

ASIA PACIFIC CENTRE - RESPONSIBILITY TO PROTECT

ASEAN AND THE ROHINGYA CRISIS SINCE 2017:

DYNAMICS, CHALLENGES, AND NEW AVENUES FOR A MORE
EFFECTIVE REGIONAL RESPONSE IN POST-COUP MYANMAR

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Abstract

The Rohingya crisis has displaced over one million people from Myanmar because of military violence, creating one of the largest refugee settlements in the world. ASEAN used its limited influence through soft diplomacy and discreet means to keep Myanmar on the negotiating table in attempts to solve the long-standing crisis. The primary goal was to end the violence and halt the exodus while working towards refugee repatriation from Bangladesh. The second goal was to address the conflict's root causes by implementing recommendations of the Advisory Commission on Rakhine State. To a keen observer of the region's affairs, there was no constructive progress made by ASEAN. Today, the February 2021 coup d'état by the Myanmar Tatmadaw has impeded any positive developments, however little, and stalled progress towards resolving the crisis. ASEAN diplomacy with Myanmar has also become more complex.

Our analysis suggests that due to institutional gaps and structural flaws, ASEAN lacked the capacity, flexibility, and robustness required to handle grave internal conflicts and widespread human rights violations perpetrated by member states against their populations. In relation to the Rohingya crisis, it could only act on an ad hoc, piecemeal basis. Further, in the face of ASEAN strictures on how it conducts diplomacy, creative leadership in devising solutions to solve the crisis has been found wanting. Unfortunately, ASEAN's current focus on the coup will overshadow its further efforts. The repatriation of the Cox's Bazar refugees is also unlikely to take place under present political conditions in Myanmar. To assert ASEAN's relevance and credibility in the eyes of the global community, ASEAN should take bold steps that hitherto have not been contemplated.

This paper examines the ASEAN response to the Rohingya crisis since 2017 including its internal dynamics, challenges and constraints. It also considers the impact of the coup on ASEAN's diplomacy with Myanmar and proposes several strategies and recommendations for ASEAN to adopt in moving the issue forward.

Introduction: The Myanmar challenge

The Association of Southeast Asian Nations (ASEAN) was established in 1967 through the ASEAN Declaration (also known as the Bangkok Declaration) signed by Indonesia, Malaysia, Philippines, Singapore, and Thailand. The regional association later invited Brunei Darussalam (1984), Viet Nam (1995), Lao PDR (1997), Myanmar (1997), and Cambodia (1999) to join the group. Myanmar's admission in ASEAN was controversial. Pressure was initially put on ASEAN to exclude the country due to its poor human rights record. The military's violence against its own people has been well-documented. Seen as being governed by a despotic government run by the junta, its international reputation was tainted. Its blemished record includes the arrest and 15-year house imprisonment of Aung San Suu Kyi in 1989. She was freed in 2010 after massive international pressure only to be detained again recently in the 2021 military coup.

In addition, the 2015 Rohingya refugee crisis and the 2016 outbreak of violence in Rakhine State have plagued Myanmar and by extension, ASEAN. Although ASEAN preferred to handle the challenges regarding the Rohingyas behind closed doors under the umbrella of non-traditional security issues, namely, irregular migration and trafficking in persons,¹ the August 2017 exodus of refugees from Myanmar blew the lid off ASEAN's reticence. With more than 700,000 Rohingyas fleeing Rakhine State due to the Tatmadaw's brutal operations, the international outcry became overbearing and could no longer be ignored. The magnitude and spillover effect of the crisis on neighbouring countries compelled ASEAN to address the issue head-on. But the ASEAN response was timid and painfully slow, inviting a slew of criticisms from the international community.

This paper firstly outlines the steps that ASEAN took in response to the Rohingya crisis from September 2017 to early 2021. Next, we discuss the challenges and constraints facing ASEAN in managing the crisis and briefly examine the use of sanctions to influence the military regime. As we were writing this paper, the Tatmadaw staged a coup d'état on the morning of 1 February 2021. We consider the impact of the coup on the crisis up until 1 July 2021. Finally, we offer several strategies and recommendations for ASEAN and its mechanisms to adopt in seeking a lasting solution to the Rohingya issue.

This study draws from desk-based research of publicly available documents and interviews with people familiar with the issues, including former and current officers with ASEAN. The interviewees possessed a range of professional expertise, and were involved in different operational capacities covering the political, social, and humanitarian spheres within ASEAN. All the interviewees requested anonymity. Some declined to be interviewed due to the sensitivity of the matter at hand. To ensure accuracy of information, we cross-checked and triangulated primary data with secondary sources as much as possible. This paper remains limited by the inaccessibility to data; much of ASEAN's important in-

formation remains confidential unless one works within the system or at the ASEAN Secretariat.

The ASEAN response to the Rohingya crisis

September 2017 – early 2018: The ASEAN Way

Violence in Rakhine State has been a recurring issue. The 2017 events when hundreds of thousands fled across the Rakhine border into Bangladesh was not an isolated incident. However, its scale was unprecedented.

ASEAN's first public response came in the form of the Chairman's Statement on the Humanitarian Situation in Rakhine State, an outcome of the meeting of the ASEAN Foreign Ministers, held on the sidelines of the 72nd Session of the United Nations (UN) General Assembly in New York on 23 September 2017. The statement was released by the Philippines as ASEAN Chair at that time. Soon after, Malaysia disassociated itself from the statement with its Foreign Minister Anifah Aman stating the following:

Malaysia would like to dissociate itself with the Chairman's Statement as we are of the view that it is a misrepresentation of the reality of the situation. In this regard, Malaysia has made known its concerns but they were not reflected in the Chairman's Statement. Hence, the Chairman's Statement was not based on consensus. The statement also omits the Rohingyas as one of the affected communities.

(MFA Malaysia, 2017)

The Philippines responded by explaining that the decision to use the ASEAN Chairman's statement instead of a joint communique was to "reflect the general sentiments of the other foreign ministers" even as Malaysia had "different views on some issues" (PHDFA, 2017).

Right off the bat, there was dissent among the ranks. This was not surprising considering the severity of the violence perpetrated on the Rohingyas, causing their outflow to Bangladesh. Malaysia was becoming exasperated as numerous high-level discussions had taken place to find a solution but to no avail. ASEAN was deeply concerned but was once again bereft of cohesion to deal with its regularly erring member, Myanmar. Individually, the two most outspoken critics of the Rohingya refugee problem were and remain to be Indonesia and Malaysia, a popular destination of the Rohingya refugees. National interests played a part. They were the most affected when the 2015 Rohingya boat crisis occurred. The issue also galvanised their Muslim bases and had often been used by their leaders for political expediency and legitimacy.²

Unlike Malaysia, Indonesia opted for quiet diplomacy. Its Foreign Minister Retno Marsudi met Myanmar's State Counsellor Aung San Suu Kyi in December 2016 and September 2017 (CSRI, 2016; 2017; Salim, 2016) in efforts to fast-track a solution. Myanmar welcomed Indonesia's approach while Malaysia's vocal criticisms were not appreciated; Myanmar subsequently banned its workers from working in Malaysia (Reuters, 2016).

Understanding that there were two major forces at play in Myanmar, the military regime and Aung San Suu Kyi's administration, ASEAN approached the issue delicately. It preferred to be patient while continuing to foster trust. This was consistent with the ASEAN Way. What is the ASEAN Way? The former ASEAN Secretary-General (ASEAN SG) Rodolfo C. Severino described the ASEAN Way as an "evolutionary approach, relying largely on patient consensus building to arrive at informal understandings or loose agreements", explaining that the region's way of "dealing with one another has been through manifestations of goodwill and the slow winning and giving of trust" (Severino, 2001).

Severino saw ASEAN as a group of sovereign states that needed to deal with different cultures, histories, and political systems. These differences had to be managed to reach a consensus. The ASEAN Way relies on *mushawara* and *mufakat*. Discussions are done through consultation instead of "across-the-table negotiations involving bargaining and give-and-take that result in deals enforceable in a court of law" (Severino, 2001). The approach also avoids embarrassing and cornering errant members. The sentiment was echoed by Thailand's Foreign Minister Don Pramudwinai who in 2019 stated that ASEAN's handling of the Rohingya crisis was not to "point out who is right or wrong" but instead focused on conducting meaningful discussions (Wongcha-um and Thepgumpanat, 2019).

Although Myanmar was able to obstruct attempts to manage the crisis, the ASEAN Way facilitated an open channel of communication with Myanmar's officials. ASEAN saw the need to engage Myanmar using quiet diplomacy and confidence-building measures. In turn, Myanmar treated ASEAN as a trusted partner. It was willing to discuss the issue with ASEAN and provide updates. These private discussions were often informal but measured in tone and conducted through back channels. Myanmar's relative openness with ASEAN contrasts with its unwillingness to speak to the nations of the West as they had resorted to naming and shaming methods contrary to the ASEAN Way.

It is noteworthy to understand how ASEAN categorised the Rakhine State crisis internally. The association comprises

three pillars: the ASEAN Political-Security Community (APSC), the ASEAN Economic Community (AEC), and the ASEAN Socio-Cultural Community (ASCC). Issues are confined to a specific pillar and dealt with using the pillar's mechanisms. Cross-cutting issues posed a real challenge as they required ASEAN to increase its synergy and collaboration among the pillars. Before the August 2017 exodus, the involuntary migration of the Rohingyas from Myanmar was viewed only as a non-traditional security challenge limited to being dealt with by the APSC pillar through the Senior Officials Meeting on Transnational Crime (SOMTC) and the ASEAN Ministerial Meeting on Transnational Crime (AMMTC).

What was particularly problematic was the absence of a specialised ASEAN entity that had the experience of dealing with human-induced disasters. The association has no in-built institutional response capable of managing widespread and systematic human rights violations committed by its members. The Rohingya crisis was never considered from a human rights lens, as possible crimes against humanity committed by the Myanmar military, requiring a "whole-of-ASEAN approach" (Wisnu and Bon, 2018). Such a multiprong response would need the mobilisation of all three ASEAN pillars, but this was not done. Nevertheless, the breadth and extent of the ripple effect caused by the fleeing refugees compelled ASEAN to be more visible in its approach.

A (humanitarian) crisis to be managed

On 19 October 2017, at the 6th Meeting of the Conference of the Parties (COP) to the ASEAN Agreement on Disaster Management and Emergency Response (AADMER) and the 5th ASEAN Ministerial Meeting on Disaster Management (AMMDM), the Rakhine State crisis was described as an example of the "changing humanitarian landscape in the region" and "emerging human-induced disasters" (ASEC, 2017b). There was a shift in terminology. ASEAN thus regarded the Rohingya crisis as a "disaster" requiring a "humanitarian" response and delegated the assignment to the ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management (AHA Centre). Despite its original mandate to deal with natural disasters only, the path was cleared for the AHA Centre to act. This would be only the second time the AHA Centre was to provide assistance in a human-induced situation; the first was targeted at internally displaced persons of Marawi, the Philippines, in July 2017.

The AHA Centre reports to the ASEAN Committee on Disaster Management (ACDM) under the ASCC pillar. Its expertise and experience have been in managing natural disasters, not violent internal conflict. It was ill-equipped to manage the Rohingya crisis. A service-oriented approach delivering aid and supplies appeared to be the best that it could do under the circumstances. It was also increasingly clear that the AHA Centre's mandate was limited. In form, it reported to the ACDM, but the political repercussions of the crisis meant that any decision to act had to be approved by the ASEAN Foreign Ministers' Meeting (AMM). This chain of command meant that Myanmar was able to veto decisions that would put its government in a bad light. Similarly, the ASEAN SG Lim Jock Hoi, who facilitated communications between Myanmar and the other member states, could not act independently of the remit given to him by the ASEAN leaders.

By mid-October 2017, the AHA Centre, with Myanmar's consent, delivered the first batch of relief items from the ASEAN stockpile in Subang, Malaysia. A second batch was sent later. With Singapore's financial contribution, additional relief items were deployed to the displaced communities in Rakhine State in December 2017.

At all material times, the AHA Centre had to walk a delicate line, ensuring its actions placated the international community while retaining Myanmar's participation at the negotiating table. ASEAN's involvement through the AHA Centre continued with another distribution of relief items in January 2018. But aid delivery was only half the battle. Notably absent was any attempt to address the root causes of the conflict, such as the structural and legal disenfranchisement of the Rohingyas, as recommended by the Advisory Commission on Rakhine State (ACRS, 2017). While subsequent ASEAN statements reiterated the call to implement the recommendations, there was no tangible progress on this score.

Early 2018 – end of 2019: Preliminary needs assessment

In 2018, the Rohingya crisis continued to be on the ASEAN agenda.³ Because ASEAN did not contemplate taking harsher action to deal with its deviant members, it could go no further than to "encourage" or "support" Myanmar's actions to bring about peace and stability in Rakhine State and a resolution to the humanitarian disaster. These statements showcased to the world that the issue was still on the radar but concretely, little substantive change was happening on the ground.

It was not until the 33rd ASEAN Summit in November 2018 that the ASEAN leaders agreed to further steps, such as dispatching a needs assessment team to Rakhine State to gather information on the repatriation of displaced persons (ASEC, 2018b). This was a significant move even though the mission could only proceed with Myanmar's consent. Myanmar has always been cautious in granting access to international organisations. For example, it only gave access to the World Food Programme (WFP) and the International Committee of the Red Cross (ICRC) into the affected areas. Even UN agencies having offices in Myanmar were denied entry (McPherson, 2018). When granted, their movements were tightly circumscribed and subjected to Myanmar-dictated terms where the outcomes could be controlled by the

government. The military junta is wary of the UN which has been critical of the treatment of the Rohingyas. It sees the UN as having an ulterior motive seeking to influence Myanmar's internal decision-making processes.

In December 2018, the ASEAN SG led a delegation to Myanmar to finalise the terms of reference for the needs assessment team (ASEC 2018c). Myanmar demanded that the needs assessment team be ASEAN-led. As such, the team comprised members of the ASEAN Emergency Response and Assessment Team (ERAT) from different member states, the ASEAN Secretariat and the AHA Centre.

At the same time, the mission needed funding so that ASEAN need not rely on its dialogue partners or external agencies. ASEAN looked to the Trust Fund to Support Emergency Humanitarian and Relief Efforts in the Event of the Irregular Movement of Persons in Southeast Asia. The SOMTC oversees this fund. Recall that earlier discussions in 2017 to aid displaced Rohingyas did not bear fruit. The Philippines, which chaired the AMMTC then, erroneously claimed that the ASEAN Secretariat had to approve the use of funds (Interaksyon, 2017). The Secretariat's role was actually limited to facilitating fund disbursements only; member states were the ones to approve the use of funds. The second attempt in 2018 for the Trust Fund to be used for the needs assessment mission also did not find support. After much deliberation, it was decided that the ASEAN Development Fund (ADF) would support the mission. In March 2019, the ERAT team conducted the first phase of the needs assessment exercise culminating in the Preliminary Needs Assessment (PNA) report (AHA Centre, 2019a).

The report which was eagerly anticipated was leaked in June 2019. Rohingya civil society and human rights groups criticised the report for refusing to recognise the Rohingyas as an ethnic group of Myanmar, the cause of their exodus, and the on-going conflict in Rakhine State. It failed to adopt a human rights-based perspective and consider accountability measures that had to be taken against the military. The report was seen to be biased, written to suit Myanmar's interests. The AHA Centre's Executive Director, Adelina Kamal, explained that the PNA report was only a preliminary assessment and was not a repatriation plan per se. She said that the team did not have the authority "to focus on issues not tasked to them by ASEAN leaders or Myanmar – including looking into allegations of human rights abuses" (Leong, 2019).

ASEAN did not revise the PNA report but instead went on to pursue the implementation of its recommendations. Some of the recommendations included improving access to information to facilitate the repatriation process, building capacity to support the verification exercises at the reception centres, and providing livelihood-recovery programmes (MPO 2020). These recommendations went beyond the traditional humanitarian assistance rendered by the AHA Centre and a new implementing body had to be established to act on them. At the 35th ASEAN Summit in November 2019, the ASEAN leaders supported the formation of an implementation team.

2020 onwards: Implementing the PNA report and the Ad-Hoc Support Team

In February 2020, the implementation team of the PNA report was established and later named the Ad-Hoc Support Team (AHAST). It was to be supervised by the ASEAN SG and funded by Indonesia (ASEC, 2019b). With the consent of Myanmar, the AHAST was to conceptualise initiatives required to implement the recommendations. Unlike the needs assessment mission which had to be ASEAN-led and ASEAN-funded, the said initiatives could be supported by ASEAN's dialogue partners.

Two points stand out. First, recognising that the AHAST had to act expeditiously, it came directly under the ASEAN SG rather than a particular institution or body. The idea for this was to reduce the time, resources, and bureaucracy needed to act. Under the ASEAN SG's supervision, the ASEAN Secretariat connects the AHAST with the relevant agencies in Myanmar. The agencies are to assist the AHAST with the technical knowledge and expertise to implement the initiatives in Myanmar. Second, as a general rule, ASEAN projects must benefit all its ten members. Even projects under the Initiative for ASEAN Integration (IAI) aimed at narrowing the development gap between the CLMV countries and other member states must cover all the four countries: Cambodia, Lao PDR, Myanmar, and Viet Nam. Given how the Rakhine State crisis had been characterised as a regional problem caused by one member state, ASEAN made an exception to the rule.

Since February 2020, the AHAST has identified more than 30 possible projects. Four priority projects have been finalised – two of them were being implemented as we wrote this paper, while the rest were still under discussion (Difa and Kurmala, 2021). The projects cover infrastructure development, such as the building of roads and provision of health facilities, education, and advice on livestock management (MPO, 2020). Progress, though, has been painfully slow. A comprehensive needs assessment (CNA) was scheduled to be undertaken in 2021 and its terms of reference was to be finalised by March 2021. But the military coup d'état and detention of top political figures in February have put paid to any hope that the CNA timetable and the AHAST projects would be on track.

Sanctions and their limitations

A word about sanctions is necessary as it has become a favoured foreign policy tool. In response to the Rohingya crisis,

Western nations such as Australia, Canada, and the United States of America have imposed targeted sanctions on Myanmar. The impact of these sanctions on the military regime has been minimal. Meanwhile, ASEAN has never taken this punitive route and we do not foresee that it will happen in the near future.

There is no legal mechanism in the ASEAN Charter to impose sanctions or other coercive measures, such as suspending or expelling a member state (Noor, 2021). The Treaty of Amity and Cooperation 1976 (TAC) enshrines ASEAN's code of conduct on inter-state relations. It codifies the norms of interaction among member states to deal with conflict through dialogue and consultation. It outlines the principles underlying ASEAN's framework of cooperation: mutual respect for the independence and sovereignty of all nations; the right of every State to be free from external interference, subversion or coercion; and non-interference in the internal affairs of one another. As confrontation is to be avoided, differences are to be settled by peaceful means. Even among the organisation's errant members, trust and confidence must be maintained. Conflict management through soft diplomacy is the ASEAN Way. ASEAN's preference for constructive engagement is evidenced by, among others, trips made by the ASEAN Secretariat and the AHA Centre to Cox's Bazar in 2019 to brief the Bangladeshi officials and Rohingya communities on the PNA report (AHA Centre, 2019b). ASEAN also supported the dialogue sessions between Myanmar and Bangladesh on the repatriation process.

While there are different types of sanctions, the most common ones target the economy. For trade sanctions to have a real impact, the trade size between Myanmar and the imposing country needs to be substantial. Myanmar's five main trading partners are China, Thailand, Japan, India, and Hong Kong. China and Japan are Myanmar's first and third most significant trading partners respectively (WITS, 2019). None of the countries have had the appetite to impose sanctions on Myanmar over the Rohingya crisis. Instead, China has played an active, mediating role by hosting trilateral meetings with Myanmar and Bangladesh (Xinhua, 2019). Japan, as ASEAN's dialogue partner, has been funding projects undertaken by the AHAST and the AHA Centre. India has also signed several partnership agreements in 2017 and 2020 to assist Myanmar in developing Rakhine State (MEA India, 2017; 2020). All the countries are keen to protect their interests and will not jeopardise their relationships with Myanmar by using sanctions.

ASEAN was not established as a supra-national organisation like the European Union (EU). Sanctions overreach the non-interference principle that has guided ASEAN's conduct thus far. Economic development and growth are its priority. Myanmar's poor reputation in the eyes of the international community has pressured ASEAN to take more action for otherwise the bloc would be seen as weak or worse still, irrelevant. Nevertheless, sanctioning a fellow member state is a step too far for ASEAN. History has proven as such. For example, at the 20th ASEAN Summit in 2012, ASEAN leaders called on the international community to lift sanctions against Myanmar. Cambodia's Secretary of State Kao Kim Hourn explained that ending sanctions "would contribute positively to the democratic process and especially economic development of Myanmar" (DW, 2012).

Even the lure of religion as a reason to protect the minority Rohingya Muslims will not see sanctions imposed by Indonesia or Malaysia. Indonesia, often perceived as Myanmar's "big brother" and having the largest economy in the region, has consistently relied on quiet diplomacy with Myanmar. President Jokowi Widodo made it clear that his government will not adopt "megaphone diplomacy" (CSRI, 2016), much less rely on sanctions in its advocacy for the Rohingyas. In 2019, Indonesia continued in this collaborative spirit to offer assistance in the implementation of the PNA report (CSRI, 2019). But considering how the recent coup has magnified the internal split within the organisation, how long will ASEAN's patience last with Myanmar?

The Rohingya crisis after the coup: Everything stalls

The February 2021 coup led to the ousting of the National League for Democracy-led government by the military. Senior General Min Aung Hlaing has said that he will not recognise the Rohingyas. On the other hand, the National Unity Government (NUG) has pledged to reinstate the citizenship of the Rohingyas by amending the relevant citizenship laws including the constitution. Accountability measures through the International Criminal Court (ICC) for crimes committed against the Rohingyas are also in the pipeline (Strangio, 2021; Myanmar Now, 2021). Formed in exile to oppose the Tatmadaw, the NUG's position is clearly intended to garner support both from the Rohingyas (to oppose the military government) and global community of nations (for recognition as the legitimate representative of the Myanmar government).

Whether the NUG's call will be reciprocated remains to be seen. Encouragingly, the majority ethnic Bamar population who are Buddhists have shown their solidarity for the Rohingyas (The Star, 2021a). It could simply be "the enemy of my enemy is my friend" approach but if the NUG's promises are to be taken seriously, we could see a palpable change in the relationship between the Rohingyas and other ethnic groups in Myanmar in the future. Already, there is some evidence of a positive shift towards political and social reconciliation among them (Olney and Ahmad, 2021).

Unfortunately, the coup has drawn ASEAN's attention away from the Rakhine State issue and the Rohingyas' plight. There has been relatively less visibility on the crisis than before. ASEAN is more occupied with ensuring that the "Five-Point Consensus" (5PC) is implemented by the military government (ASEC, 2021). Attempts at repatriation

have been halted although on paper, the ASEAN leaders in April 2021 maintained that the repatriation of “verified displaced persons” should resume as soon as possible along with the conduct of the CNA (ASEC, 2021). Bangladesh’s call for Myanmar to accept the refugees has also fallen on deaf ears (Bala, 2021). In light of the political instability and continuing violence in Myanmar, it is simply unrealistic to expect that any repatriation will happen.

While ASEAN has attempted to present a unified face to the international community, cracks are now evident among its members on the handling of the coup and how Min Aung Hlaing’s junta government should be treated. First, when the 5PC was openly defied by the military government that relegated it to be considered “when the situation returns to stability in the country since priorities at the moment were to maintain law and order and to restore community peace and tranquility” (The Jakarta Post, 2021a), ASEAN failed to refute the statement. Second, the internal tussle over the appointment of the ASEAN Special Envoy to Myanmar exposed the group’s fault lines. The Myanmar visit by the ASEAN SG and Brunei’s Second Foreign Minister to meet Min Aung Hlaing in early June 2021 was termed a “disastrous mission” (The Jakarta Post, 2021b) that did not advance ASEAN’s agenda but served only to strengthen the junta’s hand. Third, in mid-June 2021, five ASEAN countries – Indonesia, Malaysia, Singapore, Viet Nam, and the Philippines – broke away from tradition and voted in favour of the UN General Assembly resolution condemning the coup. Thailand, Brunei Darussalam, Cambodia and Lao PDR abstained from voting (The Star, 2021b). Although the resolution is not legally binding, there is an ASEAN split on how the military government is recognised.

This internal division means that ASEAN is positioned to tactically walk the tightrope and manage its relations with both the Tatmadaw and the NUG. Engaging both parties of the conflict allows ASEAN greater room to manoeuvre for concessions. Min Aung Hlaing said that he underestimated the public hostility and opposition towards the government takeover and was surprised by the breadth of the revolt against him (The Irrawaddy, 2021). Before the military consolidates its power, ASEAN has an opportunity to exploit the popular uprising opposing the coup. Min Aung Hlaing knows that ASEAN is hamstrung as it does not possess the capacity to act quickly in times of crises; and to be able to push back against the regime and hold it accountable for its actions. He will accordingly buy time to strengthen his base while normalising relations with other actors. He is confident that his troops will quell the civil disobedience movement (CDM) and public backlash against the military.

Several key factors will determine whether the junta succeeds in holding on to power. First, the extent the CDM is able to organise itself and sustain its protests. It is yet unclear if the movement will take up arms. Will it radicalise or adhere to non-violence? Second, whether the ethnic armed groups such as the Arakan Army will support the CDM against the Tatmadaw. Third, whether the military is prepared to walk away from ASEAN and the benefits the organisation brings to Myanmar. Fourth, the Chinese government’s influence on the junta as the former does not wish for the conflict to prolong such that it jeopardises its interests in Myanmar.

Until the military relinquishes power, the status of the Rohingyas within and outside of Myanmar will remain unchanged. The coup has overshadowed the Rohingya crisis but both issues are to a large extent intertwined. How can ASEAN bring the Rohingyas back to the front and centre of its diplomacy with Myanmar?

Strategies and recommendations for ASEAN

Given the present backdrop, ASEAN should build on the momentum gained following the 5PC and take a firm stand that its members must behave responsibly and ethically. Several strategies and recommendations are made here as avenues for ASEAN to adopt in dealing with the Rohingya situation in Myanmar’s post-coup period. Some should be immediately implemented.

How should ASEAN treat the State Administration Council (SAC) and the Tatmadaw?

ASEAN must decide whether it will recognise the military junta as the legitimate head of the Myanmar government. It should not. Its engagement should be severely limited particularly if the 5PC is not going to be implemented. Guidelines should be drawn up on how ASEAN is to work with Myanmar’s agencies to focus only on fundamental initiatives that directly benefit the people. This is an opportunity to show that ASEAN is still able to function when a member state is excluded.

On the Rohingya issue, ASEAN should be transparent and reveal the status of its cooperation with the Myanmar government up to the time of the coup. It should review the current and pending projects, and assess the extent the ACRS recommendations have been implemented. Even if ASEAN does not recognise the SAC as the legitimate government, it should place the 5PC together with the Rohingya crisis and other key matters on the table for discussion with Myanmar moving forward.

Should ASEAN engage with the NUG?

ASEAN must not shy away from engaging with the NUG just as it did during the years when it collaborated with Aung San Suu Kyi when she was under house arrest. As the 5PC calls for dialogue, the ASEAN envoy should play the role of an interlocutor or mediator between the SAC and the NUG. The 5PC will not be implemented without concerted pressure. There will be less pressure on Min Aung Hlaing to comply if ASEAN is not engaging with the NUG.

While the NUG's statements on the Rohingya crisis augur well for the future, there has been a paucity of reliable information on the progress the Aung San Suu Kyi-led government made in implementing the ACRS recommendations. On this, the NUG should reveal its available information up to the time of the coup to allow ASEAN and civil society to continue its work on the same.

What should ASEAN institutions and bodies do?

ASEAN must boost its capabilities and capacities to address atrocities committed by its members. It must be progressive and not foreclose the many possibilities available to it.

- ASEAN Intergovernmental Commission on Human Rights (AICHR)

The AICHR should provide a human rights and peace lens to the Rohingya crisis. It can do this, first, by documenting the numerous communications and cases it has received on rights abuses against the Rohingyas, and issue guidance notes or opinions on them. If the AICHR is unable to achieve consensus on a particular view of the communication or case, individual AICHR representatives should issue the same as has been the recent practice. Second, the AICHR can undertake a conflict analysis approach to understand the different forms and phases of conflict in the case of the Rohingyas. Dialogues can be hosted with affected communities to air their stories and grievances to document the conflict, and track progress towards resolution.

- ASEAN Institute for Peace and Reconciliation (ASEAN-IPR)

ASEAN failed to act early on when Myanmar's systematic violations against the Rohingyas came to light. It is imperative that ASEAN does not fail again. The ASEAN-IPR should conduct research into the region's "hotspots" to monitor and report on atrocity trends such as escalation risks and early warning signs. It can provide guidance on the immediate upstream, pre-emptive measures to be taken to prevent possible atrocities, for example, by establishing early response frameworks, and managing anticipated risk and trigger factors.

- AHA Centre

The AHA Centre is in a unique position. It possesses rich and valuable ground-level data on the Rohingya crisis due to its access to Rakhine State and direct engagement with Myanmar's agencies. Therefore, it should first, review ASEAN's role in handling human-induced crises and measure the impact of its work. The report, containing recommendations for the future, should be made public. Second, building on the expanded mandate to deal with situations of human conflict, it should operationalise a permanent emergency mechanism that incorporates human rights and peace, and conflict management and resolution, perspectives. The mechanism can then be called on immediately whenever the need arises.

Should the ASEAN Charter have an enforcement mechanism against errant member states?

This is urgently needed; yes, it should. ASEAN is not short on salutary declarations, non-binding agreements and aspirational conventions that seek to protect human rights (Morada, 2016). These soft laws include the ASEAN Declaration on Culture of Prevention for a Peaceful, Inclusive, Resilient, Healthy and Harmonious Society (ASEC, 2017c) read with the ASEAN Plan of Action on Culture of Prevention (ASEC, 2020); and the Manila Declaration to Counter the Rise of Radicalisation and Violent Extremism (ASEC, 2017a) read with the ASEAN Plan of Action to Prevent and Counter the Rise of Radicalisation and Violent Extremism (2018- 2025) (ASEC, 2018a) and the Work Plan of the ASEAN Plan of Action to Prevent and Counter the Rise of Radicalisation and Violent Extremism (2019-2025) (ASEC, 2019a).

Unfortunately, there are no enforceable mechanisms for their compliance in the event of a breach. It has been said that ASEAN member states abuse human rights because there is no such compliance mechanisms (Kipgen, 2012). It is time that ASEAN puts one in place.

How are the Responsibility to Protect (R2P) principles relevant?

ASEAN should have a second look at the recommendations of the High-Level Advisory Panel on the Responsibility to Protect in Southeast Asia. Among others, the panel recommended that member states should build national architec-

tures to prevent atrocities, conduct national assessments of risk and resilience, appoint national focal point persons to coordinate national efforts, and participate in dialogues and peer review (Pitsuwan, Hung, Wibisono, Mahathir and Romulo, 2014). ASEAN has not acted purposefully on these recommendations; it should factor them into the workplans of its respective institutions and bodies.

Conclusion

The Rohingya crisis laid bare ASEAN's shortcomings in dealing with grave internal conflicts and widespread human rights violations perpetrated by member states against their populations.

First, there was no strategic plan from the outset to deal with the Rohingya crisis until the global pressure and media attention became overbearing. Without adopting a holistic approach from the outset, ASEAN's efforts bore little fruit and appeared to be driven more by the aim to placate the international community. ASEAN showed that it was doing something, but its diplomacy lacked forcefulness and firepower. Second, while ASEAN needed to be nimble, fleet-footed, and firm, it did not – and still does not – have a permanent mechanism able to deal with conflict-driven humanitarian crises and massive human rights violations. Without a standing mechanism to fall back on, ASEAN had to act on a piecemeal basis. Its ad hoc decisions can be seen from the time the AHA Centre was put to task, to the commissioning of the needs assessment team, to the establishment of AHAST; coupled with issues of funding. ASEAN's Rohingya response journey from 2017 to 2021 has revealed institutional gaps and structural flaws while its processes and practices did not allow for sufficient flexibility and robustness to act swiftly and resolutely. Third, in the face of ASEAN strictures on how it conducts diplomacy, creative leadership in devising solutions has been found wanting. It was bereft of ideas on how to deal with the situation. This weakness is clear when contrasted with the strong and steady influence of the then ASEAN SG, the late Surin Pitsuwan, in managing ASEAN's response to the Cyclone Nargis disaster. He chaired the ASEAN Humanitarian Task Force for the Victims of Cyclone Nargis that paved the way for timely humanitarian intervention in Myanmar, and the initiative has often been cited as an example of what inventive and innovative leadership can achieve (Bellamy and Beeson, 2010). Drawing these threads together, to say that ASEAN's inertia on the Rohingya crisis was mainly due to non-interference and the ASEAN Way is too simplistic.

The Rohingya humanitarian disaster that badly affected the region remains very much alive at ASEAN's doorstep. It is intractable and refuses to go away. It is something the association cannot entertain; ASEAN risks engraving its legacy as a body unable to control its members in the face of grave circumstances. But while there is a need to ascribe time to allow ASEAN's "alibi diplomacy" to operate in relation to the coup (Kausikan, 2021), the same cannot be said for the Rohingya crisis. ASEAN has been given more than enough time to work its diplomacy but has little to show for it. Perhaps also because much of ASEAN's work is undertaken by high-level government officials and agencies, it is doubtful whether there has been a meaningful impact on the victims and survivors on the ground. Not much has changed for the Rohingyas inside Myanmar and outside of it. Decades of elite diplomacy in ASEAN has left itself unable to think outside the box to contemplate strategies that ensure its work connects directly with people in the lower echelons of power in society.

Due to competing interests, geopolitical dynamics in the region is something that ASEAN cannot control. But ASEAN can take the lead to ensure that non-ASEAN countries do not dictate their positions on ASEAN's behalf. To assert ASEAN's relevance and credibility, ASEAN should take bold steps that hitherto have not been contemplated, as listed in our section on strategies and recommendations. One of the key steps is to establish a permanent mechanism to handle human-induced rights violations perpetrated by its member states against their populations.

ASEAN's current focus on the coup will overshadow further efforts to deal with the Rohingya crisis. With attention now directed towards convincing the military to cede power to the democratically elected government of Aung San Suu Kyi, the Rohingya crisis has taken a backseat. The repatriation of the Cox's Bazar refugees is unlikely to take place under present political conditions in Myanmar. The situation has been aggravated by the COVID-19 pandemic. Countries have struggled to contain its fallout within their borders and revive their devastated economies. In the meantime, the NUG has held out an olive branch to the Rohingyas as allies in an effort to rid of the military junta and restore democracy. How far will ASEAN take advantage of this step to handle both the coup and the Rohingya crisis?

ASEAN's window to intervene is closing. Its goal is doubly difficult now given that it not only must negotiate with the perpetrators to solve the Rohingya crisis, it must also restore democracy in Myanmar and ensure the return of the democratically elected government.

What will ASEAN's next move be?

Endnotes

1 For example, the May 2015 Rohingya humanitarian crisis saw ASEAN convene emergency meetings to discuss the refugee crisis which had spilled over to neighbouring countries, namely, Indonesia, Malaysia, and Thailand. The Thai government organised a Special Meeting on Irregular Migration in the Indian Ocean on 29 May 2015, and in July 2015, ASEAN convened the Emergency ASEAN Ministerial Meeting on Transnational Crime (EAMMTC) Concerning Irregular Movement of Persons in the Southeast Asia Region in Kuala Lumpur.

2 For example, Malaysia brought the Rakhine State issue to the Organisation of Islamic Cooperation (OIC) in January 2017, and this was seen as a move by its former Prime Minister, Najib Razak, to shore up support among his Muslim voters during the period leading up to the country's 2018 general election.

3 See, for example, the press statements of the AMM Retreat (6 February 2018), the Chairman's Statement of the 32nd ASEAN Summit (28 April 2018), and the 51st AMM Joint Communique (2 August 2018).

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