

LESSONS FROM THE ROHINGYA TRAGEDY: THE CLASH OF NON-INTERVENTION AND THE RESPONSIBILITY OF ASEAN REGION COUNTRIES

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Abstract

This study discusses human rights violations in Myanmar, particularly against the Rohingya ethnic group, from an international law perspective. Systematic discrimination through the Burmese Citizenship Law of 1982 has rendered the Rohingya stateless and subjected them to various forms of gross human rights violations, including mass expulsions, killings, rape, and alleged genocide. This issue has serious implications not only at the domestic level, but also transnationally with the emergence of refugee flows to neighboring countries, including Indonesia. In the context of international law, instruments such as the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the Genocide Convention (1948), and the UN Charter (1945) affirm the obligation of states to protect human rights. However, practical implementation faces political obstacles, both through the ASEAN principle of non-intervention and the use of veto power in the UN Security Council. The research questions include: (1) how does international law regulate human rights violations in the case of Myanmar, and (2) how do human rights violations in Myanmar affect the dynamics of international law? The results of this study show that despite normative developments such as the strengthening of *jus cogens* and the Responsibility to Protect (R2P) doctrine, reality shows that there is a serious gap between legal norms and implementation. Thus, the case of Myanmar reflects a major challenge to the effectiveness of international law in realizing universal justice and human rights protection.

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Introduction

Human rights violations under Myanmar's military junta since the February 2021 coup have been marked by fighting between junta forces and an alliance of ethnic armed groups. On an ongoing basis, civilians face the threat of beatings, electric shocks, arrest, prolonged stress, torture, rape, burning, and murder. For instance, thousands of civilians have been killed in attacks allegedly carried out by the military junta's forces, including members of the Rohingya ethnic group in central Rakhine ("Burma," 2024; Human Rights Watch, 2023). These allegations of genocide, ethnic cleansing, and crimes against humanity call for international support for the Rohingya people and for the perpetrators of human rights violations to be brought before international human rights courts (Nations, 2025). Countries in the Association of Southeast Asian Nations (ASEAN) region, bound by the ASEAN Charter, are also obliged to exercise universal jurisdiction to put an end to these crimes (Asia Pacific Centre for the Responsibility to Protect, 2023).

One need not be a human rights activist to read this data on human rights violations, but one must be mindful, as fellow human beings, of the duty to treat others with humanity. Every individual possesses human rights from the moment of conception. These universal human rights oblige every state to protect, respect, and promote them. Various international legal instruments, such as the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the International Convention on the Elimination of All Forms of Discrimination Against Women; the International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention on the Rights of the Child; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the International Convention for the Protection of All Persons from Enforced Disappearance; and the Convention on the Rights of Persons with Disabilities.

International law recognises the following fundamental principles: the Principle of Consensus; the Principle of Reciprocity; the Principle of State Equality; the Principle of Finality of Judgments and Settlements; the Principle of Good Faith; the Principle of Domestic Jurisdiction; the Principle of Freedom of the High Seas; the Principle of the Duty to Cooperate; the Principle (Fernández Arribas, 2024; Sloan, 1992). ASEAN member states are unable to take action to halt the alleged human rights violations in Myanmar due to the rigidity of the principle of state sovereignty; in other words, it is this principle of non-intervention that makes it appear as though they are turning a blind eye to these alleged human rights violations. All they can do is accept refugees, as is the case in Thailand, Malaysia, and Indonesia (UNHCR Indonesia, 2025).

Some previous studies on alleged human rights abuses in Myanmar and their impact, such as Iqthyer Uddin Md Zahed, have found that the United Nations has condemned the practice of genocide, war crimes, ethnic cleansing, and crimes against humanity, but the Rohingya have never received any form of protection from the international community and international organizations. ASEAN's non-intervention strategy, the OIC's reliance on diplomacy, the European Union's priorities for Myanmar's hybrid democratic transition, the UN political dialogue strategy, and the structural weakness of the UN Security Council are obstacles for the international community to prevent genocide in Myanmar (Zahed, 2021). Zezen Zainal Mutaqin stated that Rohingya refugees must be protected by human rights, ASEAN must not succumb to the Myanmar military junta government over these alleged human rights violations, and ASEAN is also firm in helping the humanitarian crisis for Rohingya refugees (Mutaqin, 2018). Endah Rantau Itasari found that ASEAN's failure to guarantee human rights in Myanmar was due to the principle of non-intervention contained in the ASEAN Charter. If this principle is still rigidly and statically enforced, ASEAN countries that commit crimes against humanity

may be left alone (Itasari, 2020). Endi Haryono et al. found a dilemmatic position felt by ASEAN member countries under the principle of non-intervention, so that they are not free and easy to enter and intervene in alleged human rights violations in Myanmar. This indecisiveness exacerbates the continuous appearance of victims from year to year until now. The principle of non-intervention must be reviewed and given clear limits, especially if there are allegations of human rights violations in ASEAN countries (Endi Haryono et al., 2024). Yulianto Achmad et al. argued that efforts to resolve alleged human rights violations in Myanmar can be carried out by ASEAN if the principle of Non-Intervention is applied dynamically and removes rigidity in interpreting this principle, every life must be protected by anyone regardless of the country's territorial boundaries (Achmad et al., 2021). Mohamad Rosyidin offers a constructivist paradigm in diagnosing and providing policy recommendations for ASEAN to solve the problem of alleged crimes against humanity in Myanmar. The lack of collective identity among ASEAN countries makes these alleged human rights violations seem to be left alone (Rosyidin, 2017).

This limitation motivated the present research to analyze not only the legal aspects but also the global impacts, such as transnational refugee flows and the weak implementation of the Responsibility to Protect (R2P) principle. This study aims to explain how international law regulates human rights violations in the case of Myanmar and how these violations affect the dynamics of international law. The scientific novelty of this research lies in its integrative analysis of *jus cogens* norms, ASEAN's principle of non-intervention, and the challenges of implementing international law amid modern geopolitical realities. Importantly, this study contributes to understanding the gap between legal norms and their implementation, emphasizing the need for reforming international human rights enforcement mechanisms to make them more effective, independent, and free from political influence.

Research Method

This study employs a normative legal research method focusing on the examination of norms, principles, and doctrines of international law related to human rights violations in Myanmar. The selection of this method is based on the objective of analyzing how international law regulates the obligations of states to protect human rights and the legal responsibilities arising from violations of these norms. The research applies two main approaches: the conceptual approach and the statute approach. The conceptual approach is used to examine relevant theories and concepts such as the theory of non-intervention, state responsibility, and universal human rights protection.

Results and discussions

International Legal Basis for Human Rights Violations

The international legal basis for human rights violations is based on various globally binding legal instruments, namely: the Universal Declaration of Human Rights, which is an international document that explicitly outlines universal human rights. Adopted in 1948, this declaration includes provisions related to basic rights such as the right to life, the right to liberty, and equal justice, which is the basis for the further development of international legal instruments. In this case, this Declaration also covers various rights, including civil and political rights, as well as related economic, social, and cultural rights; the United Nations Charter was established in 1945, and became the basis for the principles of universal human rights. By establishing the objectives of this international organization, including the promotion of equality, freedom, and the reduction of discrimination as basic principles of human rights protection, the International Covenant on Civil and Political Rights is an international agreement that binds countries intending to protect the civil and political rights of individuals. This agreement covers rights such as independence, the right to a better life, and religious

freedom, strengthening the protection of human rights in general. Women are empowered in various fields, including politics, economics, and social affairs; the International Convention on the Elimination of All Forms of Discrimination Against Women is an international treaty that protects women's rights, adopted in 1979. This convention sets standards for preventing and eliminating discrimination against women in various fields, such as political, economic, and social. Countries that ratify CEDAW commit to implementing the principle of gender equality and taking concrete steps to eliminate discrimination against women. The Convention on the Rights of the Child (CRC) is an international legal instrument that protects the rights of children, adopted in 1989. It covers the right to education, protection from exploitation, and the right to participate in decisions that affect them. Countries that ratify the CRC commit to respecting and fulfilling children's rights; the United Nations High Commissioner for Refugees, as the international organization dealing with refugee issues, has the authority to determine whether a particular individual or group meets the criteria for being a refugee. This effort demonstrates the important role of international law in protecting those forced to flee their home countries due to serious human rights violations; In 2009, ASEAN established an ASEAN Intergovernmental Commission on Human Rights as the official institution that handles regional human rights issues; and the Burmese Citizenship Law also provides a domestic legal framework that limits Rohingya access to basic civil rights, such as the right to obtain an official identity, the right to education and public services.

Myanmar, also known as Burma, is a country with an area of approximately 680,000 km². This country is a developing country and has a population of more than 50 million. With a 2008.33% national average, Myanmar is divided into seven states. These seven states are: The Chin, Kachin, Kayin (Karen), Kayah (Kiarenni), Mon, Rakhine (Arakan), and Shan tribes are ethnically diverse. The people of Myanmar practice several religions.

Buddhism is the majority religion in Myanmar. Other religions practiced by the people of Myanmar include Christianity, Islam, and others. The beginning of all the conflicts that have occurred in Myanmar began when the military junta government took over power through a coup in 1962. Since then, a policy of discrimination against. Repression of ethnic minority groups, particularly the Rohingya, began to be enforced because they were not considered part of the indigenous population of Burma. In the same year, General Ne Win succeeded in seizing power and then

served as head of state, resulting in Myanmar's political system shifting over time, becoming authoritarian. From the military regime's perspective, the Rohingya were viewed as a threat because they were considered a separatist group. Therefore, in 1978, the government launched a military operation aimed at crushing the separatist movement and curbing their religious status, namely those who are Muslim. The conflict that occurred in Myanmar itself began with the implementation of a policy known as Burmanization, which only recognizes Buddhism as the official state religion. The Rohingya ethnic group, one of Myanmar's ethnic groups, is not recognized as official citizens. The religious conflict between the Muslim and Buddhist communities in Myanmar is better known as the conflict between the Rohingya and Rakhine ethnic groups. Historically, evidence shows that Rohingya Muslims are the indigenous entity in Arakan. They have long been victims of discrimination perpetrated by the Myanmar Military Junta, which has resulted in serious violations of the civil rights of the Rohingya population. The Rohingya tribe has been considered as immigrants from Bangladesh, considering that North Rakhine borders directly with the country.

However, they have been living in Myanmar since the 7th century AD. Rohingya come to Myanmar during their harvest season to work as laborers. During World War II, they were one of the groups of the Muslim minority living in western Myanmar. Over time, the Rohingya community is increasingly marginalized. Human rights are rights inherent in every individual. Article 1 of the Universal Declaration of Human Rights states that "all human beings are born free and equal in dignity and rights." This declaration is recognized as a common

standard for achieving well-being for all people and nations. This declaration covers a wide range of rights, including civil and political rights, as well as related economic rights, social, and cultural rights. The international concept of human rights spread to principles such as those related to the abolition of slavery, the protection of minority rights, and the right to self-determination. In its implementation,

The state has full responsibility to promote human rights, both normatively and administratively, and is considered the primary obligation holder. However, victims are often in a weak position when confronted by the state as the perpetrator, and this situation is particularly evident in Myanmar. Fighting between the military and ethnic armed groups in northern Shan State, as well as conflict between ethnic armed groups in the region, has displaced many people and resulted in various abuses, including reports of numerous civilian deaths and forced recruitment by ethnic armed groups. The Pyithu Hluttaw Act of 1982, or the Burmese Citizenship Act of 1982, states that only 135 races can be listed under the law and are also entitled to full citizenship status. Some media reports suggest that the number of displaced Rohingya in Arakan is around 1 million, or even more. They are struggling, and they are giving up and sacrificing their lives in seeking refuge in other countries.

The Rohingya ethnic group has been the victim of various serious human rights violations, including large-scale genocide and human rights violations. Other things they have done. They have lost their right to freedom of movement and face various forms of discrimination. The Myanmar government has committed various human rights violations, including mass murder, rape, forced confiscation of land and homes, torture of children, forced conversion to Buddhism, large-scale destruction of places of worship, and restrictions on marriage for fellow Rohingya. As a result, a large number of Rohingya civilians in Myanmar are classified as undocumented immigrants and are denied the same rights and protections as ordinary citizens. In August 2012, the situation worsened with the burning of Rohingya homes and ongoing attacks by both ethnic groups. This situation demonstrates that the Rohingya continue to face serious threats and discrimination in Myanmar. The conflict that erupted in Rakhine Province against the Rohingya ethnic group was triggered by a complex array of factors. The atrocities committed by Myanmar authorities have caused many casualties among the Rohingya Muslim ethnic group, with a total of 77 people killed and 109 others injured. In addition to the deaths and injuries, this conflict has also resulted in significant physical damage, including 5,000 damaged or burned homes, 17 destroyed mosques, and massive displacement. The number of Rohingya refugees, which was initially estimated at only 28,000, has continued to rise to 53,000, while the number of ethnic Rakhine refugees has also increased to 24,000. Hateful rhetoric has also exacerbated the situation. A prominent monk, Ashin Wirathu, has incited his followers by portraying all Rohingya Muslims as a dangerous threat, which ultimately triggered the burning of at least 60 mosques in Rakhine in 2013.

The Myanmar government does not recognize Rohingya citizenship. This has had a serious impact on their lives. In addition to losing their basic rights, they are also unable to exercise their political rights legally. Until now, the number of victims is likely to continue to increase, considering that there are no concrete steps from the Myanmar authorities to address this problem. 14Meanwhile, the Arakan Army (AA) has not yet issued an official response to the post- coup political situation. After nearly two years of armed conflict between the AA and the Myanmar military, major fighting subsided following the general election on November 8, 2020. However, incidents involving civilian casualties, such as deaths and injuries from landmines, continue to occur. The military coup has hampered the delivery of humanitarian aid in ethnic areas in various ways.

The Rohingya people have experienced severe repression by the Myanmar government, resulting in the loss of their personal liberty. This is in stark violation of Article 9 of the ICCPR, which states: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention." No person shall be deprived of his liberty except based on and

in accordance with procedures established by law." In general, this article of the ICCPR has expressly prohibited arbitrary arrests without good reason, clear and certain, because the UN has also fully guaranteed and recognized the rights of every individual to personal freedom and security. A country that has signed and consciously bound itself to the Genocide Convention should implement the convention properly. However, in reality, it is prohibited, contrary to the law, as Myanmar is considered to have violated international treaties by failing to properly implement the Genocide Convention. Crimes against humanity or human rights violations in a country are often considered domestic matters that are the responsibility of the local government to resolve without involving external parties. In this case, the state has an obligation.

The Impact of Human Rights Violations in Myanmar on Legal Dynamics

Cases of human rights violations that occurred against the Rohingya ethnic group in the country of Myanmar are not merely a domestic issue, but also a global problem that impacts the development of international law. Systematic crimes include discrimination, ethnic cleansing, and allegations of genocide. A large-scale genocide that challenges the international community to assert its role in protecting universal human rights. This issue strongly demonstrates the tension between the principle of sovereignty and international human rights norms, making it an important analytical topic for examining the dynamics of contemporary international law.¹The principle of non-intervention itself is a very traditional norm.

Upheld in relations between countries. This principle really prevents the occurrence of interference by other countries in domestic affairs, including when human rights violations occur. ASEAN has made this principle part of the "ASEAN Way" to maintain regional stability. However, in the case of Myanmar, this approach has proven to be very weak, resulting only in political and diplomatic statements without any real intervention to protect victims of human rights violations. In response to the weaknesses of non-intervention, the international community developed the Responsibility to Protect (R2P) doctrine. R2P affirms that state sovereignty is not only a right but also a responsibility to protect its citizens. If a state fails to fulfill this obligation, the international community can take over responsibility through preventive, diplomatic, and collective action under the authority of the UN Security Council. The implementation of R2P in Myanmar has created serious tensions. The Myanmar government maintains its sovereignty argument to deny the intervention, while the international community considers the crimes committed against the Rohingya to constitute genocide and crimes against humanity.

This situation shows a big dilemma between maintaining state sovereignty or also uphold international obligations to protect human rights. From an international legal perspective, certain human rights, such as the prohibition of genocide, are considered *jus cogens* norms. These norms are absolute and cannot be overridden by treaties or national interests. Violations of these *jus cogens* norms give rise to *erga omnes* obligations, that is, obligations to all parties, countries to act and move. The case in Myanmar could strengthen the urgency that this fundamental norm must be upheld to prevent impunity. The UN, particularly the Security Council, has a specific mandate to act in situations of gross human rights violations. However, in the case of Myanmar, decisive action is needed, hampered by the use of veto power by major powers that also have geopolitical interests. This clearly demonstrates the limitations of international mechanisms in addressing human rights violations when political interests dominate the decision-making process.

The Security Council, the International Court of Justice (ICJ), and the International Criminal Court (ICC) also play a crucial role. The ICJ has received numerous lawsuits related to alleged violations of the Genocide Convention by Myanmar, while the ICC has made every effort to prosecute individuals responsible for crimes against humanity. The International Court of Justice affirmed that the principles of the Genocide Convention hold a fundamental position in international law. The ICJ considers the norms contained therein to be nearly universal, thus

qualifying the prohibition of genocide as a *jus cogens* norm, or imperative norm. This aligns with Article 53 of the 1969 Vienna Convention on the Law of Treaties, which states that *jus cogens* is an inviolable norm and any agreement that contradicts it is considered null and void. The link between *jus cogens* and the crime of genocide is reflected in the international community's recognition that the prohibition of genocide is a compelling norm, making its prevention and prosecution a matter of common interest to the entire international community.

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Although the effectiveness of these two institutions is still debated, the steps This demonstrates that international law continues to seek a legal and just resolution. The Myanmar crisis has prompted a complete paradigm shift regarding state sovereignty. Sovereignty is no longer viewed as an absolute right, but also as a responsibility to protect all citizens. Thus, Myanmar's failure to protect the Rohingya ethnic group has become a reason for the international community to question the legitimacy of its sovereignty within the framework of modern international law. Regarding demands for accountability for Myanmar's actions, on November 11, 2019, the Republic of Gambia filed a lawsuit with the International Court of Justice alleging Myanmar's violation of the Convention on the Prevention and Punishment of the Crime of Genocide. Gambia has legal standing to file the case because the obligations under the Genocide Convention are *erga omnes partes*, meaning they are binding on all state parties. In its lawsuit, Gambia asked the ICJ to declare that Myanmar has been and continues to be in violation of its obligations under the Genocide Convention, and to order Myanmar to immediately cease actions that are contrary to international law. ASEAN prefers a diplomatic path with limitations based on the principle of non-intervention, while Western countries use instruments such as sanctions, diplomatic pressure, and even international litigation. This difference in approach is very illustrative. How political interests influence the dynamics of international law and show that universal human rights protection has not been completely separated from power politics.

The case of Myanmar demonstrates normative progress in international law. The R2P concept is gaining legitimacy, the *jus cogens* norm is being further strengthened, and international mechanisms such as the ICJ and the ICC remain used as a reference in resolving a dispute. This development shows that international law is increasingly moving towards universal recognition of human rights protection, although its implementation in Myanmar faces many obstacles. However, in practice, human rights enforcement in Myanmar has stagnated. Political obstacles in the Security Council and a passive attitude of ASEAN, as well as the lack of international commitment, have made protection for the Rohingya ineffective. Thus, the case in Myanmar has shown that there is a gap between norms and practices: Despite progress at the conceptual level, the realization of human rights protection remains very limited. This presents a significant challenge to the international community in realizing the supremacy of international law in the future.

Conclusion

Allegations of gross human rights violations were committed by the military junta government in Myanmar, which resulted in a humanitarian crisis, especially for the Rohingya ethnic group. ASEAN's failure to resolve this case is one of them, aggravated by the interpretation of the principle of non-intervention, so that the Rohingya ethnic group still experiences physical, psychological, economic, sexual, and so on. The doctrine of Responsibility to Protect (R2P) and the strengthening of *jus cogens* norms, the effectiveness of which is contradicted by geopolitical calculations, such as the veto in the UN Security Council and the rigidity of the doctrine of non-intervention in the principle of the "ASEAN Charter". The theoretical contributions in this article show that there is a dynamic interpretation of the principles of international law, so that the guarantee of the protection of humanity does not

become a utopia for anyone and in any country. The responsibility to protect human rights should not be limited by the territory of the country, but lead to other countries to be responsible for the protection, fulfillment, and promotion of human rights. Since this research is still limited to a normative-doctrinal approach to written legal instruments and judicial documents, it is necessary to empirically measure the effectiveness of the implementation of international economic sanctions in the field.

Declaration of AI and AI-Assisted Technologies in the Writing Process

During the preparation of this work, the author used Grammarly to check grammar. After using this tool/service, the author reviewed and edited the content as needed and takes full responsibility for the integrity, accuracy, and originality of the publication's final version.

CRedit Authorship Contribution Statement

Authorship contributions are reported following the CRediT (Contributor Roles Taxonomy) system. Each author's specific role in the research and writing process should be identified clearly. Conceptualization, Data Curation, Formal Analysis, Investigation, Writing Original Draft, Supervision, Validation, Project Administration, and Writing Review & Editing.

Declaration of Competing Interest

The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper. If conflicts exist, clearly describe them here.

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