelling of the issue does not fit with the facts of the matter or with ASEAN's recognition of what is a refugee and how to protect them.

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