

Sovereignty and the Right of Citizenship: The Case Study of the Rohingya Ethnic in Myanmar

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Abstract



Citizenship is part of human rights, and states as formal institutions in international systems are the only political actor able to provide that right. To grant, to withdraw or to deny citizenship is part of a state's sovereignty. The Rohingya case in Myanmar is one example of how this right is prone to be abused by the state in order to discriminate certain ethnicities, religions or communities within their state boundaries. The Human Rights Watch Report and the annual report of Myanmar by the UNHCR showed that the Rohingya people who fled the country are facing greater problems of inhumane living conditions, lack of sufficient food, lack of education, unemployment and countless legal problems. The majority of Rohingya refugees are concentrated at Cox's Bazar, at the south part of Bangladesh. They are in great need of humanitarian assistance, as shown in the UNHCR report 2019 and the Human Rights Watch Report. This paper will seek to analyze the human rights abuse suffered by the Rohingya people, and to offer some solution to alleviate their condition.

Keywords

Myanmar, Rohingya, Citizenship Rights, Sovereignty

Introduction

The Rohingya Ethnic have been living in dire conditions for as long as they have resided in Myanmar (then Burma). Rohingya ethnics originally came from Bangladesh during the British colonization in Myanmar in the 18th to 20th century and they were not considered as part of Myanmar's citizenry ever since the independence year of Myanmar in 1948. There are two ethnics Muslims in Myanmar: Rohingya and Kaman, which mostly reside in the Arakan state in Myanmar. While Rohingya is descended from Bangladesh nations, the Kaman are Muslims from Burma's ethnic population and therefore they are considered as citizens by the Myanmar government. The Arakan state is located in the upper south of Myanmar and host the largest number of Rohingya ethnics because geographically it is located on the border between Myanmar and Bangladesh.

During May 2012-April 2013, several civilian conflicts erupted between Arakanese and Rohingya. Violence attacks took place in nine townships of the Arakan state, and on October 21-24 resulted in the deaths of “at least 70 Muslims massacred in Mrauk-U, including 28 children (Human Rights Watch Report 2013).” Approximately a hundred thousand people were displaced from their homes; this included 75,000 Muslims (Human Rights Watch Report 2013). The trigger for those violent attacks was the rape and murder of a Buddhist woman by three Muslim men. The Human Rights Watch reports stated that on “May 28, 2012: Three Muslim men raped and murdered Thida Htwe, a 28-year-old Arakanese Buddhist woman in Kyaw Ne Maw village, Ramri Township. Police arrest them and later report that one of the men committed suicide in police custody. The remaining two are brought to court, found guilty, and sentenced to death (Human Rights Watch Report 2013).” What started as a regular criminal act eventually became an ongoing ethnic religious conflict between Buddhist Arakanese and Muslim Rohingya communities.

Myanmar government has a significant role in this conflict; the police forces that were supposed to protect the Rohingya people during conflict acted as passive bystanders. The Human Rights Watch reported, “The October [2012] attacks were against Rohingya and Kaman Muslim communities and were organized, incited, and committed by local Arakanese political party operatives, the Buddhist monkhood, and ordinary Arakanese, at times directly supported by state security forces (Human Rights Watch Report 2013).” This fact led to the conclusion that the May 2013-April 2013 violent attacks on the Rohingya and Kaman Muslims were resulted from the state-induced discriminatory policies toward Muslim minorities in Myanmar.

The 1982 Citizenship Law discriminately excludes Rohingya ethnics from gaining citizenship based on ancestry and the Rohingya lack proof of their legal residencies in Myanmar. Norms and ethics of the state’s right to define citizenship are in question in this case. Is it ethical for states to deliberately deny citizenship for particular groups based on something that group could not choose such as a genealogical reason? Is it ethical for the state to neglect the protection of human rights for the non-citizen groups inside their borders? What norms should sovereign states consider in formulating their citizenship law, in order to be ethical?

Finnemore and Sikkink have been asking about norms in international relations; they formulated their questions as: “How do we know a norm when we see one? How do we know norms make a difference in politics? Where do norms come from? How do they change? We are particularly interested in the role norms play in political change (Finnemore, Sikkink 1998).” This essay is not concerned with answering all of those questions; instead it will try to merge the question on “how do we know norms make a difference in politics” into the question of the state’s rights in defining citizenship. To acquire a citizenship is one of the norms to be a legal citizen in a state, without citizenship there will be obstacles, limitations and other hindrances for people to fully

receive their rights inside a state's border. In the international system, international law dictated that only sovereign states are able provide citizenship as it concerns with state's interests and security.

The Realist perspective strongly supports the state sovereignty right in citizenship's endowment to whoever fits their rules. On the other hand, the Cosmopolitan perspective criticizes this right as discriminatory and incompatible with global justice values. The Realist perspective represents the pragmatic views of world politics while the Cosmopolitan perspective represents the Idealist one. Terry Nardin assesses that "thinking about international affairs has oscillated between Idealism and Realism throughout the modern period. Moralists continue to search for a way to combine what is reasonable in each in an ethically defensible middle between those extremes (Nardin 2011)." The Cosmopolitan perspective has some notable proponents such as Immanuel Kant, Hans Kung and Fred Dallmayr. On the other hand, the Realist perspective also has numerous proponents such as Hans J. Morgenthau, Kenneth Waltz, John J. Mearsheimer, and many others.

Based on the explanation above, this essay will focus on answering the question "**How the sovereignty rights of a state to define citizenship impact minorities?**" In answering that question, I will examine the Rohingya ethnic and violence in Myanmar in the next section. This section will be followed by the Realist and Cosmopolitan perspectives on state sovereignties and the last section will be a conclusion. In the conclusion, I will assess previous sections in which I explain about the Rohingya ethnic and violence in Myanmar, the Realist and Cosmopolitan perspectives and some suggestions in the case of Rohingya ethnic in Myanmar.

Research Method

This research was a descriptive qualitative research. The primary tool to extract data was by using a library study, in which data from online sources such as Human Rights Watch websites, online journal articles, and non-online sources such as books were utilized to analyze the conflict between Rohingya ethnic and the government of Myanmar.

Literature Review

The Realist and Cosmopolitan Perspectives on State Sovereignties

State sovereignty and non-intervention toward other sovereignty are perceived as one of the ways to maintain peace and stability in the international politics. There are two perspectives in the International Relations Theory that have opposing view on state sovereignty and state exclusive rights on citizenship, they are the Realist and the Cosmopolitan perspectives. Citizenship is an absolute right of a sovereign states from the Realist perspective. States are the only political actor in the world that can grant this right to people. This core belief of Realism has driven many states and other

international political actors to put great emphasize in attaining power and securing their own interests in the modern world. For example, during World War I, World II, The Cold War, and in intrastate conflict as in the case of violent attacks toward the Rohingya and Kaman Muslims in Myanmar. In *Politics Among Nations*, Morgenthau also discusses sovereignty in the modern-day nation states. He defines sovereignty as:

“Sovereignty points to a political fact. The fact is the existence of a person or group of persons who, within the limits of a given territory, are more powerful than any competing person or group of persons and whose power, institutionalized as it must be in order to last, manifest itself as the supreme authority to enact and enforce legal rules within that territory (Morgenthau 1972).”

Sovereignty enable state to formulate its own norms, law, rules and procedures that will be enforce within its border. This includes sole right in defining citizenship. In the case of Myanmar, the Human Rights Watch as an international organization that concern on human rights issues can only provide recommendations and could not enforce Myanmar government to abide by those recommendations. Neighboring states and the UNHCR as part of the UN could not force Myanmar to abide those recommendations either, however there is always a possibility that Myanmar government will comply with that recommendations in fear of risking supports and credibility from international community. In the Realist perspective, states are rational political actors that will calculate their actions to maximize benefit. The Realist perspective will defend the right of Myanmar government to decide whether the Rohingya ethnic is eligible or not eligible to procure citizenship based on Myanmar's interest. However, there is a middle ground of political realism in order to be ethical. Nardin explore about middle ground political realism in the discussion of just war theory and the English School, in which Nardin (2011) argue “the ‘middle’ here is not a compromise between morality and interest but a morally acceptable way of recognizing the claims of law even when they clash with those of morality.” The middle way seeks to balance Realist and Cosmopolitan tenets in achieving social justice. The Cosmopolitan perspective is now questioning the extent of sovereignty that states can exert in order to stay legitimate and not threaten the values of human rights and social justice. One of the main notions of the Cosmopolitan perspective is:

“Challenges the idea that state membership and political boundaries are of any significant normative standing. From a cosmopolitan perspective, prioritizing national interests in foreign policy would contradict the moral principle of impartiality and equal concern for all relevant subjects...on the other hand sovereignty constitutes the political expression of the state's moral standing and leads to the philosophical defence of its self-sufficiency in external decision-making (Ypi 2008).”

Although Ypi talks in the context of European Union case studies, but the notion above can also be applied to the case of Myanmar. The government of Myanmar should

consider ethics of social justice in their treatment toward minority groups inside their border to prevent the bloodshed caused by civilian conflict between different ethnic religious groups. Ypi (2008) also discusses cosmopolitan tenets as “derived from the Stoic paradigm that promised to maintain universal secularism and subjective autonomy, earthly solidarity and everyday tolerance, was broadly acknowledged by the Enlightenment *philosophes*.” Cosmopolitan would argue that one of the most important thing states should perform is the attainment of global justice, because global justice will ensure that the objectives of the Cosmopolitan tenets are achieved. The Cosmopolitan perspective understands that legitimacy of states might hinder attainment of those objectives, so it discusses legitimacy in relation to people’s rights. According to Walzer (in Beitz 2009), “a legitimate state is a people governed in accordance with its own traditions.” Walzer’s notion further empathize by Charles Beitz, who formulate five reasons on juxtaposing the people’s rights and states legitimacy as seen below:

1. A state’s people have individual rights to participate in a collective process of determining the character of their political and social lives. The idea of a social contract is a metaphor for this process. The presumption of legitimacy is necessary to protect people in the exercise of these rights.
2. Well-functioning states offer the best prospect of protecting the rights to life and liberty of their individual members. But states are most likely to become and remain well functioning when their own people are left free to exercise the responsibility for the development and reform of their institutions.
3. Insiders have an epistemic privilege not shared by outsiders, who usually do not know enough about a society’s history and traditions to judge how effectively its government represents or embodies the political values of the community.
4. We know from historical experience that self-interested states not subject to any effective form of supranational accountability may be tempted to rationalize measures taken to serve their own interests in humanitarian terms. Allowing any exception for intervention is dangerous. The presumption of legitimacy is a way of imposing a high burden of proof.
5. Like individuals, different communities left to develop in their own ways produce a diversity of cultural and political values; this is the inevitable result of the free exercise of human creativity (2009).

As in the case of Rohingya and the roles of the Human Rights Watch in mediating the conflict between Myanmar’s government and Rohingya ethnics, it also questioned Myanmar legitimacy while it remains silent and act as a passive bystander in conflict. The Human Rights Watch is an international Non-Governmental Organization (NGOs) and it is importance because of the consequences of globalization, when the national boundaries have become more profound and diminished at the same time. The

idea of global governance cannot be separated from Cosmopolitanism that embodies the quest for global ethics. Fred Dallmayr (2011) examines that “among all philosophical orientations, modern Western philosophy is most strongly universalist in outlook.” Dallmayr also ventured into the history of the global meeting between different religious entities to form “a Parliament of the World’s Religions” that generated a widely discussed “declaration toward a global ethics, a document meant to supplement and provide moral underpinnings for the Universal Declaration of Human Rights of 1948. The document was initially drafted by the German theologian Hans Kung (Dallmayr 2011).” Hans Kung (in Dallmayr 2011) once said “No survival without a world ethic. No world peace without peace between the religions. No peace between the religions without dialogue between the religions.” Dallmayr strongly supports the idea of moral globalism; he believes that “moral globalism...surely has important merits. In a world torn asunder by multiple forms of strife, nothing seems more timely than to be reminded of our shared humanity and of the Universalist aspirations present in religious teachings and prominent philosophical traditions (2011).” This notion underlies what the Cosmopolitans strive for in the international politics.

In relation to the state’s legitimacy and ethics, Jack Donnelly (2013) argues,

“A set of human rights thus can be seen as a standard of political legitimacy. The Universal Declaration of Human Rights, for example, presents itself as a standard of achievement for all peoples and all nations. To the extent that governments protect human rights, they are legitimate.”

This is the essential point of Cosmopolitan tenet; protection of human rights is the focal point in the legitimacy of states. There are different views on how one state perceive the needs to grant minority groups inside its border as deserve to be protected and grant citizenship. Citizenship right is a part of human rights fulfillment but states have exclusive rights to provide it. Cosmopolitan would argue that citizenship is not a compulsory precondition in which states may neglect its responsibility to protect human lives and implement social justice in the absence of that right. How does one define human rights based on the notion of social justice? Donnelly (2013) examines that human rights are:

- a) The minimum set of goods, services, opportunities, and protections that are widely recognized today as essential prerequisites for a life of dignity, and
- b) A particular set of practices to realize those goods, services, opportunities, and protections. No more. But no less.

In the case of civilian conflict in Myanmar, one can learn from reports delivered by the Human Rights Watch and the UNHCR that “the minimum set of goods, services, opportunities, and protections that are widely recognized today as essential prerequisites for a life of dignity (Donnelly 2013),” has been neglected by Myanmar government. Myanmar authorities deliberately imposed discriminatory policies

toward Rohingya and Kaman Muslims, although the latter is indeed a legal citizen group.

Results

There is general acknowledgement that one of the sources of communal conflict in the Arakan state is over the citizenship status of the Rohingya ethnic. A denial of citizenship for this group was based on the 1982 Citizenship Law, which effectively prohibits the Rohingya ethnic from acquiring Myanmar citizenship because of their ethnic origins, and in some part, also because of their religion, which is not compatible with the Buddhist majority population of Myanmar. The violence attacks on the Rohingya and Kaman Muslims communities have drawn the Human Rights Watch to visit the location, interviewed some eye witnesses, made a series of documentation and published a report out of the conflict zones in 2013. In its 2013 report, The Human Rights Watch advised the Myanmar government to adopt several procedures on citizenship rights for the Rohingya ethnic community. The procedures are:

- Urgently amend the 1982 Citizenship Law to eliminate provisions that are discriminatory or have a discriminatory impact on determining citizenship for reasons of ethnicity, race, religion or other protected status. Ensure that the amended law is enforced to provide citizenship without discrimination.
- Revise the Citizenship Act in accordance with article 7 of the Convention on the Rights of the Child to ensure that Rohingya children have the right to acquire a nationality where otherwise they would be stateless.
- Cease including ethnic and religious biographical details on national identity cards, as a matter of anti-discrimination practice and policy.

There are also two additional recommendations for the government to implement regarding this discriminatory national census on the Rohingya ethnic, they are:

1. Ensure that the national census currently underway, directed by the Ministry of Immigration and Population and supported by the UN Population Fund, fully complies with international standards, is non-discriminatory, and covers all populations in Burma, including Rohingya.
2. Ensure that Rohingya are employed to conduct the census in Rohingya areas and communities in Arakan state (Human Rights Watch Report 2013).

Neighboring states such as Thailand, Malaysia, Indonesia and Bangladesh, which are also impacted by the influx of refugees, have refused to accept the refugees. In the case when there are already Rohingya camps inside their borders, those countries are deemed negligent in not providing enough protection and livelihood for the Rohingya people to survive and build back their lives in humane conditions. The Human Rights Watch offers nine recommendations to Thailand, Malaysia and Bangladesh in dealing with Rohingya's refugee. One of the recommendations urge those affected states to:

“Press the Burmese government to end human rights violations and discriminatory policies, including with respect to citizenship, against the Rohingya and other vulnerable minorities, making clear that such actions will harm Burma’s bilateral relationship and international standing (Human Rights Watch Report 2013).”

The above recommendation comes from the general understanding that the influx of Rohingya refugees and the problem of Rohingya ethnics as Internally Displaced Persons (IDPs) inside the Myanmar’s borders happened as a result of state’s discriminatory policies. Rohingya ethnic as minority group in Myanmar should be granted protection by state’s apparatus such as police and army forces during civil conflict, an obligation that failed to be fulfilled by Myanmar government in May 2012 conflict. The Jakarta Post reported that on early May 2015, “Boats carrying around 500 members of Myanmar’s long-persecuted Rohingya Muslim community washed to shore in western Indonesia on Sunday, with some in need of medical attention, a migration official and human rights advocate said (Mason 2019).”

The United Nations High Commissioner for Refugees (UNHCR) is also involved in this problem, in its country report on Myanmar in 2015, the UNHCR stated that:

“The main groups of people of concern to UNHCR in Myanmar in 2015 include people without citizenship, IDPs, refugees, returnees and host communities. In 2012, violence in Rakhine state forced around 140,000 people to flee their homes. The majority live in government-designated IDP camps near the state capital, Sittwe, and in surrounding township. In Kachin State and northern Shan state, more than 100,000 IDPs are displaced and in need of continued humanitarian assistance. They are living in camps in both government-controlled areas, and those under the control of non-state actors. UNHCR also assists the more than 810,000 people without citizenship in Myanmar. In south-eastern Myanmar, UNHCR supports communities hosting the estimated 230,000 IDPs living where the organization is operational (UNHCR 2015).”

From the data shown by the UNHCR above, it is clear that in the case of state’s failure to protect certain groups or communities inside their borders, it will create subsequent problems for neighboring states and even for the international community. In the name of sovereignty, states are bound to protect or commonly known as state responsibility to protect (RtoP). Otherwise, it will pose greater problems for other nation states and create instability within surrounding region.

Ethical conducts dictated that with rights come responsibilities. This default also applied in the discussion of states’ rights to be sovereign, which bear the consequences for states to have responsibility to protect. Coicaud and Wheeler (2008) examine that “in this perspective, based on the internationalization of the democratic idea of human rights, solidarity has a universalist character. The idea being that, whilst human beings live in a plurality of cultures, which exhibits a range of particular moral practices, all

have basic needs and rights that have to be respected.” This idea shares similar notions with the Cosmopolitan perspective, which I will analyze more in the next section. Another scholar, Jeremy Moses, has elaborates the presumption that “in relation to the RtoP, debate has revolved almost exclusively around the de jure understanding of sovereignty, and indeed sovereignty as a normative principle is explicitly rendered as the key conceptual feature of the RtoP (Moses 2014).” The definition of de jure sovereignty is:

“Points squarely toward principles that have been constructed through a process of social interaction that generates standards of legitimacy and processes of recognition among states...de jure theorists of sovereignty is a focus upon how the norms, laws, rules and standards that govern the system allow or encourage states to behave in certain ways (Moses 2014).”

Recognition among states as stated in the definition above leads to solidarity among sovereign states. This essay has no purpose to discuss the de jure definition of sovereignty in details, but it will utilize the above definition to help analyze on how Myanmar’s government discriminatory citizenship law impact the well-being of Rohingya ethnic.

Conclusion

Citizenship is part of human rights, and states as formal institutions in international systems are the only political actor able to provide that right. To grant, to withdraw or to deny citizenship is part of a state’s sovereignty and other international actors such as the United Nations or other states cannot interfere without the state’s consent. The Rohingya case in Myanmar is one example of how this right is prone to be abused by the state in order to discriminate against certain ethnicities, religions or communities within their state boundaries. The Human Rights Watch Report and the 2015 report of Myanmar by the UNHCR showed that the Rohingya and Kaman Muslims that fled the country are facing greater problems of inhumane living conditions, lack of sufficient food, lack of education, unemployment and countless legal problems. There are hundreds of thousands Rohingya people as internally displaced persons in Myanmar and thousands more are becoming illegal migrants in neighboring countries, such as in Indonesia, Thailand, Myanmar and Bangladesh. Numerous incidents of sinking ships, deaths on boats, and refusal of entry in certain ports had become headlines in major international media nowadays. The majority of Rohingya refugees are children, women and elderly people; they are in great need of humanitarian assistance, as shown in the UNHCR report 2015. The Myanmar government as primary actor to provide solution for this issue has been given several recommendations by the Human Rights Watchs. One of the initial steps is to end the discrimination in 1982 Citizenship Law. The Rohingya ethnics should be granted citizenship rights and fully assimilated into Myanmar nation. By gaining citizenship, the Rohingya ethnics will be able to go to

public schools and seek decent employment; in short they will be able to seek means to life in dignity.

In analyzing this issue, I argue that there are two perspectives needed to analyze this matter; one is the Realist perspective and on the other is the Cosmopolitan perspective. The Realist perspective supports the sovereignty right of a state in providing citizenship to whoever qualify and says that states have the sole right to decide criteria and requirements of citizenship. Hans J. Morgenthau and Terry Nardin are the proponents of this stand, and they formulate the Realist tenet which emphasize on sovereignty, power and security of states. On the other hand, Cosmopolitan challenges this notion by insisting that in the international system, the attainment of global justice is the main goal. States legitimacies and sovereignties are only legal whenever social justice and protection of human rights present inside states borders. I cited some scholars that work on the Cosmopolitan perspectives, such as: Fred Dallmayr, Lea Ypi, Hans Kung, Jack Donnely, and Charles Beitz. The Realist and the Cosmopolitan perspectives are always present in the international politics. Terry Nardin examines that the middle way of exercising Realist and Cosmopolitan tenets are what states struggle to do in order to attain their interests in ethical ways.

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