THE ROLE OF ASEAN IN RESPONSE TO THE

PROBLEMS OF

THE ROHINGYA REFUGEES

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ABSTRACT

It is stated in the Universal Declaration of Human Rights (UDHR) that "everyone has the right to a nationality and no one shall be arbitrarily deprived of his nationality." According to the International Covenant on Civil and Political Rights (ICCPR), "the state has to provide citizenship, economic freedom, social and cultural development to people under its jurisdiction." However, the situation of human rights in the Southeast Asia region has continuously been violated, especially the refugee rights. This needs to be resolved by member states of the Association of Southeast Asian Nations (ASEAN) and non-state actors. This research aimed to study the roles of ASEAN's actors in response to the Rohingya refugees' problems. It started with a historical overview of the Rohingya ethnic group and its evolution from Arakan times until the post-colonial era. It then analyzed the multi-lateral legal and non-legal frameworks that were applicable to protect human rights in ASEAN member states. The methodologies employed were documentary research and semi-structured interviews with knowledgeable representatives from various organizations including government bodies, international non-governmental organizations, and universities. The research found that the root cause of the crisis was derived largely from the deprivation of fundamental human rights. The study of the regionalism approach suggested that, in order to deal with the violations of human rights in the ASEAN

i

countries, both state-actors and non-state actors should consider the principles of human rights when they create new laws, regulations, and norms. ASEAN should emphasize the importance of human rights approach at the national and regional levels. Additionally, ASEAN should designate the Senior Official Ministerial on Transnational Crime (SOMTC) as a monitoring and evaluation administrator of the region. ASEAN should also encourage the ASEAN Intergovernmental Commission on Human Rights (AICHR) to promote the human rights approach in ASEAN member states and closely monitor them based on the Treaty of Amity and Cooperation in Southeast Asia (TAC), which aligns with the principle of the ASEAN-Way. Moreover, AICHR should encourage ASEAN member states to ratify the refugee and stateless conventions in order to prevent all violence related to refugees, migrants, and stateless individuals or groups in the future. In conclusion, by employing these approaches and suggestions, the Rohingya refugee problems could gradually be alleviated.

Keywords: ASEAN, Rohingya, Human Rights

Approved by

Acknowledgements

DECLARATION

I, Kanyaphat Sae Pua, do hereby declare that this work is entirely my own and that it is original unless specific acknowledgements state otherwise.

Signed…………………………………………………..

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TABLE OF CONTENTS

TABLE OF CONTENT (Continued)

TABLE OF CONTENTS (Continued)

CHAPTER 3: METHODOLOGY

CHAPTER 4: RESEARCH FINDINGS

List of Table

List of Figure

LIST OF ABBREAVIATIONS

ACWC	ASEAN Commission on the Promotion and Protection of the Rights of Women and Children
AHA Centre	ASEAN Coordinating Centre for Humanitarian Assistance on - Disaster Management
AHRD	ASEAN Human Rights Declaration
AICHR	ASEAN Inter-Governmental Commission on Human Rights
AMMTC	ASEAN Ministerial Meeting on Transnational Crime
APHR	ASEAN Parliamentarians for Human Rights
ARSA	Arakan Rohingya Salvation Army
ASEANAPOL	ASEAN Chiefs of National Police
ASEAN	Association of Southeast Asian Nations
BIMSTEC	Bay of Bengal Initiative for Multi-Sectoral Technical and - Economic Cooperation
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading - or Punishment, New York, 10 December 1984
CEDAW	Convention on the Elimination of All Forms of Discrimination against-Women, New York, 18 December 1979
CED	International Convention for the Protection of All Persons from Enforced Disappearance, New York, 20 December 2006
CERD	Convention on the Elimination of All Forms of Racial Discrimination, New York, 7 March 1966
CMW	International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families, New York, 18 December 1990
CRC	Convention on the Rights of the Child, New York, 20 November 1989
CRPD	Convention on the Rights of Persons with Disabilities, New York, 13 December 2006
EU	European Unions

HRBA	Human Rights Based Approach
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights, New York, 16 December 1966
ICCPR OP 1	Optional Protocol to the International Covenant on Civil and Political Rights, New York, 16 December 1966
ICCPR OP 2	Second Optional Protocol to the International Covenant on Civil and Political Rights, New York, 15 December 1989
ICESPR	International Covenant on Economic, Social and Cultural Rights, New York, 16 December 1966
ICESPR OP	Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, New York, 1 December 2008
ICJ	International Court of Justice
IDCs	Immigration Detention Centres
IGOs	Intergovernmental Organizations
ILO	International Labor Organization
ILO 29	ILO Convention No.29 on Forced Labour
ILO 105	ILO Convention No.29 on Abolition of Forced Labour
INGOs	International Non-Governmental Organizations
IOM	International Organization for Migration
NGOs	Non-Governmental Organizations
OIC	Organization of Islamic Cooperation
OP CAT	Optional Protocol to the Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 18 December 2002
OP CEDAW	Optional Protocol to the Convention on Elimination of All Forms of Discrimination Against Women, New York, 6 October 1999
OP CRC AC	Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, New York, 25 May 2000
OP CRC IC	Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, New York, 19 December 2011

OP CRC SC	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, New York, 25 May 2000
OP CRPD	Optional Protocol to the Convention on the Rights of Persons with Disabilities, New York, 13 December 2006
Palermo	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
RCPs	Regional Consultation Processes
RMG	Regional Migration Governance
SOMTC	Senior Official Meeting on Transnational Crime
Smuggling	Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime
UDHR	United Nations Human Rights Declaration
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNODC	United Nations Office on Drugs and Crime

CHAPTER 1

Introduction

"Everyone has the right to life, liberty, and security of person….No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment… Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services… Everyone is entitled to a social and international order in which…rights and freedom … can be fully realized."

-UN, 1945.

1.1 Introduction

Human rights are fundamental to all human beings, regardless of race, sex nationality, ethnicity, language, religion, or status (United Nations, 1948). Unfortunately, the Rohingya people in Myanmar are unable to enjoy their basic human rights. They are victims of various forms of persecution, such as restrictions on movements, restrictions on marriage, land confiscation, limited access to education and economic opportunities, forced labor etc. The vast majority of Rohingya were forced to be statelessness decades ago, and have since been living under an apartheid regime, confined to areas where they cannot move freely and subjected to major human-rights violations as stated above. The problems have directly affected Myanmar and Bangladesh; they have also impacted Malaysia, Indonesia, and Thailand. Except for Bangladesh, the afore-mentioned countries are the member of the Association of Southeast Asian Nations (ASEAN); therefore, these countries as state actors and ASEAN state members have major roles to play regarding Rohingya refugee problems. Additionally, many non-state actors i.e. International Non-Governmental Organizations (INGOs) and Non-Governmental Organizations (NGOs) could play a crucial role in facilitating bilateral and multilateral agreements with the countries involved and ASEAN (cmsny.org, 2014). Since the 1970s, numbers of crackdown operations on the Rohingya in Rakhine State of Myanmar government have

forced them to flee to neighboring states in different kinds of forms: thousands of Rohingya fled to Bangladesh to live in refugee camps, while a hundred others fell into human trafficking and people smuggling circle (Fortify Rights, 2015). Rohingya fled the country with smugglers going on migration routes to Malaysia, Indonesia, Thailand, and Australia (IOM The UN Migration Agency, 2015). The violence against the Rohingya has been known to the international community. INGOs, government agencies and ASEAN, have responded to the crisis in various kinds of assistance, i.e, ensuring food security, healthcare services, shelter, education, nutrition, protection, and gender-based violence prevention. It is essential to know whether the signatories of Universal Declarations of Human Rights and other conventions related to refugees and migrants' rights have been taken into consideration when ASEAN member states discuss the issues to seek solutions for the Rohingya refugee problems. The researcher believes that the policy implantation, advocacy, and cooperation through ASEAN with state and non-state actors could be beneficial and applicable to find sustainable solutions for Rohingya refugee problems (Fortify Rights, 2015).

1.2 Research questions

With the introduction above, it is interesting to discover the roles of ASEAN in resolving the Rohingya refugee problems. Thus, the overall research questions listed below will need to be answered:

1. How should the ASEAN respond to the Rohingya Refugee crisis, both at national and international levels?

2. Can ASEAN alleviate the problems related to the Rohingya refugees by applying a human rights approach?

3. What should be the larger regional approach of cooperation towards resolving the Rohingya refugee problems?

1.3 Objectives

The research aims to analyze the roles of ASEAN, its member states, states affected by the Rohingya refugee crisis, and non-state actors in responding the Rohingya refugee problems. This research has specific objectives as follows:

1. To study ASEAN's solutions in responding the Rohingya refugee problems both at national and international levels
2. To analyze the ASEAN's perspective on human rights.
3. To discover the ASEAN regional approach towards resolving the Rohingya refugee problems.

1.4 Hypothesis

For decades, the Rohingya crisis has become a severe humanitarian challenge within and beyond Southeast Asia, and has consequences on every member states of ASEAN both directly and indirectly. ASEAN is an official institutional body that could intervene in this matter as Myanmar; the origin country of the Rohingya population: Malaysia, Thailand, Indonesia are transit and destination countries, and are member states of ASEAN. Hence, ASEAN could also cooperate with Bangladesh and Australia, who are also effected by the issues. Currently ASEAN has developed key ASEAN platforms and partnerships such as ad hoc working groups, regional platforms, and special coordination groups to tackle the Rohingya refugee problems. Therefore, ASEAN is seen as the most effective facilitator for this crisis that involve both member states and non-member states of ASEAN.

1.5 Thesis outline

The thesis is outlined as follows:

Chapter 1 introduces Rohingya ethnic group's background, its ancestral roots, the past events that generated the Rohingya refugee problems in Myanmar and the region, which leads to situations that describe ASEAN's actions and policies, and the research questions. The chapter ends with definitions of terms used in this research.

Chapter 2 presents regionalism theory, which will include the cooperation among ASEAN and states and non-state actors. It will also present conceptual frameworks and literature review on the causes of the Rohingya crisis, which touches the ASEAN's roles regarding the crisis.

Chapter 3 explains methodology: how the data was collected, processed, and presented in line with the research questions in chapter 1.

Chapter 4 presents the research findings collected from six expert interviews and a focus group discussion of thirteen participants to finalize the conclusion and recommendations.

Chapter 5 presents the discussion of findings, which ties the theoretical framework and the literature review and document reviews. It then presents the final conclusion, and recommendations on the Rohingya refugee problems through actions, policies, and academic practices through cooperation between ASEAN and member states, and between ASEAN and non-state actors.

1.6 Background and Statement of the Problems

1.6.1 The History of the Rohingya

According to Ibrahim, Rohingya have been living in Rakhine state in western Myanmar for generations. Rakhine state is one of the poorest community in Myanmar and was previously called "Kingdom of Arakan" until it was conquered by the Konbaung Dynasty (1752-1885) in 1784. The origin of Rohingyas is highly disputed but it is likely that, an Indo Aryan language-speaking group who migrated from Northern India to Arakan around 3000BC is the ancestor of Rohingya (Ibrahim, The Rohingyas: Inside Myanmar's Hidden Genocide , 2016). Arakan and Myanmar have a separate history until 18th century. The Muslim minority group Roingya are related to people who are identified as Muslim Arakanese living in western Myanmar, which is now called Rakhine State. The word 'Rohingya" came from Rohang and is one of the old names of Rakhine State (Ahsan, 2016). Another known name of the region was Arakan and it was an independent kingdom before British colonization of Myanmar. There were approximately two million Rohingya, and 800,000 of them were living in Rakhine State as of 2017 (Farzana, Memories of Burmese

Rohingya Refugees, Contested Identity and Belonging, 2017). In 1780, A British diplomat named Hiram Cox was sent to assist refugees. He found and established the Cox's Bazar town in Bangladesh, where many Rohingya refugee camps are situated today (Al-Mahmood, 2016).

Figure 1: Map showing the movement of the Rohingya people from Rakhine State, Myanmar to Cox's Bazar, Bangladesh

1.6.2 The British Colonial Era (1824 to 1942)

Britain colonized Burma – now known as Myanmar from 1824 to 1942. During this colonial era, the British ruled Burma as part of British India until 1937, when Burma became a separate British colony. The British colonial administrators encouraged extensive migration of "loyal" Indians to offset the influence of the "less reliable" Burmese to maintain stable colonial governance (Sarkar, 2019). Many Rohingya and local Indian were brought to Myanmar in order to increase rice cultivation and profits during the 17th century. The Muslim population increased tripled from 1871 to 1911 according to census records

(idem). The situation became complicated because of the Japanese invasion in 1939, which will be described in the section below:

1.6.3 World War II and Japan's Invasion (1939 – 1945)

World War II was declared in 1939, followed by Japan's invasion of Myanmar, when it was still a British colony. Myanmar sided with Japan and let it influence over the country's affairs as the latter promised to liberate Myanmar from British rule. Whilst the British promised a similar thing to the Rohingya Muslims if they fought on the side of the British against the Japanese forces. Nevertheless, after the war ended in 1945, with Japan's surrender and Myanmar remained under the administration of British government until 1948. The event had left the Rohingya in a difficult situation (Sarkar, 2019).

1.6.4 The Evolvement of the Rohingya Problems

Many events have defined the situation of the Rohingya today as per described below:

From 1948 to 1950, although Myanmar was fully independent from the British but violent conflicts broke out in various segments of its more than one hundred ethnic and racial groups (Sarkar, 2019). Later on, some Rohingya resisted the government, led by an armed group called Mujahids. The insurgency gradually died down. During 1962 and 1997, General Ne Win and his Burma Socialist Programme Party seized power and began the Nagamin beoperation Nagamin or Dragon King which they said was aimed at screening out foreigners among its population. The operations caused more than 200,000 Rohingya people to flee to Bangladesh during 1977 and 1978, amid allegations for army abuses. However, the Burmese army denied any wrongdoing. Bangladesh struck a U.N.- brokered deal with Burma for the repatriation of refugees, under which most Rohingya returned. The government of Myanmar launched "The 1982 Citizenship Law" which redefined people who migrated during British rule as illegal immigrants. The law applied to all Rohingya. The government of Myanmar changed the name of Burma to Myanmar officially in 1989. There were 250,000 Rohingya refugees fled the country alleging running away from forced laboring, rape and religious persecution perpetrated by the Myanmar army while the army responded that it was trying to restore in Rakhine state. In 1997, around 230,000 Rohingya

6

returned Arakan, now known as Rakhine, under another repatriation agreement (Al-Mahmood, 2016).

1.6.5 Current crises

Throughout 1970s and until 2011, the Rohingya people were under rules of Myanmar Military Government who enacted repressive laws against them, as detailed below.

1.6.5.1 Denial of Citizenship

After its independence in 1948, Myanmar's government enforced the 1948 Union Citizenship Act, which outlined criteria of the "indigenous races of Burma" which warrant citizenship to specific ethnicities. Yet, the list excluded Rohingya ethnic. The 1948 Union Citizenship Act entitled people whose families had lived for two generations in Myanmar to an identity card. A few hundreds of Rohingya received a citizenship or identification card under this provision. However, after the military coup in 1962, the government began to issue fewer and fewer identify documents. to Rohingya children which refused entirely to recognize new generations of the Rohingya population. The situation worsened in 1974, when Myanmar began requiring all citizens to make a National Registration Card but permissible Rohingya were only eligible to a Foreign Registration Card that was not aligned with the policy of the many faculties. The schools in Myanmar did not to acknowledge the foreign registration cards which become a hindrance to access education and economic opportunities among Rohingya. In 1982, the citizenship problem degraded as the administration of General Ne Win required that only ethnic minorities who could prove that their families had lived in Burma before 1948 were eligible to Myanmar citizenship. Most of Rohingya failed in giving proof due to lacking records of their families] historical residency. The 1982 Citizenship Law has further undermined Rohingya's opportunities of economic betterment, education, property possession, political rights, freedom of movement, etc. The Myanmar officers denied the existence of the Rohingya in Myanmar's history through official interviews and documentation (Lowenstein A. K., 2015).

1.6.5.2 Forced Displacement

In 1978, Myanmar's government initiated an operation called Naga Min or "Dragon King," to purge illegal migrants which referred to Rohingya in Northern Rakhine State. There were reports of abused, raped and murdered of many Rohingya by the Myanmar military, and estimatedn 200,000 Rohingya fled to Bangladesh. However, General New Win accepted to take back these Rohingya refugees due to international pressure and condemnation. Nonetheless, it relaunched the persecution within the targeted area. Consequently, Rohingya people continued fleeing to Bangladesh periodically over the following twenty years (Smith, 1999).

1.6.5.3 Forced Labor

The police, military, intelligence, custom officers, and riot police joint a mission called Nay-Sat Kut-kwey ye or Nasaka operation under authorization of the Ministry of Border Affairs. This operation was with a purpose to force Rohingya into many forms of laboring i.e. construction work, agricultural work, serving as porters, or guards. Throughout the 1990s, the Myanmar government denied this allegation which contrasted to reports of the International Labor Organization (ILO) (Nui, 2010) .

1.6.5.4 Religious Persecution

The Myanmar government has participated in the racial and spiritual ill-treatment of Rohingya people. In 2002, Human Rights Watch revealed that the government issued military orders that unauthorized mosques to be destroyed. The closed mosques and Islamic schools were closed downs and used as government agency offices. Furthermore, the Muslim Rohingya were prohibited to repair or renovate their mosques. In 2001, mobs attacked a minimum of twenty-eight mosques and spiritual faculties. State security did nothing to prevent the attacks, instead, conjointly participated in the destruction (Nui, 2010).

1.6.5.5 Marriage Restrictions and Population Control

In 1990s, Myanmar government enforced a law of marriage restrictions and population control on the Rohingya population on the ground that Rohingya have produced population more rapidly than international standard. In order to obtain a marriage license, Rohing men was obliged to shave their beards and Rohingya women were permitted wear face coverings. Lastly, two children policy was applied to Rohingya couples (Fortify Rights, 2015).

1.6.5.6 Sexual Violence

Rape cases were reported in various situations. Women in the household who failed to serve labor duties were raped by the Myanmar military groups. Some Rohingya women were being forced as sex slaves for Myanmar military groups (Fortify Rights, 2015).

1.6.5.7 Restrictions on Freedom of Movements

The government of Myanmar imposes strict restrictions on the freedom of movements of Rohingya. They must apply for approval before traveling outside Rakhine State one week in advance against an unaffordable fee which allegedly aimed at deterring them from traveling outside the Rakhine state (Fortify Rights, 2015).

1.6.5.8 The Riot Series in Rakhine State in 2012

In June 2012, a series of riots started after weeks of sectarian disputes. The violations included gang rapes and murder of a Rakhine women by Muslim Rohingya Buddhist Arakanese were killed more than 100 people. There were around te of thousands of people been forced into Bangladesh. Almost 150,000 were forced into camps in Rakhine (Al-Mahmood, 2016).

1.6.5.9 The Andaman Sea refugee crisis in 2014

The main crisis examined in the proposed research is the Andaman Sea refugee crisis. The Andaman Sea refugee crisis began in 2014, when intimately 63,000 refugees

moved from Bangladesh and Myanmar across the Bay of Bengal and Andaman Sea toward Thailand, Malaysia and Indonesia (Bernama News, 2017). This route has been increasingly used since 2012 (IOM The UN Migration Agency, 2015), and it is expected that migration rates across the route will only increase. It is estimated that 25,000 people travelled across this route between January and March 2015, indicating a rising use of the route. This rate of migration is problematic for many reasons, one of which is the fact that the route is unregulated and unsafe, often involving crossing water in unsafe vessels with the assistance of traffickers (Bernama News, 2017).

Although there are numerous reasons for this mass migration, migration from Myanmar is primarily due to a Burmese government campaign of violence against the Rohingya people, a Muslim ethnic minority group whose origin is in Rakhine State on the Bay of Bengal (Green, MacManus, & de La Cour Venning, Countdown to annihilation: Genocide in Myanmar, 2015) This violence has been called a genocide by international law observers, who have noted that tactics including isolation, imprisonment in labor camps and detention villages, denial of livelihood and basic needs including food and water, anti-religious laws, and formal state violence against the Rohingya people constitute a deliberate attempt to eliminate the group (Green, et al., 2015).

There have been some high-profile humanitarian crises related to this migration route. For example, in May 2015 a mass grave containing the bodies of more than 100 Rohingya refugees who fled Myanmar was found in Padang Besar, a Thai border town adjacent to Malaysia. (Davis & Cronau, 2015). Having died during the journey, these refugees' bodies were disposed of by the human traffickers who took them toward Thailand and Malaysia (Davis & Cronau, 2015). Even when there is no such high-profile violence against the refugees, there still lacks of structural support, official reception and resettlement centers, or a monitoring of the migration routes to ensure safety and respond to humanitarian needs of refugees (Bernama News, 2017).
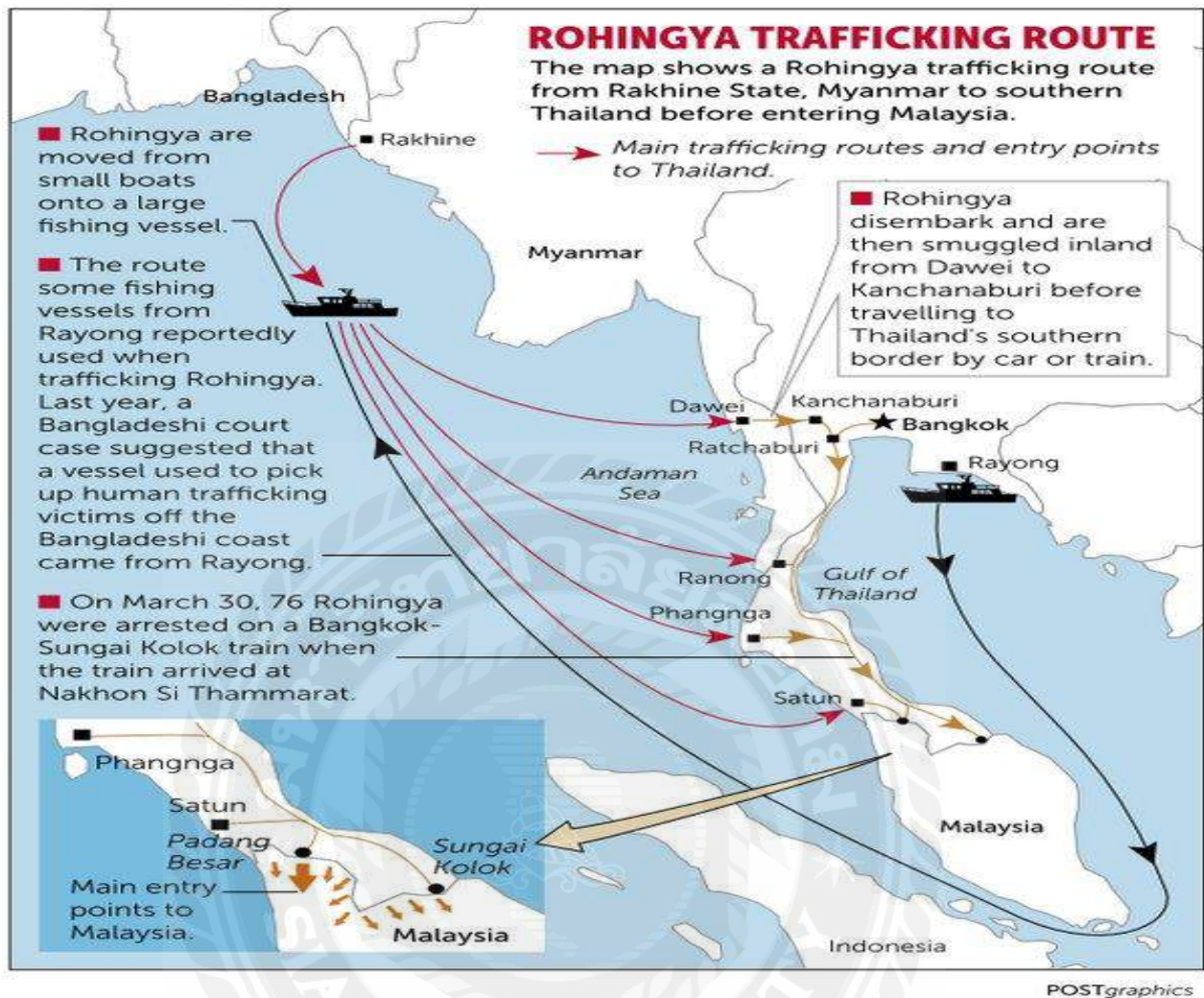
Figure 2: Map Showing Rohingya Refugees Trafficking/Smuggling Route in -

Andaman Sea

1.6.5.10   The Worst Crisis in the modern time 2016 - 2017

In 2016, about 300 Rohingya men attacked border posts in Rakhine State, killing nine police officers, according to state media. The attacks sparked an intense crackdown by the Myanmar military and triggered an exodus of 87,000 Rohingya to Bangladesh. Rohingya insurgent group, now known as Arakan Rohingya Salvation Army (ARSA), claims responsibility for the border post attacks. In 2017, more than 671,000 Rohingya people displaced from Rakhine state to the border of Bangladesh to escape the military devastated campaign of ethnic cleansing (Straittimes, Straittimes , 2018). The militant group known as ARSA claimed responsibility for attacks on police and army posts. The

Myanmar's government counter-attacked them by deploying operations in hundreds of Rohingya villages and forced nearly seven hundred thousand Rohingya to leave Myanmar. There reported that more than 6,700 Rohingya were killed between August 25 to September 24, 2017 according to the Doctors without Borders. There also allegedly reported that Myanmar security forces opened fire on fleeing civilians and planted land mines near Myanmar-Bangladesh crossing passes used by Rohingya during their flight. Most of those who fled are now located in Teknaf and Cox's Bazar (Eleanor C. et al, 2018). This violence has drawn attention of international community after the Andaman crisis in 2014.

As of January 2019, there were over 1, 000,000 stateless Rohingya refugees reside in Ukhiya and Teknaf Upazilas. A massive number of people lived in 34 camps in Kutupalong and Balukhali Expansion Sites. Most people arrived between August and December 2017 and followed by a new group of more than 16,000 arriving from January 2018 to June 2019. From the outset of the crisis, the Government of Bangladesh hosts nearly a million of Rohingya refugees who forcibly displaced by the Myanmar government by keeping its borders open and taking lead in collaboration with international community in response to the crisis in many aspects. With supports of the Bangladeshi government, the humanitarian community inside the camps significantly scaled up their operations to provide assistances and life protection of these refugees (ISCG, 2019).

After the recent influx of a half-million Rohingya into Bangladesh, the country now hosts more Rohingya than Myanmar.
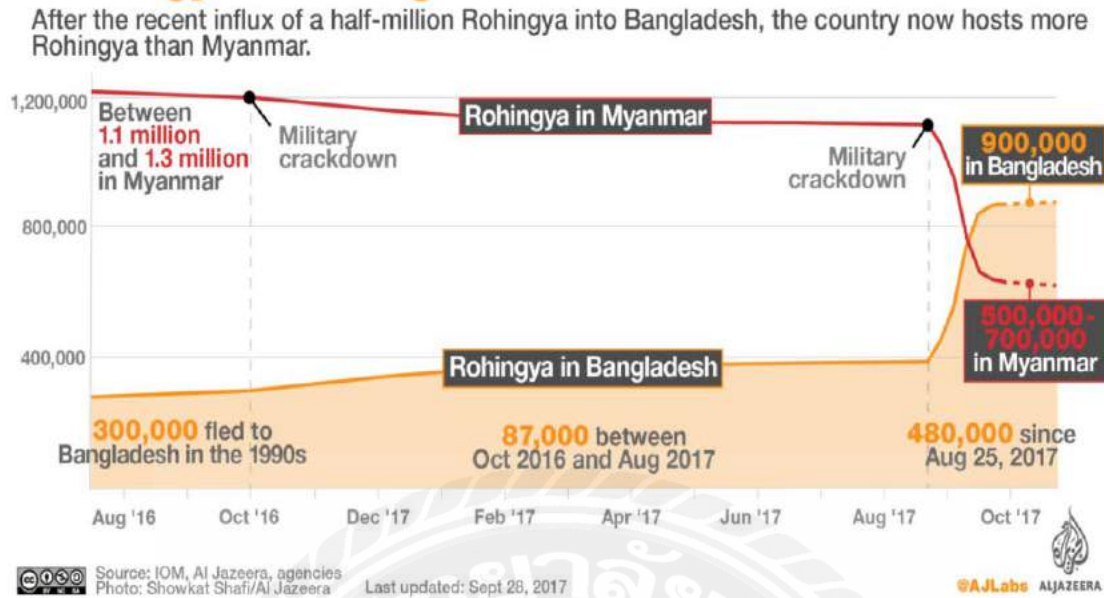
Figure 3: Number of Rohingya refugees fled from Myanmar to Bangladesh

(Source: IOM, Al Jazeera, agencies)

1.7   Scope and limitation of the Study

During the key informant interview preparation process, the researcher encountered several limitations, one of which is the sensitivity in giving opinions on the Rohingya refugee topic. Additionally, the scrutiny of the Thai military government also affects the international organizations on the positioning on the Rohingya issue and giving information contributing to this research. The researcher tried to select the key informants from multidisciplinary backgrounds such as Buddhist monks, diplomats, and Thai authorities' representatives whose work is related to the Rohingya refugee issue. However, many of the prospect Informants declined to take part in the interviews due to the confidentiality and sensitivity of the topic. Despite various limitations to access the information, the researcher as able to overcome this obstacle by exploiting more of secondary data, recruiting secondary respondents who know the situation of Rohingya and also interviewing more key informants who work closely on Rohingya issue in Thailand. Finally, this research topic is broad in many areas; therefore, the researcher was unable to collect all the data as expected.

1.8 Significance of the Study

Generally, most of the existing researches on the Rohingya issue related to the response of ASEAN tend to focus on the weakness of loosening engagement and law enforcement. There significantly lack of researches on Rohingya that comes up with the feasibility of the constructive engagement of ASEAN and other actors in the international community, which can be beneficial for other researchers, academia, and policymakers. This would enable them to see the broader picture and gain a more comprehensive explanation on the situation. This research tries to draw a web of cooperation of all sectors and actors at national, regional, and international levels towards this prolonged suffering the Rohingya people.

1.9 Terminology Use

1.9.1 ASEAN is a short term of The Association of Southeast Asian Nations consisting of ten member countries namely Indonesia, Malaysia, Philippines, Singapore, Thailand, Brunei Darussalam, Vietnam, Lao PDR, and Myanmar. The organization aims to drive a united front in spearheading its regional affairs while cultivating a more integrated society, economy, and regional security.

1.8.2 Asylum seeker is an individual who is seeking international protection and claims to be a refugee but whose claim has not been evaluated yet. The persons would have applied for asylum on the grounds that returning to his or her country where there is an opportunity to lead to persecution on account of race, religion, nationality, or political beliefs. Some of them can be in the asylum seeker status for as long as their application is pending for approval. Therefore, every refugee is initially an asylum seeker but not every asylum seeker will be recognized as a refugee (UNHCR, 2006).

1.9.3 Illegal migrants is not an authorized person to enter or to engate and stay in a remunerated activity in the state of employment pursuant to the law of that state and to international agreement to which that state is a party (UNHCR, 2006).

1.9.4 Immigrants is the persons who moves into another country other than her or his country of nationality or usual residence, so that the country of destination effectively becomes his or her new country of usual residence (UNHCR, 2006).

1.9.5 Internally Displaced-Persons (IDPs) is a person or groups of persons who have been forced to leave their home countries of habitual residence, in particular as a result of or in order to avoid the effects of such kinds of conflicts, human rights violations, situations of generalized violence, or natural disaster and or human-made disasters, and who have not crossed an internationally recognized state border (UNHCR, 2006).

1.9.6 Migrants can be described as someone who choose to leave or flee from their country of origin and who, when they want to, can return home in safety, whereas refugees do not have this option. Most of the migrants migrate in order to improve their lives on economic, livelihood and family reunification reasons, according to UNHCR.

1.9.7 Refugee is a person who has fled his/her country due to the fear of being persecuted for reasons of nationality, religion, race, membership of a particular country or political view, is outside the country of his/her home country, and is unable to be protedted by their particular country (UNHCR, 2008).The affected states and the UNHCR determine an individual's refugee status through an administrative process. Often, refugees effectively become stateless people, because they cannot return home for fear of reprisals or continuing persecution. James C Hathaway (1997), claimed that, the 1951 refugee convention does not need that refugees be granted asylum in a new political community. Refugees are instead entitled to benefit from dignity and rights regarding protection until and unless conditions in the state of origin permit repatriation without the risk of persecution. However, the refugee status is explicitly conditioned on the continuation of a risk for refugees in the state of origin, and in need, it may be withdrawn when there has been a significant change of circumstances in the country to reduce the need for protection (Hathaway, 1997, p. 551). In this concern, giving Rohingyas refugee recognition or not, will not make any difference in treating them as migrants from another country.

1.9.8 Rohingya in this research is called according to habitude, and for familiarity without political implications.

1.9.9 Rohingya refugee problems in this thesis means the human rights violation which leads to irregular movements of the Rohingya to the neighboring countries. Another problem is while seeking asylum, their rights are still not protected and they are in need of international protection in terms of shelters, access to basic services in the shelter, and the right not to be repatriated.

1.9.10 Stateless person refer to a person who are not considered as a national by any states under the operation of their laws (UNHCR, 2006).

1.9.11 Non-State Actors are those who are not the government or state. They have lower power hierarchy compared to thestate actors. The military force and power are not allowed to be used as per their will. However, in cases of Inter-Governmental Organizations (IGO) and Non-Governmental Organization (NGO) involvements in state affairs such as the UN peace-keeping forces, military force is used under the approval and the consent of the particular the state. (Andrew, 2009)

1.9.12 State Actor is a representative of a particular government and has following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states". While there are alternative definitions of states according to different theories of foreign policy, the one codified in the Montevideo Convention is still to be considered as a common ground. The current number of sovereign states differs depending on the criteria used for counting, as there are several cases where recognition is disputed. It can be said that a state achieves full recognition once it has been recognized by a significant number of other states and admitted as a member state of the United Nations.

1.9.13 Urban Refugee is the refugee who was obliged or decided to settle in an urban area in the country where they fled to rather than in a refugee camp. The urban refugees are not officially recognized term in the 1951 Convention Relating to the Status of Refugees. Nonetheless, the UNHCR has adopted a 'Policy on Refugee Protection and Solutions in Urban Areas' in 2009 (UNHCR, 2009).

CHAPTER 2

Literature Review and Conceptual Framework

In studying the issues of the Rohingya crisis concerning ASEAN, it is necessary to search for information in interdisciplinary fields as this issue entails diverse and complex dimensions in terms of politics, economy, and culture. Additionally, the question concerns many departments and levels that could conjointly resolve this problem., It is crucial to start the study on the afore-mentioned at the national, regional, and international levels, including the existing researches to further find the potential solution for the Rohingya problems. In this chapter, the researcher presents the existing works of literature of regionalism theory and 'good governance' concepts, which will include a human rights approach and touches upon neo-liberalism plus constructivism theories to understand natural approaches of individual countries within ASEAN. Lastly, the thesis will discuss and conclude with the conceptual framework based on rules, laws, norms, regimes, policies, and actions, which deem to be a resolution for the Rohingya problems.

2.1 The Root Cause of Statelessness

The Rohingya people are considered as a Muslim minority group of people in Rakhine State, which was formerly known as Arakan in the western part of Myanmar. Rakhine state is adjacent to Bangladesh and the Bay of Bengal.

Myanmar composes of a number of diverse ethnic groups. "Burmans" are the dominant and majority group, whie ethnic minority groups make up to estimately40 percent of Myanmar's population (Lowenstein K. , 2015). With regards to the religious dimension, the majority of Myanmar is Buddhist, which is an important part of Burmese nationalism. As of 2015, it has been estimated that approximately one million Rohingya were living in Rakhine State. A great debate on Rohingya is the history of Rohingya's origin. And whether or not they are eligible to live in Myanmar as a Muslim minority group. Many

assumptions about the origin of Rohingyas have been criticized. Some said that they are indigenous Burmese as the first Muslim group in the Rakhine region. At the same time, some claimed that they immigrated to Rakhine State in 1826 when Myanmar was a British colony (Ibrahim, The Rohingyas: Inside Myanmar's Hidden Genocide, 2018). Lowenstein (2015) argued that the denial of citizenship of Rohingya in Myanmar rooted in the long history of Myanmar citizenship law. It begins with "The 1948 Union Citizenship Act," which defined the citizenship for "Burmans" and also identified the minority groups and granted some of them a citizenship. Unfortunately, the list of minority groups that gained citizenship did not include the Rohingyas and absolutely recognize new generations of Rohingya as described in previous section. The Burmese government excluded the Rohingya from obtaining equal rights by deny their citizenship, and consequently, they were made fully stateless. Another cause of their being stateless happened when the Burmese government set Burmese language as the national language. The Rohingya cannot obtain the Myanmar nationality because they speak "Rohingya dialect" and have been systematically excluded from accessing education, which was taught in Burmese language. Another result of the 1982 Citizenship Law is that, it also deprives Rohingya from the Myanmar judicial system, property ownership, work opportunity, and basic needs. Furthermore, the Rohingyas have been controlled in private life, such as birth control and marriage restriction by the Burmese government. With these course of events, the Burmese government has officially denied the existence of the Rohingya minority in Myanmar and recognized them as the "illegal immigrants" until today.

2.2 Legal Frameworks that link to the status of Rohingya

2.2.1 Rohingya as a refugee and stateless person status

"Every person who, owing to external aggression, occupation, foreign domination of events seriously disturbing public order in either part of the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality (UNHCR, 1951)*"*

According to the 1951 Convention of Refugees of UNHCR, Rohingya falls under the universal concept of 'refugee.' Each Rohingya is being persecuted due to state's repression and is also unwilling to avail himself of the protection of that country. The

United Nations defines Rohingya as the most persecuted community in the world due to numerous attack operations by the government of Myanmar (Ibrahim, The Rohingyas: Inside Myanmar's Hidden Genocide, 2018). The 1951 refugee convention is the fundamental legal document in defining who should be deemed refugees, their rights and legal obligations in the first asylum country, but it is more or less restrained protecting only the European refugees in the aftermath of World War II. However, the 1967 protocol expanded its scope as the problem of population displacement around the world rose (Al Imran H. &., 2014). The international refugee law is a part of human rights law. For example, according to article 14 of the universal declaration of human rights 1948 (UDHR) of (UDHR, 1948), "everyone has the right to seek and to enjoy in other countries asylum for persecution." States, from now on, instead of being a non-signatory of 1951 convention, still provide shelters to refugees whenever it is necessary on humanitarian grounds. Moreover, Article 26 of the International Convention on the Civil and Political Right, 1966 (ICCPR 1966) mentioned that, "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law". It guarantees all persons equal and effective protection. Moreover, the UN refugee agency UNHCR, offered three durable solutions to the refugee problem such as voluntary repatriation, local integration and resettlement (UNHCR, 2005). The core concept of voluntary repatriation is return in safety and dignity. Voluntary repatriation refers to the conditions of physical, legal and material safety with full restoration of natural protection. Local integration is a solution whereby the country of asylum provides legal residency, and resettlement involves the permanent movement of refugees to a third country (Azad, 2013). Rohingya crisis is a protracted crisis. Repatriation is a proposed solution of a protracted crisis by UNHCR, but it is not acceptable if contradicting the principle of non-refoulement. The Principle of non-refoulement obliges the state to provide shelter to a refugee determining the ground of customary international law (Al Imran H. &., 2014). None-refoulment is the normative ground that influences the voluntary repatriation. The 1951 convention of refugees, article 33(1) considers the refoulment relating to the status of refugees that

"No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or

political opinion." (UNHCR, 2005) Nonetheless, the principle of non-refoulment requires the safety and security in the place of their return, the provision of freedom might be threatened because they will be no more refugees after return from the asylum-seeking countries. On the other hand, according to article 33(2) of 1951 convention, the exception on refugee return can be possible on two grounds; refugees become a threat for the national security or public order of the host country, and if the refugees have been found to have committed a crime, thus posing a danger for the host community (Al Imran H. &., 2014).

In addition, the Convention Relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961) is also applied to status of Rohingya people. Although relatively few states are parties to these treaties, the principles contained within them provide useful guidance to all countries and form the core of UNHCR's work on behalf of stateless people. Both of these treaties were inspired by article 15 of the Universal Declaration of Human Rights, which states: "Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality." The 1954 Statelessness Convention defines a stateless person as "… a person who is not considered as a national by any state under operation of its law" (UNHCR, 2005).

2.2.2 Rohingya as victims of human trafficking and people smuggling

From 2012 to 2015, the Rohingya were estimated more than 170,000 boarded ships from Myanmar and Bangladesh head to Malaysia and Thailand. Before 2014, the majority of people trafficked were the Rohingya refugees; however, in late 2014 and 2015, Bangladeshi nationals began to be a targeted group of the traffickers as well. Nevertheless, this research focuses on Rohingya refugees as victims of human trafficking and people smuggling issues. According to the report, well-established individuals or organizations worked together with the whole process of people smuggling and human trafficking - deceived Rohingya refugees into boarding ships bound for Thailand and Malaysia and then abused them. Traffickers grouped hundreds and thousands of Rohingya refugees into repurposed fishing boats and disposed of food, water, and space, committing torture and,

in some cases, rape at sea. Many of the Rohingya refugees died by suicide at sea and murdered by the traffickers. Once the vessels onshore, the traffickers held the Rohingya refugees in conditions of enslavement in remote camps along the Thailand-Malaysia border to demand for money upwards of US$2,000 for their release. These traffickers from Myanmar, Thailand, and Malaysia tortured Rohingya captives with belts, pipes, threats, intimidation, and other means. Traffickers denied their captives access to adequate food, water, and space, resulting in deaths, illness, and injury, including paralysis, particularly for those unable to pay. The trade-in Rohingya from 2012 to 2015 is estimated to have generated between US$50 to US$100 million (174.5 to 349 million Malaysian Ringgit) annually (FortifyRights, 2019). The Rohingya refugees were forced into the people smuggling and human trafficking process because they do not have basic human rights in their homeland - Rakhine State.

2.3 International Relations Theories

Looking at the problems of Rohingya migrants from an ASEAN perspective requires lenses of various theories in order to understand the political way of member countries both inside and outside of ASEAN (The researcher). It is essential to know the nature of ASEAN's political policies to understand their responses individually and collectively.

2.3.1 New Regionalism

According to Hettne (Hettne & Soderbaum, 1998), the new regionalism is a comprehensive, multifaceted and multidimensional process that implies a change of a particular region from relative heterogeneity to increased homogeneity with regard to several dimensions, the most important being culture, security, economic policies, and political regimes. The convergence along these dimensions may be a natural process or politically steered or, most likely, a mixture of the two. When conducting research on the Rohingya refugee problems, the concept of regionalism refers to regional cooperation in many levels and actors. The concept of region is used to include both sub-national regions (provinces within states) and supra-national regions (world regions or macro regions). The

process of regionalization also has structural consequences beyond the particular region in which it takes place. Since the Rohingya refugee problems has affected ASEAN countries and extra-regional of ASEAN countries in the perspectives of economies, politics and also security; thus, regionalism is seen to be the best theory when searching for solution for the Rohingya refugee problems. The table below shows natures of political wills of each ASEAN member states implyingwhy and how they respond to the Rohingya crisis differently.

No.	ASEAN Member State	Nature of policy	No.	Extra-regional state	Nature of policy
1.	Brunei	Realism	1.	Bangladesh	Realism
2.	Cambodia	Realism	2.	China	Realism
3.	Indonesia	Realism	3.	Japan	Liberalism
4.	Laos	Realism	4.	India	Liberalism
5.	Malaysia	Realism	5.	United States	Liberalism
6.	Myanmar	Realism			
7.	The Philippines	Liberalism			
8.	Singapore	Realism			
9.	Thailand	Realism			
10.	Vietnam	Realism			

Table 1: Political Policy of ASEAN Member States (Source: Hettne & Soderbaum, 1998)

2.3.2 Political Realism

Hans Morgenthau, the central figure in international relations, popularizes the theory of political realism with its emphasis on the inevitability and the evilness of man's lust for power (Kaufman, 2006). One of the essential characteristics of Morgenthau's political realism is that the primary function of a state is to satisfy and protect national interest while the state must place its survival above all other moral goods (Welch,

2000).Political realism prioritizes rational foreign policy as ideal to maximize benefits and minimize risks, whereas the nation-state is the ultimate point of reference for contemporary foreign policy (Morgenthau, 1948). The foreign policy is also regulated through the ideological preferences of politicians in order to attain national goals in terms of power. For political realists, the pursuit for power is the overriding concern for a state because political relationship entails unending struggle for power and interests (Morgenthau, 1948).

To political realists, there is a distinction between the moral aspiration of a nation and universal moral laws with the latter not being able to apply to the actions of states. They reject the moral and liberal premises e.g., education, culture, and technology, as well as prospects for peace and international stability (ibid). Another essential characteristic of Morgenthau's political realism is pragmatism. The national policies must be empirical and pragmatic regarding which Morgenthau has elucidated its validity in the 'theory of international politics' (ibid). Rejecting the principle of liberal internationalism, Morgenthau concludes that perpetual peace can never be attained under the moral, social, and political conditions in the realist world (Kaufman, 2006). As no international community is capable of guaranteeing national security, the nation chooses the realist ones which separates itself from moral values (Pham, 2008). The realist theory emphasizes national interest over any humanitarian interest. In recent years, states receiving Rohingya refugees have increasingly been concerned about the national security threats posed by such refugees and thus legitimized the expulsion of Rohingya trying to enter their territories. When describing such hostile attitudes toward the Rohingya, this paper uses the term 'realist policy' due to the overemphasis of the state in protecting its own interest, and even by neglecting many customary and treaty-based international law which guarantee the humanitarian protection of refugee population (Tripp, 2013).

2.3.3 Liberalism

The foundation of classical liberalism originates from John Locke's 'Second Treatise of Government' (Hung, 2009). The other prominent scholars of classical liberalism are Adam Smith, Immanuel Kant, Giuseppe Mazzini, and John Stuart Mill. Liberalism supports core principles of human rights such as individual freedom, political participation, private property, and equality of opportunity that all liberal democratic

societies, by definition, share to some degree. The theory promotes moral freedom as well as equal rights to all human beings. It also reiterates liberal foreign policy and international regimes in order to promote cooperative relations among states (Endre & Burgess, 2009). The four main basic elements of John Locke's political theory are limited government, the rule of law, freedom from restraint, and personal responsibility (Adam, 2010). Classical liberalism limits the role of the state and only support for its legitimate functions subsequent to the constitutional limits of governmental power. Classical liberals observe that the main responsibility of legitimate state authority is only to protect individuals' rights, liberty, and property, regardless of their national identity (ibid). Governmental institutions need to be capable of upholding the rule of law and defending societies against internal and external threats where there will be no unlimited power to the central authority, although they appreciate effective governmental institutions for domestic stability (Paris, 2006, pp. 425-440) (Paris, 2006). This theory, thus, paves the way to provide basic humanitarian needs conducive to adequate protection of such individuals' fundamental rights. It also emphasizes on establishing a political order with a view to promoting peace and social cooperation (Maloberti, 2012). With regard to the Rohingya refugees, the liberal policy focuses on hosting such refugees and providing them with basic needs, humanitarian supports, as well as preserving their rights. Advocates of liberalism argue that when a large number of Rohingya flee state-sponsored persecution in Myanmar, it becomes a humanitarian obligation for the neighboring countries to provide shelter and security to such refugee population. List of international refugee laws and humanitarian laws provide the legal and normative basis for such a liberal refugee policy. The list includes the 1951 Refugee Convention, its 1961 protocol, and nearly half a dozen other international instruments focusing on the preservation of cultural and political rights and elimination of discrimination and torture. In summary, a realist refugee policy prioritizes host state's interest and legitimizes the expulsion of refugees on national security grounds. By contrast, a liberal refugee policy emphasizes the vulnerability of the displaced persons and calls for shelter and care for them. In central question is, the official policies of ASEAN member states are of a realist or a liberal attitude or a mix of both.

2.3.4 Human Rights Approach

According to Gomez, James and Ramcharan (2014), the human rights practices in ASEAN has been quite poor. Their survey of the statist to the rights of the liberal democratic tradition shows that human rights in ASEAN do not conform to international standards of protection (Gomez & Ramcharan, 2014).   The Human Rights Approach was created by the United Nations (UN) since its inception. "Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status." Human rights include the right to civil and political rights, economic, social, and cultural rights (UNESCO, 2017). However, the Rohingya people in Myanmar have been hindered to access to the civil and political rights as well as economic, social, and cultural rights. They do not have access to their own housing, education, and work, not to mention political rights (Ibrahim, The Rohingyas: Inside Myanmar's Hidden Genocide, 2018). Later on, the UN has developed a "Human Rights-Based Approach or HRBA, which contains five core principles as follows:

- **Participation** – everyone is entitled to active participation in decision-making processes, which affect the enjoyment of their rights.

- **Accountability** – duty-bearers are held accountable for failing to fulfill their obligations towards rights-holders. There should be effective remedies in place when human rights breaches occur.

- **Non-discrimination and equality** – all individuals are entitled to their rights without discrimination of any kind. All types of discrimination should be prohibited, prevented, and eliminated.

- **Empowerment** – everyone is entitled to claim and exercise their rights. Individuals and communities need to understand their rights and participate in the development of policies that affect their lives.

- **Legality** – approaches should be in line with the legal rights set out in domestic and international laws (ENNHRI, n.d.)

All the above description of human rights approached is in line with the "liberalism" theory and can be applied to find the resolution for the Rohingya refugee problems. The treaties related to the "human rights" regime are automatically applicable and legally bind

those countries who ratified them. The following treaties build the core of the international human rights regime: The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD, 1965), the International Covenant on Civil and Political Rights (ICCPR, 1976), the International Covenant on Economic, Social and Cultural Rights (CESCR, 1976), the Convention on the Elimination of all Discrimination against Women (CEDAW, 1976), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, 1984), the Convention of the Rights of the Child (CRC, 1989), the Convention on the Protection of Migrant Workers (CPMW, 1999), the Convention on the Rights of Persons with Disabilities (CRPD, 2006), and the International Convention for the Protection of all Persons from Enforced Disappearance (ICCPED, 2006). These treaties have a strong transformational impact on the behavior of states. The summarized table below shows the fact of the ratification of ASEAN member states (Pusittrakul, 2019).

Country/Convention	ICCPR	ICCPR OP	ICCPR OP	ICESCR	ICESCR OP	CRC	OP CRC AC	OP CRC SC	OP CRC IC	CEDAWW	OP CEDAW	CED	CAT	OP CAT	CERD	CRPD	OP CRPD	CMW	Palermo	Smuggling	ILO 29	ILO 105
Southeast Asia																						
Brunei Darussalam						✓	✓	✓		✓						✓						
Cambodia	✓			✓		✓	✓	✓		✓	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓
Indonesia	✓			✓		✓	✓	✓		✓			✓		✓	✓		✓	✓	✓	✓	✓
Lao PDR	✓			✓		✓	✓	✓		✓			✓		✓	✓			✓	✓	✓	
Malaysia						✓	✓	✓		✓						✓			✓		✓	
Myanmar				✓		✓		✓		✓						✓			✓	✓	✓	
Philippines	✓	✓	✓	✓		✓	✓	✓		✓	✓		✓	✓	✓	✓		✓	✓	✓	✓	✓

Singapore				✔	✔			✔				✔	✔			✔		✔	
Thailand	✔			✔		✔	✔	✔	✔	✔	✔		✔		✔	✔	✔		✔	✔
Timor-Leste	✔		✔	✔		✔	✔	✔		✔	✔		✔	✔	✔			✔	✔	✔
Viet Nam	✔			✔		✔	✔	✔		✔			✔		✔	✔			✔	

Table 2: Ratification of major human rights and adopted treaties of ASEAN Member States

2.4 Positions and Response of ASEAN and its Member States

2.4.1 ASEAN and the ASEAN Parliamentarians for Human Rights (APHR)

There are many articles and scholars' critics on ASEAN's response towards the Rohingya crisis that that ASEAN has indeed a limited capacity to interfere in the Rohingya crisis; however, it is rather because Myanmar has rejected offers to reconcile the situation, not only from ASEAN, but also from China. The non-intervention principle or ASEAN Way has become both a strength and weakness of ASEAN in advancing its cooperation. ASEAN has been trying to alleviate the humanitarian crisis in Rakhine State. However, this becomes challenging for ASEAN because of no interference to this issue. The main obstacle is that Myanmar's government rejects the term "Rohingya". According to the Chairman's statement of ASEAN during the 30th ASEAN summit in 2017, there was the need to establish a task force to respond to *"crisis and emergencies arising from the irregular movement of persons in Southeast Asia."* The statement used the term "stateless Muslim minority" instead of "Rohingya" and confirmed that they were "victims and affected communities of the conflict (The Diplomat, 2018)." Moreover, at the 35th ASEAN Summit held in Bangkok in November 2019, the ASEAN leaders exhibited their new strategy of regional humanitarian assistance and disaster reliefs. In consequence, ASEAN has introduced the ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management or AHA Centre. The latest crisis in 2017 in Rakhine State, the AHA Centre, handed over relief items to Myanmar authorities. Later in 2019, the AHA Centre was granted access to Rakhine state to monitor the situation and work on a safe return agreement of the Rohingya refugees who have fled to Bangladesh. Nonetheless, it is still

criticized by the international community that ASEAN assistance is insufficient and does not delve into the root causes of the problem. All of that is because of the ASEAN Way principle or the non-interference in the domestic affairs of ASEAN member countries. They encourage member states to initiate bilateral agreements rather than multilateral ones. As a result, Myanmar believes that they can rely on ASEAN rather than the intervention of the international community as well as displayed by Aung San Suu Kyi during her appearance at the International Court of Justice in December 2019 (Spandler, 2020).

ASEAN Parliamentarians for Human Rights: PHR is a human rights delegation of an intervention force. They are a group of current and former parliamentarians from Southeast Asian countries. The aims of the delegation are to 1. Prevent discrimination, 2. Uphold political freedom, and 3. Promote human rights and democracy across this region by using their specialist technique and innovative means. APHR encourages sustainable solutions throughout the work of human rights actors and civil society organizations. By intervention, it aims at increasing involvement of governments and multilateral bodies to ensure their accountability, upholding and enforcement of international human rights laws. The APHR conducted a fact-finding mission to Bangladesh from 21 to 24 January 2018 in order to examine the root causes, impacts, and implications of the crisis the consequence from the crackdown on Rohingya Muslim communities, in the Rakhine State by Myanmar security forces in 2017.The delegation visited the refugee camps located in Cox's Bazar and interviewed government officials and representatives of humanitarian organizations. The main focus of APHR was on gathering information about human rights violations that the Rohingya experienced in Myanmar. The delegation also focused on the rights concerns to the Rohingya refugees when living in Bangladesh. In addition, the delegation sought to obtain a clearer understanding of the proposed safe repatriation process. Finally, the delegation launched a final report with recommendations for ASEAN, Bangladesh, Myanmar, and other ASEAN member states' governments (ASEANMP.Org, 2018).

2.4.2 Malaysia's position on Rohingya Refugee Problems

Malaysia, like Thailand, has not ratified the treaties which are most directly relevant to the Rohingya refugee situation – namely the 1951 Refugee Convention and its 1967 protocol, and the two Statelessness Conventions; the1954 Convention relating to the Status

of Stateless Persons, and the1961 Convention on the Reduction of Statelessness. Even if Malaysia has not yet ratified any relevant treaties that oblige it to protect the Rohingya refugees, it does not leave the Rohingya without hope and rights. The 1954 Convention relating to the Status of Stateless Persons defines a stateless person as someone "who is not considered as a national by any state under the operation of its law." This definition is now part of customary international law and thus equally applies to states that are not a party to the convention (UNHCR, Guidelines on Statelessness No1: The definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons, 2012). In addition to being stateless, the majority of Rohingya who have fled Myanmar are refugees and thus have the right to protection under international law, and specifically the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (UNHCR, 1951).

Malaysia is a member of ASEAN. It took up the chairmanship of ASEAN in 1977, 1997, 2005, and most recently in 2015. Under the auspices of its membership of ASEAN, Malaysia has appointed one representative to the ASEAN Inter-governmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) (AICHR.org, 2020).

18 December 2012, the Heads of ASEAN member states adopted the ASEAN Human Rights Declaration (AHRD) (ASEAN Human Rights Declaration, 2013). The AHRD, while non-binding, demonstrates a regional commitment to the protection of human rights of all people, including stateless minorities such as the Rohingya. Under Article 18 of the AHRD: "Every person has the right to a nationality as prescribed by law. No person shall be arbitrarily deprived of such nationality nor denied the right to change that nationality (The ASEAN Human Rights Declaration:A Legal Analysis, 2014, p. 47)." The law should include norms of international law under both ratified international human rights treaties and customary international law *(ibid)*. The AHRD also imposes upon the Member States, including Malaysia and Thailand, "the primary responsibility (...) to promote and protect all human rights and fundamental freedoms (ASEAN Human Rights Declaration, 2013)" without distinction. The ASEAN Member States have also declared through the AHRD that:

"The rights of women, children, the elderly, person with disabilities, migrant workers, and vulnerable and marginalized groups are an inalienable, integral and indivisible part of human rights and fundamental freedoms (emphasis added)."

Article 16 of the AHRD provides that "every person has the right to seek and receive asylum in another State under the laws of such State and applicable international agreements (ASEAN Human Rights Declaration, 2013).

Among its fellow ASEAN member states, Malaysia was one of the most proactive responders to the issue of Rohingya refugees. The Malaysian government has a pro-active and assertive role in uplifting the Rohingya issue at an international level via the Organization of Islamic Cooperation: OIC and the United Nations: UN (Organization of Islamic Cooperation (OIC), 2017). It has always given precedence to the Rohingya refugee issues it hosted of the Islamic Summit on 19 January 2017. Consequently, on 4 September 2017, Malaysia reached to the foreign ministers of Iran and Turkey and proposed an ad hoc meeting at the OIC to discuss the issue of violence in Rakhine which took place on 25 August 2017. In parallel, the Malaysian ambassador, Raja Nushirwan Zainal Abidin, Deputy Director-General of Bilateral Affairs, Malaysian Ministry of Foreign Affairs called the ambassador of Myanmar, U Sien Oo to meet on September 5, 2017, and expressed concerns about the allegations of escalating violence from security operations against attackers. Malaysia emphasized that security measures implemented should not lead to another humanitarian crisis (The Ministry of Foreign Affairs, Malaysia, 2017) .

Moreover, Malaysia isolated itself from the informal statement of the ASEAN Foreign Ministers Meeting in 2017, where ASEAN launched a "Presidential Statement" instead of "Foreign Minister's Statement" which did not include the opinions of Malaysia. Malaysia urged Myanmar to seriously resolve the Rohingya issue during the ASEAN-Australia Counter-Terrorism Conference on 17 and18 March 2018. At this event, Najib Razak criticized Aung San Suu Kyi's ignorance towards Myanmar's treatment of Rohingya Muslims, which caused "suffering" and "displacement" and would lead to a risk of these population turning to join an extremist group as there was no hope for them in their homeland (ABC News Australia, 2018). Even though the speech of the Malaysian Prime Minister sounded aggressive given that it was addressing a leader of another country. on

the one hand, it is clear that Malaysia was highly concerned, that if the Rohingya refugee problems were not resolved, it might evolve into terrorist acts that would threaten the whole region.

Malaysia's legal framework is divided into its domestic and international contexts as both are important instruments to protect the rights of refugees. Domestically, the main legal framework that supervises Malaysia's treatment of refugee and its wider immigration regime is the *Immigration Act 1959/63*. The act does not recognize the term 'refugee'. However, it provides criteria of what constitutes a legal migrant and how to legally enter Malaysia. In response to the current dynamics and challenges of irregular migrants, and particularly to impose on them the harsh penalties, the Government of Malaysia successively amended the Act in 1997 and 2002 (The Commissioner of Law Revision, Malaysia, 2006). Malaysia has a legal framework for the detainment of refugees deemed as illegal immigrants. Section 5 of the Passport Act 1966 provides a legal framework for police or immigration officers to lawfully detain immigrants who unlawfully enter Malaysia on board of the vessels, as long as they are still within Malaysia territorial waters (Act 150, Passport Act 1966, 1966). Due to the lack of legal framework on refugees, the UNHCR has become a primary actor concerning refugee situation in Malaysia and it coordinates closely with the Malaysian authorities on the matter.

As refugee issue is closely linked to human trafficking, it is also important to underscore Malaysia's legal framework concerning this subject. The primary legal instrument that Malaysia has regarding human trafficking is the Anti-Trafficking in Persons Bill 2007, which has been amended and increased its focus towards "smuggling of migrants" (Anti Trafficking in Persons Bill 2007).

Internationally, there are two main international frameworks concerning the status and protection of the refugees: *the 1951 Convention relating to the Status of Refugees* and *the 1967 Protocol relating to the Status of Refugees*. However, Malaysia is not a party to either of these instruments. Therefore, Malaysia is not legally obligated to recognize the status or protect people classified as refugees under these two instruments, nor are they obliged to *the non-refoulement* principle enshrined in the convention. Yet, it should be noted that, in spite of not being a signatory to any of the afore-mentioned international instruments,

Malaysia is party to a number of international instruments that are committed to protect human rights regardless of the citizenship status. ~~Once~~ Malaysia is required to give protection to refugees according: article 14 of the Universal Declaration of Human Rights, Article 16 of the ASEAN Human Rights Declaration, article 22 of the Convention on the Rights of the Child (CRC), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (Aslam, 2015). Furthermore, Malaysia is fully committed to attain the non-legally binding Sustainable Development Goals (SDGs) during the United Nations Summit for Adaptation of the 2030. A goal of SDGs is to bring opportunities of education, health care among the refugees in Malaysia, it is a powerful tool that can promote a more inclusive protection for refugees in Malaysia (UNDP, 2015).

Same as in other ASEAN countries within non-signatory country, UNHCR plays a leading role in handling refugees' situation in the country. Their response includes determining the refugee status, issuing of UNHCR card and conducting the resettlement processes.

With the above-presented accounts, we could presume that Malaysia could play a significant role in ASEAN in setting up a paradigm for leadership in addressing the ongoing Rohingya refugee crisis (Tan, 2020).

2.4.3 Myanmar's position on Rohingya Refugee Problems

The population of Myanmar consists of 135 different ethnic groups, as recognized by the government. This recognition excludes the Rohingya ethnic minority. The government, as well as the dominant ethnic groups in Rakhine State, namely the ethnic Buddhist Rakhine, have opposed the use of the name 'Rohingya' ever since it was introduced as a mean of self-identification by the group. Rohing derives from the word 'Arakan' in the Rohingya dialect, and the added 'ga' or 'gya' means 'from' Scholars believe it provides the group with a collective, political identity. It puts a linguistically claim on the land they live on as well, which is one of the main reasons why the name is rejected by opponents (Ibrahim, 2018, pp. 17-24), who believe the group has no rights to this land. It

was estimated that there were one million Rohingya in Myanmar before 2017, making up nearly a third of the population of Arakan State. The Rohingya is one of the country's few Muslim groups, whereas the majority of the country's different ethnic groups are Buddhist (Lamboo, 2017). According to the Human Rights Watch, Arakan State lays in the Myanmar, India and Bangladesh border and so there have been movements between different ethnic groups in the last two thousand years, thus, the Rohingya is belived to be a result of this movement (Human Rights Watch, 2009). The Rohingya speak Bengali dialect, which is different from the one spoken in Bangladesh. This has been an argument of majority groups in Myanmar in claiming that the Rohingya are Bengali immigrants that came to Myanmar illegally (Human Rights Watch, 2000). The government of Myanmar does not recognize them as citizens but considers them to be 'resident foreigners' *(ibid)*. The successive military government has stated that the Muslims in northern Arakan are Bengalis, who have only recently arrived in Myanmar. The migration that took place during the British colonial rule is considered illegal, which provides grounds to refuse their citizenship. This exclusion has been the basis for discrimination and violence directed towards the Rohingya since the country's independence in 1948 *(ibid)*.

The denial of the identity of the Rohingya Muslim in Myanmar has become politically infected, and there are two blocs of both pro-and anti-Rohingya in Myanmar. The ones who have a positive opinion towards the Rohingya claim that Rohingya settled in Myanmar in the ninth century and blended with Bengalis, Turks, Moghuls, and Persians (Ahsan Ullah, 2016). This theory would go in line with Arakan's historically pluralistic demography of Arakan (Rakhine) (Albert & Maizland, 2020). In contrast, the anti-Rohingya group of people claims that Rohingya is a self-created identity constructed by illegitimate Chittagonian Bengali migrants arriving in Myanmar during the British colonial era. The Myanmar government uses the term Bengali to label the Rohingya status as outers and not recognized as citizens of Myanmar. To the Myanmar government, the Rohingya minority is called illegal migrants and "resident foreigners" (Ahsan Ullah, 2016).

2.4.3.1 How does Political Buddhism in nationalism, religion and ethnicity shape the mindset of Myanmar government towards the Rohingya people

Political Buddhism is when the Buddhist religion is used for nationalistic and political purposes to exclude non-Buddhists and thereby gain a sense of belonging (Farzana, Memories of Burmese Rohingya Refugees, Contested Identity and Belonging, 2017). Ethnicity and nationalism are also used to strengthen political Buddhism and being Burmese has been central for the Burmese society

. The concept of political Buddhism is not unique for Myanmar and is also comparable to the equivalent of Islam or Hinduism. However, that comparison is not be elaborated on here because, as mentioned, Rohingya are primarily living in the context of a Buddhist majority society. Nevertheless, Rohingya became a target of political Buddhism because they represented a group which did not belong to the Myanmar identity, they were the "others" (Farzana, 2017, p. 46) Noteworthy is that other minority groups, such as the Christian Karen, who because of their faith were favored during the British colonial rule (Farzana, 2017, p. 17), have been targeted by political Buddhism as well. According to the Burma Citizenship Law of 1982 the population of Myanmar was classified into three different categories: citizens, associate citizens and naturalized citizens (Farzana, 2017, p. 51). The law said that the ones who belonged to the citizen category were the so called "national races" of the country or those whose relatives settled in Myanmar before 1823 (*ibid*). There are 135 "national races" in Myanmar who are acknowledged by the government, but Rohingya is not one of them (Farzana, 2015, p. 55). Consequently, this makes it nearly impossible for Rohingya to become legitimized citizens since they are not recognized as a national race and it is very difficult to prove that your relatives have lived in the country since 1823. If there are no evidence provided to qualify as a citizen then that person would be an "associate citizen" and naturalized citizens are those who prove that their parents have lived in Myanmar before the independence in 1948 (Farzana, 2017, p. 51). Additionally, those who are approved for citizenship under the Union Citizenship Act of 1948, but do not qualify under the 1982 Citizenship Law are also qualified as associate citizens. For Rohingya it is practically impossible to qualify for any of the three categories (they do not qualify as associate citizens neither under the 1948 law, nor the 1982 one)

(*ibid*). The citizenship issue is not the only way in which political Buddhism is used to target Rohingya. Arbitrary arrests, disappearances, restrictions of movement, destruction of property and police harassment among other things, have been used to make Rohingya victims and destroy their identity (Farzana, 2017, pp. 234-235). Regardless of these abuses, statelessness is the primary outlier which creates the largest amount of suffering for the Rohingya population. It literally isolates them from the accepted Myanmar citizens since Rohingya are forced to live in rural areas with restricted infrastructure and harsh living conditions. Secondly, being exiled from their ancestral land Arakan (Rakhine), has created a rootlessness that has further eroded the Rohingya identity (*ibid*). Additionally, the region of Arakan have connections to ethnic and cultural influences for Rohingya; when their villages were attacked all aspects of their culture and ethnicity were also attacked. Myanmar deliberately targeted the Rohingya existence and identity (Farzana, 2017, p. 236). They did so because it was inherent for the political strategy of the Burmese military authorities. The systematic violence against Rohingya has been institutionalized, carried out during decades (Ahsan Ullah, 2016, p. 291). This use of systematic violence has become an important tool of political Buddhism. Since Rohingya is not part of the Burmese national identity, political Buddhism excludes the minority group and targets legitimate violence because they are seen as illegal insurgents. Rohingya Muslims say themselves that they will unite in response of the systematic violence. As mentioned, using violence as a tactic has proven to be a useful strategy of political Buddhism (Albert & Maizland, 2020). The Myanmar government say they conduct counter-terrorism operations as an excuse to the violence against Rohingya (BBC News, 2020). In fact, counter terrorism operation becomes code for targeting Rohingya Muslims in the name of political Buddhism. Finally, despite the destructive use of political Buddhism, the Rohingya identity has not been shattered and the Rohingya language, songs, and way of life have been kept throughout life in refugee camps (Farzana, 2017, p. 242). The devastation to Rohingya has been called a modern genocide (Albert & Maizland, 2020). However, Myanmar authorities have created a commission to investigate these allegations who rejected the alleged ethnic cleansing because Rohingya is not a recognized ethnicity in Myanmar. Although Rohingya are not citizens one can ask whether Myanmar still has an obligation to protect human beings residing within its territory, regardless of citizenship (Farzana, 2017, p. 243).

2.4.3.2 The alternative view towards the Rohingya Muslim in contemporary Myanmar

The previous part assumed the common practice of anti-Rohingya in Myanmar. However, many Myanmar citizens have spoken out against racism and intolerance. Pan Zagar networks have courageously spoken out against the hate speeches and actions towards Islam. "Let us watch what we say, so that hate between mankind does not proliferate" has become the slogan of the Pan Zagar networks. Apart from the Pan Zagar networks, there were others too spoken out, Mon Mon Myat - a journalist and filmmaker. He has supported the idea of respect to all Myanmar's ethnic communities in the move towards democracy. There was also the dissent from within the Buddhist community against the extremists. There was a report that, in 2014, some Buddhist monks worked with the local Muslim community in Mandalay to reduce tensions and promote inter-faith relations (Ibrahim, 2016, pp. 70-72).

2.4.3.3 Head of state's efforts to address the Rohingya refugee problems

As already presented in Chapter 1 on the Evolvement of the Rohingya problems and current crises, theses combined with the current internal politics in Myanmar, it is very challenging for Myanmar's civilian government under Aung San Suu Kyi to resolve these protracted problems. Aung San Suu Kyi, faces restrictions in addressing dealing with Rohingya issues, both from the executive structure and the constitutional legislative branch, which allows the military a superiority and control over the civil government. Additionally, Buddhist Burmese are ready to oppose Aung San Suu Kyi if she gives signals of support to the Rohingya. With these limitations, Suu Kyi has to be prudent when expressing opinions on this issue. At the same time, there has been a continuous effort to find a solution from the Rakhine State Commission to the Board of Directors for the recommendations from Rakhine State submitted on 16 August 2018. Despite numerous pressures, demands, and limitations, Aug San Suu Kyi still demonstrated her efforts to address the issues by communicating with the international community about the situation,

and the establishing a working group to identify concrete problems to be resolved (Ibrahim, The Rohingyas: Inside Myanmar's Hidden Genocide , 2016).

As for the communication with the international community about the situation, Aung San Suu Kyi was presented before the general debate of the 72th UN General Assembly from19 to25 September 2017addressing the assembly about national reconciliation and peace. In addition, there were interesting remarks from a senior president of an Islamic organization in Rangoon that Suu Kyi might have been overthrown by a military coup while she was abroad, had she reported negatively about security issues and violence in Rakhine State. Hence, it was better to have Aung San Suu Kyi in the country to control the situation because as long as Aung San Suu Kyi was present, there would still be hope to resolve the problem which Muslims Burmese were ready to fully support Suu Kyi. With regard to the establishment of the working group to identify concrete problems to be resolved, a concrete evidence is the forming of three working groups namely, the Advisory Commission on Rakhine State, the Committee for Implementation of the Recommendations on Rakhine State and the Advisory Board to the Committee for Implementation of the Recommendations on Rakhine State that were mandated for two years from September 2016 to August 2018 to work on the issues (Chaiaksornwej & Pipatrattanaseri, ASEAN and the Irregular Migration of Rohingya, 2019).

Myanmar has been ruling by the civilian government since 2011, although violence against the Rohingya people still persist leading to condemnation of Aung San Suu Kyi by the international community. Nonetheless, Aung San Suu Kyi tried to communicate with the international community, and ASEAN through the above mentioned three working groups from 2016-2018 on the matter. Neighboring countries of Myanmar and the international community could help push or join in solving problems as long as Daw Suu Kyi still holds has a key role in Myanmar's government *(ibid)*.

In terms of legal frameworks relating to refugees and stateless, Myanmar t has not ratified the 1951 Refugee Convention like many other countries. Yet, itis a UN member state, so it is expected to cooperate in good faith with the United Nations. According to Article 2(5) of the UN Charter, it provides that, "*All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter*". As stated

in article 7 of the UN Charter, the Human Rights Council is a subsidiary body of the United Nations established by General Assembly resolution 60/251, and as such, the acts of the Human Rights Council, and action that it mandates be carried out by mechanisms it establishes, are actions of the United Nations in accordance with the Charter (Chaiaksornwej & Pipatrattanaseri, ASEAN and the Irregular Migration of Rohingya, 2019).

2.4.4 Thailand's position on the Rohingya refugee problems

Thailand has played a significant role in Southeast Asia in providing shelter for refugees who fled violence and persecution from Cambodia, Laos, and Vietnam in 1975, including those from the conflict regions in Myanmar, who are still in nine temporary shelters along Thai-Myanmar border these days (Equal Rights Trust, 2014). Additionally, Thailand has been hosting hundreds of thousands of irregular migrants who search for better economic prospects over the years. Consequently, Thailand has been experiencing challenges of its land and sea borders while also accepting to protect the victims of persecution. As a consequence, Thailand has been experiencing challenges of its land and sea borders while also accepting to protect the victims of persecution while also offering protection to victims of persecution. Concerning that, Thailand and other countries in Southeast Asia shifted the law and policy framework to focus more on borders control and less protection (Equal Rights Trust, 2014). Thailand is a final destination for some Rohingya who fled Myanmar, while the majority of them use it as a transit country on the journey to Malaysia, Indonesia, and eventually, some reach Australia (ibid).

In terms of legal frameworks, Thailand is not party to either the statelessness or refugee conventions, however, many of the rights enshrined in these two conventions also promulgated the seven core international human rights instruments, namely: the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESPR); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention on the Rights of the Child (CRC); the Convention on the Elimination of All Forms of Racial Discrimination

(CERD); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and the Convention on the Rights of Persons with Disabilities (CRPD The principle of *non-refoulement- which applies to Rohingya migrants*- prohibits the removal of persons to states where there is a substantial risk of persecution or irreparable harm is enshrined in both the CAT and the ICCPR (See Article 3 of the CAT, and Article 2 in conjunction with Article 6 (right to life) and 7 (freedom from torture) of the ICCPR, as authoritatively interpreted by the Human Rights Committee in its General Comment No. 31, 2004).

As a member state of the ASEAN, the 2012 Human Rights Declaration, a non-binding document which nonetheless is a reflection of the human rights consensus in the region, is relevant to Thailand (ASEAN Human Rights Declaration, 2012). Thailand is also an active member of the ASEAN Inter-Governmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) (AICHR.org, 2020). Under these instruments, Thailand has a duty to protect the rights of refugees and stateless persons on its territory and subject to its jurisdiction. Thailand's strong treaty ratification record and the rights protections contained in the Thai Constitution are nonetheless undermined its international obligations by poor implementation and the non-compliance of many of Thailand's domestic laws.

Thailand has not ratified the 1954 Convention Relating to the Status of Stateless Persons, but it is automatically applied to states not a party to the Convention. Therefore, the Rohingya who have fled Myanmar are refugees and stateless, and thus have a rights to protection under international law, and specifically the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (UNHCR, 1951).

However, over the years, the Thai government has been regarding refugee situations as a temporary humanitarian issue to be handled according to the purview of foreign affairs, with protection being the responsibility not of Thailand but of the international community, with Thailand contributing *ad hoc* assistance as a member of that community. As such, the country lacks permanent legal and administrative frameworks for determining asylum claims and protecting refugee rights. Consequently, its response to

refugees has been described as "*ad hoc* and inadequate" (Ad hoc and Inadequate: Thailand's Treatment of Refugees and Asylum Seekers, 2012).

In the absence of a domestic refugee law framework, the Immigration Act of 1979 regulates all foreigners entering the state's territory, including refugees. While Thailand has for decades accommodated persons displaced by protracted conflict in Myanmar in temporary camps along Myanmar-Thailand border, the country does not formally recognize refugees who live outside these camps. Instead, there appears to be an effort to move refugees and asylum seekers in other parts of the country to the border camps, including through the employment if strategies such as immigration raids and detention. Urban refugees, including the Rohingya, are thus regarded as "illegal migrants" and on this basis are subject to arrest, detention and deportation under the Immigration Act (krisdika.go.th, 1979). This policy places the Rohingya at a disadvantage vis-à-vis Burmese refugees in border camps and is therefore discriminatory. It is also inconsistent with the principle of *non-refoulement*.

Nevertheless, the Thai government responds in a positive diplomatic way towards the Rohingya refugee problems, according to the Ministry of Foreign Affairs, Thailand. Thailand supports democracy in Myanmar so that Myanmar can maintain its status in a crisis of hatred for the Rohingya, including the political conditions that make Aung San Suu Kyi faces difficulty in directly addressing the Rohingya problems. Thailand plays "a good neighbor" role to Myanmar, by providing important assistance so as used to strengthen relations through academics and development cooperation. This focuses on the fields in which Thailand has the expertise and is in line with the needs of the Myanmar (Demand-driven approach). Thailand sees that it helps building trust in both the governments and the people (thaiembassy.org, 2012). After the violence events in Rakhine State, on 25 August 2017, the researcher finds that, Thailand expressed interesting opinions and concerns about the crisis, which are:

- Expressing concern over the situation and providing humanitarian assistance to affected people in both northern Rakhine State of Myanmar and Cox's Bazar City of Bangladesh.

- Willing to assist Myanmar in all areas to solve the problems at the root cause by encouraging Myanmar to implement the recommendations of the Advisory Commission on Rakhine State to have immediate and concrete results.

- Supporting the "ASEAN Chairman's Statement on the Humanitarian Situation in Rakhine State" on 23 September 2017 during the 72nd UN General Assembly, in which Thailand assists in the development of various infrastructure to continuously improve the quality of life in the area since 2012 (thaiembassy.org, 2017) .

- The Government of Thailand and Myanmar will establish a 3-year Thai-Myanmar Development Assistance Plan of USD 4.2 million. It covers projects assisting Myanmar and Rakhine State, including agriculture, education, public health, and economic infrastructure (*ibid*).

The various actions taken by the government of Thailand have demonstrated Thailand's role as "Good neighbors" that supports various dimensions of development in Rakhine State to help resolve problems and find solutions for Myanmar. Rather than choosing to pressure Myanmar and Myanmar have shown that they entrust to ASEAN member states rather than international organizations or external groups. It could be presumed that ASEAN and Thailand would be ones of the best actors that will help resolve problems effectively.

2.5 Extra-ASEAN: their positions on Rohingya refugee problems

2.5.1 Bangladesh's position on Rohingya refugee problems

Bangladesh also has a long struggle for nation-building and military dictatorship. Although it is a nation-state but based on Bengali nationalism, it cannot achieve the standards set by Western countries. The principles that are crucial for nation-building like the rule of law, democracy, and freedom of speech are neglected in this territory since its birth. It cannot fulfill the basic needs as well as human rights for its citizens. In this apparatus of a trinity of territory-nation-sovereignty, it becomes more susceptible to outsiders. Rohingya people currently living in Bangladesh have no refugee status or legal rights. They are registered as Undocumented Myanmar Nationals and depend on

humanitarian provisions. Three influx of Rohingya arrived in Bangkladesh e in 1992, 2012, and the largest influx arrived in 2017. They are not recognized as refugees, living in the precarious conditions of the encampment and deprived of minimum human rights. Moreover, they are identified as 'victims, problems, threats, or burden (Kirtsoglu, 2018)". According to Kirtsoglu (2018), Bangladesh has not ratified the 1951 UN Refugee Convention Relating to Refugees Status and its 1967 Protocol, and has no other legal frameworks and policies for refugees. Therefore, the government of Bangladesh treat non-nationals of Bangladesh according to some old laws such as the Passport Act (1920), the Naturalization Act (1926), Registration of Foreigners Act (1939), the Foreigners Act, (1946), the Bangladeshi Citizenship Act (1951), the Bangladeshi Control of Entry Act (1952) the Registration of Foreigners" Rules (1966), the Bangladesh Citizenship (Temporary Provision) Order (1972), the Bangladeshi Passport Order (1973), and the Extradition Act (1974) *(ibid)*.

In spite of the above mentioned background, Bangladesh has been providing humanitarian assistance to Rohingya refugees who fled the violent persecution from Myanmar. Bangladesh is allegedly the largest country that received the Rohingya refugee from 1978 to present periodically. From 1978 to 1992, the Bangladesh government conducted a liberalism policy towards the Rohingya refugees by granting shelters, asylum status as well as providing food and medical services. The government also called on humanitarian aid from various international organizations such as the United Nations High Commissioner for Refugees (UNHCR) (Sultana, 2016). After 1992, the government of Bangladesh adopted a repatriation policy under the auspices of the UNHCR between 1993 and 1997.

Nonetheless, the Bangladesh government changed its stance after August 1997 as it repeatedly further its policy of non-acceptance of Rohingya migrants who arrived after August 15, 1997. The new policy called "informal deportation of Rohingya refugees, enforced in 2008 and 2009 by pushing them back to the Naaf River. The deportation process was done informally because the Bangladesh government did not hand over the deportees to Myanmar's border force. In the latest crises from 2012 to 2017, Bangladesh enhanced the capacity of the border security agencies to block the influx of the Rohingya

migrants, or impose the law on those who did not have document. Additionally, the government of Bangladesh did not allow humanitarian agencies to operate at refugee camps freely. Another main factor behind Bangladesh's policy shift from liberalism to realism policy towards the Rohingya was due to the security incidents that have occurred domestically and internationally. According to intelligence sources, both registered and unregistered Rohingya in Bangladesh were allegedly involved with the operating organization of such incidents *(ibid)*.

2.5.2 Organization of Islamic Cooperation: OIC

The Organization of Islamic Cooperation (OIC) is the second-largest inter-governmental organization after the United Nations with a membership of 57 states across the globe. It was stated that the organization is the collective voice of the Muslim world, and aims to protect the interests of, and strive for the safeguard of the Muslim world in the spirit of promoting harmony and international peace among various people of the world. The permanent delegation of the OIC located at United Nations and the European Union. Its official languages are Arabic, English and French (OIC, 1969). The OIC has a strong affirmation regarding the Muslim Rohingya refugee problems periodically from 2009 to 2020 (OIC, 2020) (RefWorld.org, 2018) as described below:

2010 – The Secretary General of the Organization of the Islamic Conference (OIC), Professor Ekmeleddin Ihsanoglu expressed concerns over report confirming that hundreds of Muslim Rohingya refugees were missing and drowned in late December 2008 in Thai territorial waters. Additionally, Mr. Ihsanoglu appealed to the UNHCR to undertake an independent investigation and provide neccessary assistance to the Muslim Rohingya refugees. He emphasized the need for the Thai government to conduct, as promised by Thai Prime Minister, an urgent investigation on the circumstances leading up to this tragic incident and refer those found responsible to justice. He affirmed that he would follow up on developments of this matter with the Thai government *(ibid)*.

2011 - The Secretary-General of OIC visited Bangladesh to discuss the establishment of an independent human rights commission in the OIC and the implementation of a ten-year of action program. The human rights body aimed for fostering peace and security, and address the Rohingya refugee issues. , The Secretary-General then attended the 13th Session

of Human Rights Council (HRC) held in Geneva and discussed the issues related to the situation of Rohingya refugee *(ibid).*

2012- OIC condemned Myanmar for the acts of violence and intimidation against the peaceful Rohingya population and expected Myanmar authorities to stop violence in the Arakan region. It also urged Myanmar to recognize the citizenship of the Rohingya Muslims according to international standard *(ibid).*

2013 – 2016 – the Secretary-General met with the Prime Minister of Malaysia, and the Minister of Foreign Affairs of Bangladesh to discuss concerns over the Rohingya Muslim problems *(ibid).*

2017 – OIC held an emergency ministerial meeting in Kuala Lumpur, Malaysia, to discuss the situation of Rohingya Muslim in Myanmar. On 15 February 2017, OIC sent an official condemnation on the violence against Rohingya in Myanmar (RefWorld.org, 2018).

2018 – OIC raised the plight of the Rohingya at the general assembly of the United Nations.

2019 to 2020 – OIC provided urgent aid to the Rohingya Muslim during monsoon season and provided advocacy to the government of Bangladesh. In the same year that OIC welcomed the United Nations General Assembly's resolution, which condemned strongly the government of Myanmar on the rights abuses against Rohingya Muslims and other minority groups in Myanmar. An unanimous decision taken on23 January 2020 by the International Court of Justice (ICJ) in The Hague to order provisional measures to prevent further acts of genocide against the Rohingya from occurring in Myanmar. This resolution followed the report on 22 October 2019 of the UN Independent International Fact-Finding Mission (FFM) to Myanmar. The report declares that Myanmar failed to meet its obligations under the Genocide Convention to prevent, investigate, and enact effective legislation criminalizing and punishing genocide. Myanmar was further ordered by the Court to present a report after four months, and then every six months thereafter, on its compliance with the Order. The OIC called upon Myanmar to fully comply with such order. It urged the international community to extend further support, and legal efforts for the justice and accountability for the Rohingya people, and to redouble all diplomatic and

political endeavors to ensure the safety and protection of the Rohingya Muslim minority *(ibid)*.

2.5.3 The Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC)

The Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation or BIMSTEC is a regional institution that contains seven member states lying in the shore and adjacent areas of the Bay of Bengal establishing a contiguous regional unity. The organization was founded on 6 June 1997 through the Bangkok Declaration. There are seven member states from Southeast Asia (two members) and South Asia (five members), namely: Myanmar, Thailand, Bangladesh, Bhutan, India, Nepal, and Sri Lanka. Initially, this regional bloc contains four member states with the acronym 'BIST-EC' (Bangladesh, India, Sri Lanka, and Thailand Economic Cooperation) for the purpose of the economic cooperation. Myanmar joined the institution on 22 December 1997 during a special ministerial meeting in Bangkok, and the Group was renamed as 'BIMST-EC' (Bangladesh, India, Myanmar, Sri Lanka, and Thailand Economic Cooperation). This followed by an admission of Nepal and Bhutan at the 6th ministerial meeting in February 2004 in Thailand. Eventually, the name of the group was changed to the 'Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation' (BIMSTEC) (BIMSTEC, 2014). The areas of their cooperation, including 1. Trade and investment, 2. Technology, 3. The energy sector, 4. Transport and Communication, 5. Tourism, 6. Fisheries, 7. Agriculture, 8. Cultural Cooperation, 9. Environmental and Disaster Management, 10. Public Health, 11. People and People Contact, 12. Poverty Alleviation, 13. Counter Terrorism and Transnational Crimes, and 14. Climate Change *(ibid)*. India was designated a leader in the area of counter-terrorism and transnational crimes and administer of six sub-groups, each works on a specific aspect of CTTC cooperation, and they all report to the BIMSTEC Joint Working on CTTC listed as below:

- Sub-Group on Narcotic Drugs, Psychotropic Substances and Precursor Chemicals (SGNDPSPC); [Lead Shepherd – Myanmar]

45

- Sub-Group on Intelligence Sharing (SGIS); [Lead Shepherd – Sri Lanka]
- Sub-Group on Legal and Law Enforcement Issues (SGLLEI); [Lead Shepherd - India]
- Sub-Group on Anti- Money Laundering and Combating the Financing of Terrorism (SGAML-CFT); [Lead Shepherd -Thailand]
- Sub-Group on Human Trafficking and Illegal Migration; [Lead Shepherd - Bangladesh]
- Sub-Group on the Cooperation on Countering Radicalization and Terrorism. [Lead Shepherd – India]

The latest and the second meeting of national security chiefs of BIMSTEC member states was hosted by Bangladesh in Dhaka on 28 March 2018. The meeting reviewed the progress on the outcome document of the first meeting of BIMSTEC national security chiefs held in New Delhi, India, on 21 March 2017. The meeting emphasized the importance of working together and information and data sharing toaddress common security threats, both traditional and non- traditional ones, in the region. Themeeting also considered the report of the First Track 1.5 BIMSTEC Security Dialogue Forum held in New Delhi, India, on 22 September 2017. The meeting underscored the importance of participation of Think Tanks, Civil Societies, etc. in the security dialogue and agreed to continue convening the Track 1.5 Dialogue annually. Bangladesh hosted the second meeting of the Track 1.5 BIMSTEC Security Dialogue Forum in 2018. Similar to ASEAN's structure and bodies, BIMSTEC has its own structure of policy making bodies, which are summit, ministerial meetings, foreign ministerial meeting, trade/economic meeting, senior official's meeting (SOM), and experts group meeting *(ibid)*.

From the researcher's analysis, the BIMSTEC institution was considered as an organization with loosen integration similar to ASEAN as the issue of the Rohingya refugees was considered sensitive and there has been no consensus from BIMSTEC as stated by its Secretary-General during the Summit in Kathmandu, Nepal August 30, 2018:

"From the vantage point of the secretariat, we feel that Bangladesh and Myanmar have shown diplomatic maturity by not raising the issue when the organization is not ready to deal with an issue such as this," Islam said, replying to a question. Every organization has its own characteristics, and BIMSTEC is meant for the technical and economic cooperation, he said. Asked whether it is possible to move forward, keeping a major issue aside, Islam said, "It is possible to work on the issues where we have a clear consensus." "Progress in areas where we have a consensus should not suffer for the areas where we don't have a consensus. We continue to keep up the progress in trade, investment, connectivity, and energy cooperation." "No member states actually proposed that the Rohingya issue should be on the agenda. So that has not been on the agenda, so there was no scope for holding discussions on this," Islam said. "The agenda was prepared and circulated by the host country [Nepal], and it was agreed upon by the member states." Bilaterally, Bangladesh, and Myanmar have not stopped trade despite the differences they have on the Rohingya issue, according to Islam (bbcnews24.com, 2018). In addition, there were other critiques that the BIMSTEC summit skipped the Rohingya issue, but there was a report of an official's statement of the Bangladesh Prime Minister Sheikh Hasina addresses the Rohingya problems at the Summit in Kathmandu, Nepal August 30, 2018, that "I urge the international community to take specific steps to build up pressure on Myanmar to implement the deal," Hasina added, without specifying which measures she had in mind (Reuters, 2018)."

2.5.4 United Nations

UNHCR plays an important role regarding the Rohingya refugee problems and leads humanitarian assistance along with other humanitarian organizations. After 40 years of the first Rohingya exodus, International Refugee Regime (IRR) has now many more instruments, policies, strategies along with other UN human rights and covenants. Most importantly, now IRR has a more substantial legal basis from the Organization of African Unity Convention, UNExCom Conclusion (1980), and the 'Responsibility to Protect' commitment in 2005. Despite the extensive number of policy tools and mandate for securing world peace and security, the international community and UNHCR could not end the Rohingya crisis. Moreover, they witness a more substantial flow this time than in 1978.

The State Law and Order Restoration Council (SLORC) compounded decisive military crackdown against the so-called Rohingya militant group in 1988 but mainly to clear the area for new cantonment, which forced the exodus of 250,000 Rohingya refugees into Bangladesh in 1991 (Bjornberg 2016:153). UNHCR again encouraged repatriation and reconciliation (War and Wong 1997:85). Moreover, the international community rewarded and welcomed Myanmar into the international arena lifting bans and sanctions against it. UN also observed that the situation was being improved in Myanmar. Nevertheless, Myanmar increased its persecution against the Rohingya Muslims in 2012. Since 2012, the UN-coordinated with its partners in providing humanitarian assistance to both Myanmar and Bangladesh. According to Inter Sector Coordination Group: ISCG, Bangladesh, various agencies of the UN has strengthened partnerships with other NGOs in response to humanitarian emergency management. They work in the cluster of prevention, mitigation, preparedness, disaster, response, recovery and reconstruction perspectives through United Nations for the Coordination of Humanitarian Affairs (OCHA), United Nations Development Programme (UNDP), United Nation Children's Fund (UNICEF), World Food Program (WFP), World Health Organization (WHO), Food and Agriculture Organization (FAO), United Nations (UNHCR) and Immigration Organization for Migration (IOM) (ISCG Bangladesh, 2020). These agencies lead and coordinates inter-agency humanitarian response preparedness and response in support of national governments as well as providing the government of Bangladesh with humanitarian tools and services in emergencies *(ibid)*.

2.6 ASEAN   Mechanisms towards the Rohingya refugee problems

2.6.1 The ASEAN Charter

The ASEAN Charter was adopted as the constitution for the ASEAN at the 13th ASEAN Summit in November 2007 (www.asean.org, 2015). The purpose was to lay a concrete foundation for this association, which has existed for more than 40 years with no written constitution. The Charter aims at integrating and transforming member states to become one community by applying four principles:

1. Respect for the independence, sovereignty and territorial integrity of member states;

2. Peaceful settlement of disputes;

3. Non-interference in member states internal affairs;

4. The right to live without "external interference

ASEAN confirmed its legal personality in its Article 3 of the ASEAN Charter that, "ASEAN, as an inter-governmental organization, is at this moment conferred legal personality." In addition, it has set forth its rights and obligations, hence its duty in Article 5 (3), "In the case of a serious breach of the Charter or noncompliance, the matter shall be referred to Article 20." Unfortunately, Article 20 (1, 2, and 4) under Consultation and Consensus has laid out very shortcoming practices which are below the international standards, which states, "1. As a basic principle, decision-making in ASEAN shall be based on consultation and consensus", "2. Where consensus cannot be achieved, the ASEAN Summit may decide how a specific decision can be made," and, "4. In the case of a serious breach of the Charter or noncompliance, the matter shall be referred to the ASEAN Summit for decision." This particularly means that an issue would have to be put on hold until it can be brought up formally in an ASEAN Summit, which is held only once a year, and all members must agree to it as a serious matter of concern by consensus to then address the issue. If these steps did not follow through, the issue would have to be put aside and then (possibly) be addressed the following year again. The main reason for such practice is because ASEAN projects a family image, preferring inclusion and compromising to isolation and judgment, the ASEAN Way (Masilamani & Peterson, 2014). The ASEAN Way can be described as a distinctive and agreed approach of ASEAN members. This approach is based on shared and acceptance of common behavioral norms (Weatherbee, 2009). Any disputes over member states' behavior will be dealt with based on consultation and consensus is the principles that ASEAN holds dearly. This custom is strictly embedded in the heart of the Charter, "Respecting: the fundamental importance of amity and cooperation, and the principles of sovereignty, equality, territorial integrity, non-interference, consensus and unity in diversity." Fortifying the norm, Article 2 (2), the Principle states, "ASEAN and its member states shall act in accordance with the following principles: (a) respect for the independence, sovereignty, equality, territorial integrity, and

national identity of all ASEAN member states; (e) non-interference in the internal affairs of ASEAN member states; (f) respect for the right of every member state to lead its national existence free from external interference, subversion and coercion; and (g) enhanced consultations on matters seriously affecting the common interest of ASEAN." Nevertheless, the Charter still acts as a milestone of a concrete structure that has value to set a clear and focused direction for ASEAN, the first time in forty-one years of the organization's history. This structure has laid the framework to address non-compliance with agreements and settle disputes in an objective and binding matter. Without this Charter, ASEAN would not have the agreed-upon criteria for its members to account for adverse impacts.

ASEAN Charter is legally binding, and all ten member states ratified it before the 14th ASEAN Summit in December 2008. Myanmar ratified this Charter on 18 July 2008 (Reuters, 2019); meaning that all the provisions stated in the Charter are binding to the country and it shall be retained accountable for its illegal actions in the region. In terms of human rights, the ASEAN Charter has set forth its principles as follows: Preamble of ASEAN Charter: "Adhering to the principles of democracy, the rule of law and good governance, respecting for and protection of human rights and fundamental freedoms." Article 1 Purposes: "7. to strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the member states of ASEAN, 11. To enhance the well-being and livelihood of the peoples of ASEAN by providing them with equitable access to opportunities for human development, social welfare and justice." Article 2 Principles: "2. ASEAN and its Member States shall act in accordance with the following Principles: (i) respecting for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice; and (j) upholding the United Nations Charter and international law, including international humanitarian law, subscribed to by ASEAN member states." The ASEAN Charter demanded a Human Rights body in Article 14: "1. In conformity with the purposes and principles of the ASEAN charter relating to the promotion and protection of human rights and fundamental freedoms, ASEAN shall establish an ASEAN human rights body. 2. This ASEAN human rights body shall operate

in accordance with the terms of reference to be determined by the ASEAN Foreign Ministers Meeting."

With the above provision, the Charter has caused various controversies, as the principles of non-interference and human rights mentioned-above contradict each other. Although we can see that, various clauses adhere the protection of human rights in the region, the principles regarding the non-intervention rule out the possibilities to address these issues in an effective or timely manner. The Charter does not authorize ASEAN, as the regional organization, to have the power to impose sanctions or punish countries that violate the clauses set out and, would therefore, be limited in effectiveness. As Article 14 provides that ASEAN must have a human rights body, the ASEAN's newer members including Cambodia, Laos, Myanmar and Vietnam were reluctant and protested against the formation of a functional ASEAN Human Rights body which might lead to accusations of human rights abuse within their borders. Moreover, these states view that these constructions might lead to attempts by outsiders to pursue their own interests in various possible aspects in their countries. Non-interference, in this regard, is given weight for its ability to preserve the domination and manipulation of weaker members by more powerful members. Notwithstanding, the terms were agreed upon and led to the establishment of ASEAN Intergovernmental Commission on Human Rights (AICHR) on the ASEAN Summit 23 October 2009 (AICHR.org, 2020).

2.6.2 The ASEAN Intergovernmental Commission on Human Rights (AICHR)

In reference to the ASEAN Charter, the ASEAN Intergovernmental Commission on Human Rights: AICHR turned out to only "promote and protect human rights" as clearly stated in its Article 1, Purposes. The Terms of Reference of the AICHR states in the Principle clauses as follows: "The AICHR shall be guided by the following principles: 2.1 Respect for principles of ASEAN as embodied in Article 2 of the ASEAN Charter, in particular: a) respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN member states; b) non-interference in the internal affairs of ASEAN Member States; c) respect for the right of every Member State to lead its national existence free from external interference, subversion and coercion; AICHR; d) adherence

to the rule of law, good governance, the principles of democracy and constitutional government; e) respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice." The Principles of AICHR, again, return to the norms of non-interference among the ASEAN members laid in the ASEAN Charter, rendering the body to have absolutely no enforcement power (German-Southeast Asian Center of Excellence, 2019). The definition of promotion and protection, hereby only includes raising awareness, advising, sharing information, and advocating for the member states. It cannot pass judgments regarding the violation of human rights in the region or of the member states. There did not mention any enforcing power nor the ability to address country-specific human violations.

2.6.3 ASEAN Ministerial Meeting on Transnational Crime (AMMTC)

ASEAN's response to the Rohingya Refugee problem was implemented, but very limited in scope, between 2009 and 2016. However, the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) held a meeting in July 2015 to discuss regional solutions to the problem, and search for a balanced approach between humanitarian response and law enforcement. "ASEAN remained focused on the matter throughout 2015 with the establishment of a trust fund to provide emergency humanitarian support for victims, and the inclusion of people smuggling in the AMMTC's portfolio. These developments provided impetus for the signing of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) in November 2015. Three ASEAN member countries have ratified the ACTIP, including Thailand, a major transit point for maritime migration from Myanmar and Bangladesh. Having been criticized for reportedly connected to the people traffickers, the Thai government has increased anti-trafficking law enforcement efforts and prosecuted cases of abuse of illegal migrants. Unlike Malaysia and Indonesia, they took the path of quiet diplomacy by convening meetings with Aung San Suu Kyi. Indonesia's Foreign Minister Retno Marsudi held a bilateral meeting with Aung San Suu Kyi on Rohingya refugee problems on 6 December 2016. This followed by Myanmar's call for an ASEAN foreign ministers retreat in Yangon on 19 December 2016

to discuss recent developments in Rakhine. This retreat, the first of its kind, failed to reach any agreements that grant ASEAN any effective role to play. Suggestions such as establishing an ASEAN eminent persons' group to lead a fact-finding mission or utilizing ASEAN disaster relief mechanisms to address humanitarian needs were brushed aside. While Myanmar promised to grant necessary humanitarian access, it remained ambivalent about when and how ASEAN could participate. By convening the retreat, Myanmar intended to keep ASEAN foreign ministers appraised of the situation and urged ASEAN countries to give Myanmar time and space to address the problem. It had no desire to build any new mechanism involving ASEAN at this time, pending the work of the Advisory Commission on Rakhine State led by former UN Secretary-General Kofi Annan, which is due to submit its final report and recommendations in the second half of 2017 (Hoang & Ye, 2016).

2.6.4 Treaty of Amity and Cooperation in Southeast Asia (TAC)

The "Flexible Engagement" was initiated by late Dr. Surin Pitsuwant who is considered as a model for managing the crisis in ASEAN based on ASEAN Way principle and in line with the Treaty of Amity and Cooperation in Southeast Asia (TAC). TAC was endorsed at the 1st ASEAN Leadership Summit in 1976, and was revised in 1987, 1998 and 2010. The main purpose is to promote perpetual peace, everlasting amity, and co-operation among the people of Southeast Asia, which would contribute to their strength, solidarity, and closer relationship. In their relations with one another, ASEAN member states which are considered as the high contracting parties shall be guided by the following fundamental principles;

a. Mutual respect for the independence, sovereignty, equality, territorial integrity, and national identity of all nations.

b. The right of every State to lead its national existence free from external interference, subversion, or coercion.

c. Non-interference in the internal affairs of one another.

d. Settlement of differences or disputes by peaceful means.

e. Renunciation of the threat or use of force and

f. Effective co-operation among themselves (ASEAN, 1976).

These principles align with the statement of the 35th ASEAN Summit, which emphasized on the TAC during its signing ceremony that was initiated in 2003. ASEAN encourages and promotes cooperation and partnership with none-ASEAN countries. Non-ASEAN countries who want to build cooperation must accept the principles of ASEAN, and sign TAC (Srisaengnam, 2019).

2.7   Rules and Laws and Regimes in relation to the Rohingya refugee problems

2.7.1 Universal Declaration of Human Rights (UDHR)

According to the article 15 of the Universal Declaration of Human Rights (Universal Declaration of Human Rights: UDHR, 1948) everyone has the right to a nationality and no one shall be arbitrarily deprived of his nationality. The scope of arbitrariness includes the prohibition against ethnic discrimination and the prohibition against statelessness *(ibid)*. The prohibition of racial and ethnic discrimination is stated in article 2 of the UDHR and in every international and regional human rights instrument. Hence, these instruments limit states from depriving nationality and any deprivation of nationality based on racial or ethnic discrimination will be judged as arbitrary (CEDAW, 2008).

2.7.2 Statelessness and Refugee Law

According to the 1954 Convention Relating to the Status of Stateless Persons, Stateless person is *'a person who is not considered as a national by any state under the operation of its law'*. This definition is now part of customary international law, (UN, 2006) and thus applies also to states not party to the Convention. In addition to being stateless, the majorities of Rohingya who have fled Myanmar are refugees and thus have a right to protection under international law, and specifically the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.

2.7.3 ASEAN Human Rights Declaration through AICHR

The most important instrument of human rights in ASEAN is the Human Rights Declaration, which the ASEAN leaders announced in November 2012 and established certification. Various human rights appear in the Universal Declaration on Human Rights, including new rights such as rights to develop peace, rights to information, news, personal and rights in a sustainable environment. This Declaration is considered as the main instrument of ASEAN in the implementation of human rights. However, many sectors are still concerned that the declaration may allow some of member states to avoid restricting certain rights by its the internal laws., which creates concerns, that the rights that the member states provide will have lower standards than human rights principles that stated in the Universal Declaration on Human Rights and Vienna Declaration and Program of Action, 1996. Therefore, the ASEAN member states issued a statement called Phnom Penh Statement regarding the ASEAN Declaration on Human, with significant content in the third page confirming that all member states must comply with the responsibilities in accordance with the charter. This declaration has been initiated by AICHR (National Human Rights Commission of Thailand, 2016). The declaration is a non-binding political instrument exhibiting the intention of ASEAN that it promotes and protects human rights, which, in the long-term, protect the interest of the people and ASEAN region. AHRD consists of the following chapters:

1) General principles: this chapter refers to conditions of basic rights and freedoms that each individual should have equality and fairness without discrimination.

2) Civil and political rights: chapter describes the relationship between individuals and the state, and the protection of the basic rights of individuals in each case.

3) Economic, social, and cultural rights; there refers to the confirmation of ASEAN Member States to protect, promote and support economic, social, and cultural rights in order to achieve the maximum welfare that a person should have.

4) The right to development; there states the needs of ASEAN member states in its quest for economic, social, cultural, and political development along with the rights of individuals in participation, support, exercise their rights, and receive fair benefits from such development.

5) The right to peace; there state the right of all people to access peace, and livelihood. To fully achieve these rights, the ASEAN member states must promote cooperation in order to strengthen the stability in the region *(ibid)*.

By recognizing the importance of the role of AICHR as an institution responsible for the promotion and protection of human rights Southeast Asia region in all aspects, it will lead to the creation of an ASEAN Community with a people-centered scheme. In addition, the ASEAN has confirmed its commitment to promote and protect human rights and freedoms according to ASEAN charters, rules of laws, and good governance within the region. Lastly, this declaration complies with the United Nations Declaration on Human Rights: UDHR and Vienna Declaration and Programme of Actions, and also other international charters on human rights *(ibid)*.

2.7.4 International Bill of Human Rights

In 1966, the member states of UDHR accepted a legal obligation to protect human rights and fundamental freedoms. The legal obligation was codified by two covenants that entered into the force in 1976; International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights. Along with the human rights declaration and the two protocols to the ICCPRs, these instruments are collectively known as the Bill of human rights. In addition, other relevant universal human rights instruments as follows;

1. International Convention on the Elimination of All Forms of Racial Discrimination (1965);

2. United Nations Convention on the Elimination of All Forms of Discrimination against Women (1979);

3. United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984);

4. United Nations Convention on the Rights of the Child (1989);

5. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990).

Such human rights regarding the right to life, right to freedom from torture or cruel, punishment, degrading treatment are listed in the ICCPR. These rights must always be protected even if in a situation of public emergency as they are non-derogable.

2.8 Advisory Commission on Rakhine State

In September 2016, following a request from Aung San Suu Kyi, the Kofi Annan Foundation and the Office of the State Counsellor established an Advisory Commission on Rakhine State. The commission aims at proposing concrete measures for improving the welfare of 'all people' in Rakhine state (The Advisory Commission on Rakhine State, 2017). As this commission was a national entity, they were very careful of the term 'Rohingyas'. In August 23rd 2017, the Commission had submitted its final report to national authorities (Advisory Commission on Rakhine State, 2017). The report included several recommendations focused specifically on Rohingyas' citizenship verification, rights and equality before the law, documentation, the 21 situations having caused internally displacement, and freedom of movement *(ibid)*. However, only two days after the report was submitted, the brutal military crackdown began and the large number of Rohingya refugees fled to Bangladesh.

2.9 Regional Migration Governance (RMG)

The Regional Migration Governance (RMG) is a regional forum to discuss, improve, corporate, and initiate dialogues between states at the regional level. It also promotes more effective dialogues and cooperation among governments and international organizations at the global level regarding the policy on the movement of people (Nita, 2017).

2.10 Regional Consultation Processes (RCPs)

Regional Consultative Processes on Migration (RCPs) are important mechanisms that foster inter-State cooperation and partnership on migration issues by bringing states together for informal, non-binding dialogue and agreement at the regional level (Chaiaksornwej & Pipatrattanaseri, ASEAN and the Irregular Migration of Rohingya, 2019). In addition, the RCPs is organized repeatedly at the government official's level, technical experts, and representatives of various international non-governmental

organizations. It focuses on four perspectives; firstly, economic dimension focusing on economic liberalization and migration movement. Secondly, political security dimension, which focuses on controlling migration and combating irregular migration flows. Thirdly, the Human Rights dimension focusing on the protection of migrant rights. Lastly, Institutional dimension focusing on formalization of the scope, legalization, and limitation of regional norms (IOM, 2015).

2.11 Bali Process

Bali Process or Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime Founded in 2002, currently has forty-eight members consisting of forty-two countries, three territories, and special administrative territories, and three organizations includes:

1. All ASEAN member states

2. Full ASEAN Dialogue Partners namely Australia, China, India, Japan, New Zealand, South Korea, and the United States.

3. Twenty-five other countries, comprising of six Middle Eastern countries, namely Iran, Iraq, Jordan, Syria, Turkey, United Arab Emirates; seven South Asian countries, which are Afghanistan, Bangladesh, Bhutan, Maldives, Nepal, Pakistan, and Sri Lanka; two countries in East Asia which are North Korea and Mongolia, one Southeast Asian country: Timor-Leste, and nine countries in the Pacific region: Fiji, Kiribati, Nauru, Palau, Papua, New Guinea, Samoa, Solomon Islands, Tonga, and Vanuatu.

4. Three territories and special administrative territories, including New Caledonia, Hong Kong, and Macau.

5. Three international organizations under the umbrella of the United Nations: Office of the United Nations High Commissioner for Refugees or UNHCR, United Nations Office on Drugs and Crime or UNODC and International Organization for Migration or IOM.

The Bali Process was developed by the Australian Government, which signed the 1951 Convention Relating to the Status of Refugees, and the 1954 Convention Relating to the Status of Stateless Persons. Since Australia is a vast country with good economy, it attracts numbers of migrants each year. There was an estimation that around 65,387 irregular migrants arrived in Australia between 1976 and 2016 (BBC News, 2016). Many these irregular migrants migrated by using Malaysia or Indonesia as a transit country. However, the government of Australia treated their cases through the asylum seeker registration process according to humanitarian principle. This was an underlined reason for the Australian government to initiate cooperation with many countries, especially in the Asia Pacific region. It started with Indonesia, which was considered as a strategic 'transit country'. Furthermore, Australia has appealed for cooperation from countries of origin, transit countries, and destination countries to share burdens regarding irregular migrant movements. This led to inviting other countries to participate in the first meeting on the framework of the Bali process between 26-28 February 2002 in Bali, Indonesia, chaired by the Australian and Indonesian Foreign Ministers, and the foreign ministers of thirty-eight countries, IOM also joined this meeting (The Bali Process, 2002). The structure of Bali Process is summarized and presented as the below:

Structure of Bali Process

Regional Ministerial Conference

Ad Hoc Group: AHG
1.) Ad Hoc Group Senior Officials Meetings
2.) Ad Hoc Group, Technical Experts, Working Group on Irregular Movements
3.) Regional Immigration Liaison Officer, Network: RILON
4.) Working Group of Trafficking in Person
5.) Working Group on Disruption of Criminal Networks Involved in People Smuggling and Trafficking in Persons
6. Task Force on Planning and Preparedness: TFPP

Regional Support Office: RSO

Figure 4: Summary of Bali Process Structure (Bali Process, 2002)

59

The mandate of Bali Process can be described into three sections:

1. Perspectives on problems: the problem of irregular migrants is related to poverty and inequality of economic opportunity, and political conflicts. Consequently, these irregular migrants are perceived as 'victims' rather than illegal migrants (The Bali Process, 2002).

2. Resolutions on the problems, based on:

    2.1 Provision of assistances regarding social and economic dimensions including human rights promotion and statelessness reduction

    2.2 Focus on "human rights" approach applied on emergency and long-term measures to protect the people smuggling and human trafficking victims.

    2.3 "Non-refoulement principle" and it is strictly applied to ratified partners. *(Ibid)*.

3. Non-binding principle: this may be the most challenging point that hinder the concrete resolution for the Rohingya refugee problems. (The researcher).

2.12 Conceptual Framework

Defying and classifying Rohingya according to different migration statuses
Refugees/ Asylum Seekers/ victims of human trafficking and people smuggling/ stateless persons/ illegal migrants

Actions, laws and policies (mixed approached) at National Level
REALISM & LIBERALISM

Actions, laws and policies at Regional Level
REGIONALISM

Actions, laws and policies at International Level

- UNHCR
- INGOs
- Bangladesh & Myanmar
- OIC
- BIMSTEC
EXTRA-REGIONAL APPROACH

Actions, laws and policies based on **"Realist" Approach:**

1. Strengthen national law regarding "human trafficking and people smuggling" laws

Actions, laws and policies based on **"Liberalism" Approach:**
1. Development assistances/ disaster relief assistances
2. Human Rights Based approach

Regional Migration Governance: RMG

Regional Consultation Processes: RCP

ASEAN as a mediator
- **AMMTC**
- **ACTIP**
- **TAC**
- **AICHR**

Non-state Actors (INGOs) Roles and Responsibilities

Resolution on the Rohingya Refugee Problems

Figure 5: Conceptual Framework

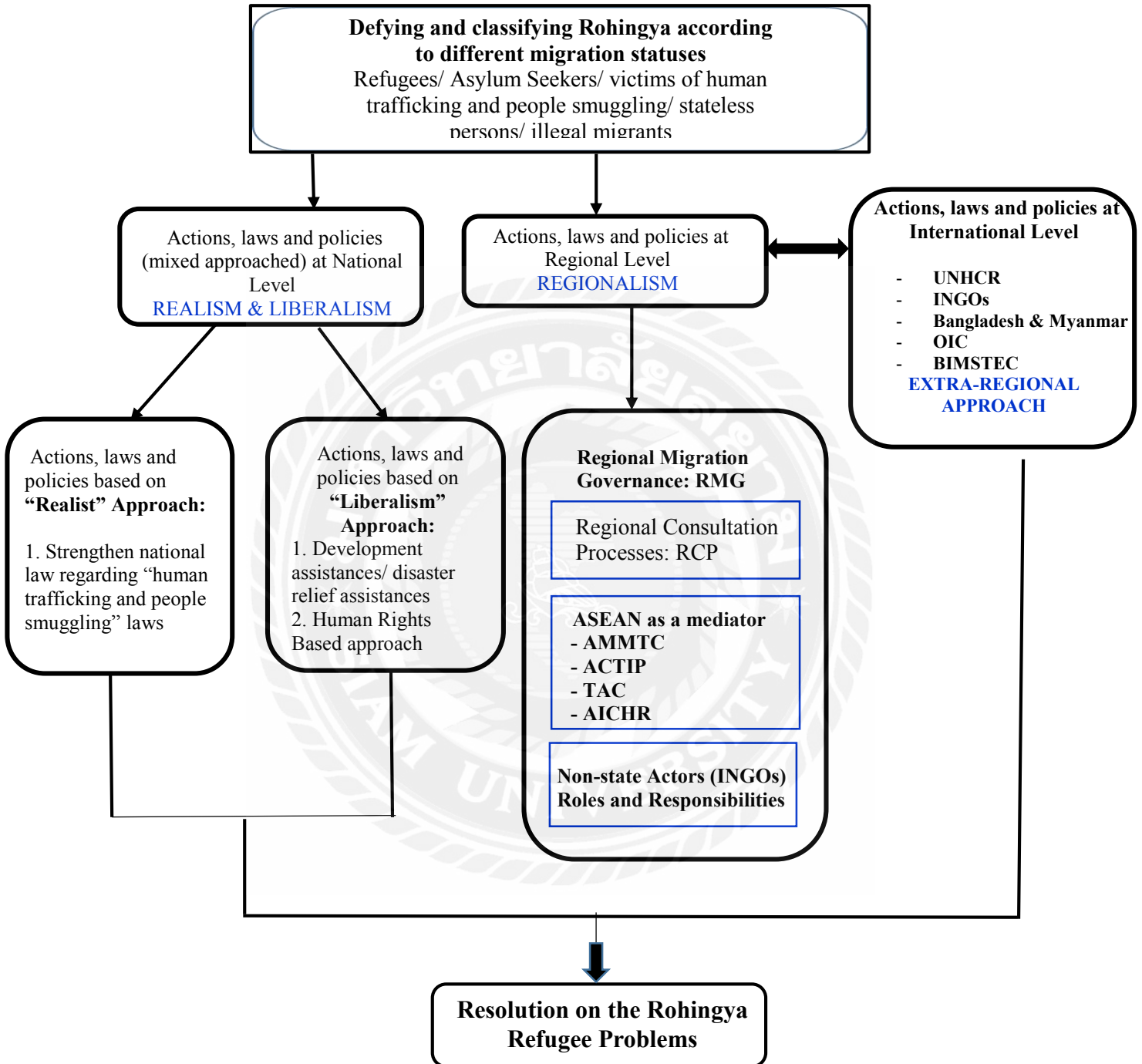The purpose of this study is to examine how ASEAN responds to the Rohingya refugee problems through various levels and actors; therefore, the researcher shall employ the regionalism approach as a theoretical framework for this study. Due to globalization, the world is obliged to connect for numerous purposes i.e.; trade arrangement, security alliances, transnational issues management, etc. According to Wilfred (Ethier, 2020) , regionalism is an expression of a shared sense of identity and purpose combined with the creation and implementation of institutions that express a particular identity, and shape collective actions within a geographical region. Regionalism is now divided into two waves, which are old regionalism and new regionalism. Old regionalism concentrates on trade arrangements and security alliances in particular geographical areas, whereas 'new regionalism' can be described as an environment of a close relationship between regionalism and the extra-regional environment in many perspectives (Hettne & Soderbaum, 1998). This paper focuses on the regionalism theory to draw a link between the Rohingya refugee problems and ASEAN mechanisms at national, regional and extra-regional levels.

CHAPTER 3

Research Methodology

This chapter presents the description of the research process. It provides information concerning the method that was used in undertaking this research. The chapter also describes the research strategy chosen of the research, which includes the selection of participants, the data collection process and the process of data analysis. This descriptive research includes data collected through the qualitative research with a semi-structured interviews as well as the secondary data sources such as scholarly articles, journal, newspaper, treaties and agreement documents and other means. The chapter ends with a data analysis for the results of this study.

3.1 Research design

3.1.1 Research Style

Qualitative Research a "good research" or "scientific research" can be qualitative or quantitative in style (King, Keohane, & Verba, 1994). Disentangling the difference between qualitative and quantitative research; King, Koehane, and Verba (King, Keohane, & Verba, 1994) argued that, neither quantitative nor qualitative is superior to the other, regardless of the research problem being addressed. Theoretically, qualitative research covers a wide range of approaches but tends to focus on one or a small number of the case, and employ intensive interviews or in-depth analysis of historical materials. Considering the style in social sciences, "qualitative and quantitative data are used differently. Qualitative research "explains social phenomenal, that the quantitative research cannot do" (Bryman & Burgess, 1999).

Arend Lijphart (Lijphart, 1971) stated that all empirical research is performed on a shared logic of inference, where inference is the process of using the facts we know to learn about the facts we do not know. So, we can find the facts by focusing on the

verification of a causal relationship between single variables while isolating the others (King, Keohane, & Verba, 1994),which also applies to this research.

This thesis aimed at exploring and understanding the meanings constructed by the participants. The study did not aim to provide the ultimate truth about the research topic but rather to investigate a particular way of looking at and deriving meaning on the phenomenon under investigation. This study was guided by the following research questions:

Key Research Questions	Required Data	Methods/tools for collecting data
1. How should the ASEAN response to the Rohingya Refugee problems be, both at national and international levels?	1.Data on current responses approaches of ASEAN member states such as Malaysia, Indonesia, Thailand and Myanmar. 2. Data on the cooperation, burden-sharing on national and international levels. 3.Data on the previous and current approaches of ASEAN towards the Rohingya crisis, ASEAN Human Rights Treaties, Bali Process, The Treaty of Amity and Cooperation and etc.	1.Semi-structured interviews according to key research questions for the primary data with the Key informants who are affected person, International Relations, International Development expert, academia, representatives of Thai authorities, INGOs. 2. Focus group with 10 experts to triangulate the conclusion from the semi-structured interview results. 3.Secondary data (scholarly articles, books, available journals, online archives, newspaper, treaties and agreement document etc.).

2. Can ASEAN alleviate Rohingya refuges problems by using the human rights approach?	1.Data on human rights bodies of ASEAN and its existing signatory's agreement towards each member state. 2.Data on the international refugee law, human rights law, and humanitarian law in the context of refugee protection or non-refoulement.	1.Semi-structured interview according to research questions for the primary data with afore-mentioned key informants.
3. What should be the larger regional approach of cooperation to solve the Rohingya Refugee problems?	1. Data on the previous and current responses this crisis of ASEAN plus 3, ASEAN with China, ASEAN with United States, ASEAN with its member states and Bangladesh. Then must analyze the potential solution and explain the complementary.	1.Semi-structured interview according to research questions for the primary data with afore-mentioned key

Table 3: Key Research Questions

3.2 Methodology

In this qualitative research, the researcher selected mixed method of documentary research in the course of this research, and experts' in-depth interview. Sources of information include public documents, reports such as news reports, press releases, speech transcripts, social media interactions, statements etc. Primary data was collected from a variety of different perspectives and actors including five representatives from ASEAN, INGOs, religious groups, academia and human rights scholars and a focus group discussion of ten participants. Various perspectives will help identify key concerns in cooperation and response.

3.3 Data Collection limitation

The Rohingya refugee crisis is a sensitive and on-going situation. As such, the researcher had difficulties to obtaining opinions from experts, authorities and religious groups. Nonetheless, the researcher managed to interview experts on issues of the Rohingya refugees and ASEAN. The main data collected for this research came from desk research as the data is stored open and various sources, both online and offline. The information is believed to be more accurate and up to date, and the sources offer different views.

3.4 Types of Data

In the course of this study, two types of data are used namely, primary data and secondary data.

3.4.1 Primary Data

Primary data are original work collected from the original source. This study collected primary data through qualitative survey (individual in-depth interviews) with interviewees in Bangkok, Thailand. Apart from this, a ten experts focus group was organized in order to triangulate the analysis of the expert interviews.

The list of interviewees is as follow;

List of key informants with ID number

01.   A Well-Informed Person, the Ministry of Foreign Affairs Thailand

02.   An INGO staff of ICRC Bangkok Delegation, Thailand

03.   An INGO staff of ICRC Dhaka Office, Bangladesh

04.   Dr. Suraphol Srivithaya, Siam University, Bangkok, Thailand

05.   An expert and experienced in international humanitarian development, UNICEF Bangkok Office, Thailand

06.   Dr. Kamal Udding, a Myanmar expert

The inquiry as a form of interview is a sheer human interaction which has several benefits. The ability to ask more detailed questions, to get a high response rate and the ability to clarify ambiguities are some of the main asset of this method. The professional backgrounds of each key informants effects their perspectives on the Rohingya crisis. Moreover, the personal relationship of the key informants with the Rohingya refugee crisis affects their viewpoints, which affects the understanding of the situation. Therefore, the six interviewees were carefully selected under the supervision of my supervisors. The criteria for their selection was based on the relevant roles of their respective positions.

The study does not have the direct interaction with the Rohingya population due to political and financial limitations. The sample of interviewees were predominantly the representatives of the government officer, academia, humanitarian workers, and the officials who have knowledge and expertise related to the Rohingya refugee problems and ASEAN.

Consequently, same set of questions were submitted to interviewees beforehand, in order to get accurate and useful information from them.

3.4.2 Secondary Data

This kind of data is based on existing information from difference sources, and readily available for use in the form of literatures, documents, journal articles, and on-line sources such as the internet data, video, film, documentaries, published and unpublished articles, newspaper, reports and books. Secondary data are often used to examine a research issue from an alternative point of view. It can be further described as data gathered by a second or third party for certain purposes that could be different from that of the researcher who intends to use the same information (Ghauri & Gronhaug, 2005).

3.5 Data Processing

Processing and analyzing data is performed by summarizing the collected data and organize them in a manner that satisfies the objectives of the study (Gerring, 2007). This method also applied to this research. The analyzes based on data gathered from state and non-state actors' reactions to the Rohingya crisis, as well as the responses from the key informants.

3.6 Data Analysis

As the Rohingya crisis is a sensitive and inaccessible topic in some group of people, this situation did not permit the researcher to survey in large-scale, which was a normal situation in social sciences researches.

Hence, the qualitative data played a major role and applied to this research study. Moreover, the interviews were conducted with the six key informants who have relevant experiences and background related to the Rohingya refugees and ASEAN topics. Prerequisites were, that the interviewees should;

1. Be aware of the Rohingya crisis, and;
2. Be knowledgeable of ASEAN, international developments/affairs, and international laws.

The interviews were conducted mostly in "Thai" and was translated into 'English" while the researcher was writing up the interview records, which helped simplify the data

collecting process. Even though, there are some limitations while conducting this research, the findings of this study should not be taken as comprehensive nor exhaustive. It should be taken as an identification of potential issues and programs for further policy design, and follow-up research.

CHAPTER 4

Research Findings

4.1 Introduction

In this chapter reports the findings of this study and analyzes "the Roles of ASEAN in Response to the Problems of the Rohingya Refugees". The identification of the resolution for the Rohingya crisis is based on data gathered from the six experts' interviews by using a set of three key research questions. This followed by a focus group of thirteen international specialists to verify the final conclusion of the six expert interview. The key research questions are as follows:

1. How should the ASEAN's response towards the Rohingya Refugee crisis be, both at national and international levels?

2. Can ASEAN alleviate the problems of the Rohingya refugee problem by using a human rights approach?

3. What should be the larger regional approach of cooperation towards resolving the Rohingya refugee problems?

4.2 Survey Results

4.3 Theme 1 – Research Question 1

1. How should the ASEAN's response towards the Rohingya Refugee crisis be, both at national and international levels?

Southeast Asia's state sub-system is incorporated in an international state system in which the fundamental principle governing state interaction is sovereign equality. Even though Southeast Asian states may challenge the Western bias in the workings of the international system, they fully embrace sovereign equality in their relations with one

another and with extra-regional state actors. It is distinct that despite the underpinning legal fiction of sovereign equality, all states in the Southeast Asian international system are not equal in terms of capabilities to promote their national interests, including defending their sovereignty. The nature of ASEAN member states can be interpreted in the way the realist approach due to the behavior of dependable on economic, political, military, and geographical interests of each other. Some states have more heirachycal power than others, and power is relative in and reflect to both bilateral and multilateral settings. The table figure below shows description of ASEAN member states political aspect (Weatherbee, 2009):

4.3.1 Rohingya as the victims of People Smuggling and Human Trafficking Networks

According to Dr. Suraphol (Interviewee No. 05), the Rohingya refugee problems should be treated differently according to a legal perspective. Many of the Rohingya refugees were trafficked and smuggled by the regional organized crime network. The vulnerabilities of the potential victims come in various forms i.e. inhuman forced labor, inequality, and sexual exploitation, which corresponds to the answer of Interviewee No.03. The main challenge of people smuggling and human trafficking issues in the region is the involvement of authorities in trafficking chain as it has happened in Thailand and Malaysia. Another challenge is the lack of regional cooperation to tackle this regional issue; countries in the region still lack intra-regional cooperation, which is essential to combat the trafficking network in the long run.

Additionally, the role of INGOs, medias, and private sectors to investigate the issue are still excluded by many governments. The Rohingya, who are victims of people smuggling and human trafficking network have been detained in immigration detention centers (IDCs) in Thailand and Malaysia, according to the Interviewee No. 03 (03, 2019). Many governments in ASEAN generally view Rohingya as a "threat" to national security. As a consequence, the Thai authorities has been implementing preventive actions. The Rohingya arrived by boat in 2015 was an example of such action, when Thai authority "pushed back" the boat to the international water. Moreover, most ASEAN member states perceive Rohingya as the "illegal migrants" as discussed in Chapter 2, the ASEAN member

states' position on Rohingya Refugee Problems. This discussion reveals that, there lacks durable solutions and national standards for the Rohingya detainees in immigration detention centers and shelters. The Thai authorities should follow the procedures of treating victims of trafficking aligning with international standards (ibid). Furthermore, most of ASEAN member states except Cambodia and the Philippines have not ratified the 1951 Refugees Convention and its 1967 Protocol, but they allow UNHCR and other resettlement program pro proceed and interview some refugees who require resettlement in the third country.

4.3.2 Political regime of ASEAN member states

The nature of ASEAN cooperation loosely ties on the economic aspect, which is different from the case of the European Union (EU). ASEAN pursues intergovernmental cooperation among the sovereign equals with decision-making based on consultation and consensus. In comparison, the EU integrated all aspects; economic, political, cultural, and identity. ASEAN regionalism is therefore characterized by a low level of institutionalization and the ASEAN Way, which emphasizes quiet diplomacy and informal mechanisms. However, following the ASEAN Charter and the advent of the ASEAN Community, ASEAN is trying to transform itself into a more rules-based organization with more effective institutions. As stated above, ASEAN member states treat the Rohingya refugees based on their based political theory. Most of the ASEAN member states applied the realism approach except the Philippines.

No.	ASEAN Member State	Nature of policy	No.	Extra-regional state	Nature of policy
1.	Brunei	Realist	1.	Bangladesh	Realist
2.	Cambodia	Realist	2.	China	Realist
3.	Indonesia	Realist	3.	Japan	Liberalism
4.	Laos	Realist	4.	India	Liberalism
5.	Malaysia	Realist	5.	United States	Liberalism
6.	Myanmar	Realist			
7.	The Philippines	Liberalism			
8.	Singapore	Realist			

| 9. | Thailand | Realist | | | |
| 10. | Vietnam | Realist | | | |

Table 4:The analysis of policy of intra-ASEAN member states and extra-regional states (Weatherbee, 2009)

There has a linkage between "nationalism" and "realism" approach, which applied to almost all nation state (Weatherbee, 2009) and difficulties to seek peaceful solution regarding the Rohingya refugee problems as international level. All the six respondents confirmed their opinions that the crises must be done at the national level by strengthening the "people smuggling and human trafficking" law enforcement to be enforced domestically. Furthermore, it was a suggestion by Dr. Suraphol (19th September, 2019) that ASEAN and the affected countries must create regional networks in correspondence to ad hoc or emergency relief centers alongside the marine borders of affected countries in order to screen and prevent the Rohingya people from "people smuggling and human trafficking" networks. The suggestion of Dr. Suraphol is in line with the literature review of Castles & Miller, 2009.

4.4 Theme 2 – Research Question 2

2. Can ASEAN alleviate the problems among the Rohingya Refugees by using a human rights approach?

Human rights are rights that essential to all human beings, regardless of race, sex, nationality, ethnicity, language, or religion. However, ASEAN contains member states that have diverse socio-cultures and different political structures and so the human rights scheme is hard to practice in this region fully.

4.4.1 Human Rights Scheme and Democracy

According to the liberal scholarship of International Relations, human rights values have a strong and positive impact, particularly on International Non-Governmental Organizations (INGOs). They are using these norms and pushing states' decisions to legally embrace universal human rights values (Risse & S. Ropp, 2009). Gomez, James, and Ramcharan

(2014) reviewed some of ASEAN's human rights practices and came up with three types of discourse on this issue; the statist discourse, the civil society discourse, and the discourse among intergovernmental organizations. Their survey of the statist discourse shows a resolute resistance and departure of the liberal democratic tradition's rights. This, thereby, led its surveyors' team to conclude that human rights in ASEAN do not conform to international standards of protection. Human rights, according to them, remain "construction of the incumbent political elite of ASEAN." They can only build up authoritarian and military regime's human rights style. The root cause of the Rohingya crisis is long-standing discrimination, persecution, and lack of citizenship. ASEAN plus Myanmar and other affected countries need to show the political will to find a solution to the Rohingya's long-standing statelessness issue. There is a need for an inclusive peace building process, which recognizes the ethnic and religious diversity within Myanmar (Uddin D., 2019). The human rights value has reflected the level of democracy of that particular country and often leads to economic growth and the advancement of people's other rights to basic human needs, such as food, education, shelter (Kim, 1997) (Sorpong, 2015). In a research interview, Dr. Uddin (19th October 2019), suggested that human rights is an essential instrument that can be used to resolve the Rohingya refugee crisis, which conforms with the views of Dr. Suraphol Srivithaya (Srivithaya, 2019). Dr. Suraphol stated that human rights is a *"natural law above state laws. The state cannot argue or against the natural law. If the state's laws contradict the natural law, then state law cannot be enforced"*.

Nevertheless, Dr. Suraphol pointed out that Myanmar was in a sympathetic position because of its ethnic's conflict situation. Besides, Raksit (Waropas, 2019) had a similar opinion to Dr. Suraphol regarding Myanmar's current human rights scheme. He added an interesting viewpoint that Myanmar had been in a democratic transitional period, and it would take years to be a civilian administration fully. Similar to Interviewee No.02 and No.03, they were strongly recommended that the human rights approach is an essential factor to resolve the Rohingya issue permanently. It can be promoted and discussed generally in all ASEAN member states to improve civilian, migrants, and refugees' living standards. The UN agencies can implement the human rights scheme in ASEAN countries

or by the national governments. However, at least there had been a positive development that helped the region move from constructive engagement with Myanmar to a more deepened interaction that has opened ways for coordinated responses to this crisis and natural disasters in the future.

4.5 Theme 3: Research Question 3

What should be the larger regional approach of cooperation towards resolving the Rohingya refugee problems?

4.5.1 Larger than ASEAN Framework

Many governments of ASEAN have been playing "human ping-pong" game" while they were operating crackdown mission on people smuggling and human trafficking. They ignore the basic principles of international customary law, according to the UNHCR report on irregular maritime movements. The Rohingya refugees arrive by boat at Thai's shore, and the Thai government used army helicopters to drop food and water to the Rohingya boat people and then pushed the boats back out to sea towards Malaysia. In turn, while Malaysian authorities pushed the boats onward, informing the Rohingya to seek asylum in Indonesia. However, the Indonesian government denied the Rohingyas to access to its territory and pushed them back out to sea again. Eventually, those mentioned states' governments agreed to temporarily permit shelters to the Rohingya refugees after tremendous pressures by the international community. The rejection from all countries: the Rohingya refugee problems should be the responsibility of all Southeast Asian states and not just Myanmar anymore. Also, international community has to take responsibility for this as they are the most persecuted ethnic and religious minorities globally. Regional standards and mechanisms namely AICHR, TAC, 1951 Convention relating to the Status of Refugees and the 1967 Protocol, ICCPR, AMMTC, ACTIP and Bali Process should be enforced and implemented to address this ongoing crisis. Dr.Uddin commented that, the massive influx of Rohingya refugees affected all parties of the Bali Process; therefore, they should apply the Bali mechanism to share the burden of the Rohingya refugees' crisis. (Uddin D. K., 2019).

4.5.1.1 ASEAN, Regional Framework, and the Dynamic of Addressing Refugee Crisis in the Region

According to Worapas (Key informant no.5), only the Philippines, Cambodia and Timor-Leste are signatories to 1951 Convention relating to the Status of Refugees and the 1967 Protocol, while most of the countries hosting to the largest number of refugees in the region are non-signatories. The absence of an operational regional framework in ASEAN countries mainly means that the region is poorly equipped to effectively address refugee crisis in the region. The reluctance of Southeast Asian countries to adopt the international refugee protection regime follows the pattern that exists in Asia, with their presumably argument that it is Eurocentric. at its time of creation. While the European states were recovering from the Second World War, and others further afield, they came altogether in an unprecedented way to address mass displacement. It is widely known that almost all Asian states were absent during the process of drafting the Convention in a series of conferences in 1949 and 1950.

Instated of ratifying the Convention, Asian states prefer formal bilateral or multilateral agreements. Because of this, Asian countries treat refugees differently, especially ASEAN member states. ASEAN member states have a lower standard of human rights recognition and do not integrate their cooperation lawfully compared to the European countries. Therefore, the ASEAN member states usually seek solutions for the refugees and migrants as illegal migrants. ASEAN member states usually treat the illegal migrant individually based on their national law. Occasionally, they extend their ad hoc cooperation regarding crises such as natural disasters and migrant influx (Srivithaya, 2019). However, Waropas suggested that the Treaty of Amity and Cooperation in Southeast Asia (TAC) can be the best solution for the Rohingya refugee crisis due to its peaceful dispute settlement method (Waropas, 2019). The researcher seconded this suggestion because TAC is similar to ASEAN way principles, especially the non-interferences approach.

4.5.1.2 Roles of ASEAN as a facilitator to Myanmar and Bangladesh

To date, ASEAN has remained silent on the Rohingya refugee problems and has failed to take any serious action to tackle the issue. ASEAN Way of non-interference was the main obstacle of ASEAN member states to avoid discussing sensitive human rights issues with Myanmar. Nevertheless, the 1976 ASEAN Treaty of Amity and Cooperation (TAC) was suggested by Waropas during the key informant interview (Waropas, 2019) that it could be a key component to apply and seek solutions on the Rohingya issue. Other instruments that could be applied are ASEAN Ministerial Meeting on Transnational Crime or AMMTC and the ASEAN Convention Against Trafficking in Persons, especially Women and Children or ACTIP. These will be a regional platform where discussing regional mechanism for this transnational issue could take place. The information from the literature reviews, as mentioned, is aligned with the opinions of six key informants during the in-depth interviews. Interviewee No. 02 (No.02, 2019); Interviewee No.03 (03, 2019), Dr. Srivithaya (Srivithaya, 2019); and (Waropas, 2019) suggested that ASEAN should play the role of either "facilitator" or "mediator" to Myanmar and Bangladesh by using the bilateral approach. The bilateral approach can be applied in form of humanitarian assistance, development projects, strengthening primary healthcare system, provision of security and protection, and vocational training to the Rohingya refugees. According to many scholars, as well as Dr. Uddin, in terms of legal mechanism, ratifying the 1951 Refugee Convention Relating to Refugees Status and its 1967 Protocol and the 1954 convention Relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961) would lead to the success long-term resolution on the Rohingya refugee problems.

ASEAN Ministerial Meeting on Transnational Crime: *AMMTC and ASEAN Treaty of Amity and Cooperation*: *TAC*

The AMMTC is held bi-annually, with the first on organized in 1997, and the the most recent one took place in 2018. The conference is with an objective to provide a regional platform for ASEAN Senior Officials on Drugs Matters: ASOD and ASEAN Chiefs of National Police: ASEANAPOL to frame and discuss on ASEAN plan actions on transnational crimes (Chaiaksornwej & Pipatrattanaseri, ASEAN and the Irregular

Migration of Rohingya, 2019). According to a well-informed official from the Ministry of Foreign Affairs of Thailand (A Well-Informed Person, 2019), he strongly believes that the official platform of ASEAN such as AMMTC have more potential to find solutions rather than the intervention of international community, especially China. This aligns with the opinion of Mr. Waropas (Waropas, 2019), who suggested that ASEAN should use ASEAN Treaty of Amity and Cooperation or TAC as a springboard within affected countries, due to the non-interference principle of the ASEAN and TAC. Mr. Waropas (*ibid*) encouraged to use the TAC and other diplomatic mechanisms for intra-ASEAN and extra-ASEAN member states to resolve the problems. He explained that sanctions from the international community would deteriorate the status of fragile Myanmar, especially its democratic transition.

4.5.1.3 Role of China

The Chinese government is one an actor in the international community offered to seek solutions to the Rohingya refugee crisis. After having met authorities from Bangladesh and Myanmar, Chinese Foreign Minister Wang Yi proposed the three-stage plan on 20 November 2017, to address the Rohingya crisis. to diplomats from 51 countries from both Asia and Europe who gathered in Myanmar's capital Naypyitaw. Myanmar shares China. The gepgrphical of Myanmar is located in Southeast Asia, with a total of 676,577 square kilometers of the land area having abundant natural resources. Myanmar is rich in forests, minerals, freshwater, natural gas, and marine resources that have increased its value of the state to other Southeast Asian countries as well as global powers such as China. Sharing the borders with India, Bangladesh, and China, Myanmar is an important gateway between South and East Asia. Due to its strategic location, Myanmar is a center of interest for both India and China to implement their economic ties in the country (Uddin D. K., 2019).

Dr. Uddin agreed with an international media report stating that Myanmar wanted to establish an export industrial and tourism zone along the Naf River, which lays along with Myanmar and Bangladesh and the Rohingya Muslims' residency. This piece of information explained why the Myanmar government want to push the Rohingya people away from the area. The ASEAN must investigate in-depth this underlying agenda. The

Rohingya issue is complicated due to many factors; geological economy, political and religious reasons. In Dr. Uddin's point of view, China could play a crucial role in resolving this issue due to its broad investment in Myanmar over many years (Uddin D. K., 2019). In contrast with Mr. Waropas, China has considered being a socialist administration, and it is not in the pros of the human rights approach, so it may not be the best solution towards the Rohingya refugees' problems (Waropas, 2019). Apart from this, Dr. Uddin believes that India is another main actor who can mediate this problem because India has long been in alliance with both Myanmar and Bangladesh (Uddin D. K., 2019).

4.5.1.4 Role of Bangladesh

Bangladesh hosted over 1.3 million Rohingya refugees as of 31 December 2019. Bangladesh received Rohingya refugees in 1978, 1992, 2012, and 2016. The largest and fastest influx of 855,000 Rohingya occurred in August 2017 during the latest violence in Rakhine State, Myanmar. They are living in thirty-four formally established camps in extremely congested conditions throughout Cox's Bazar District, Bangladesh (Inter-Sector Coordination Bangladesh, 2019). This massive influx puts the worst situation to a country that already ranks the poorest fifty countries in the world. Rohingyas have not been given convention refugee status who fled away to Bangladesh after the 25 August incident by the Bangladesh authority (Devex, 2017). Bangladesh is not a signatory of 1951 convention of refugees, but they can be a signatory of the convention upon their willingness to accept refugees. Being a signatory of the 1951 convention would oblige state to recognize refugee. The refugee definition in 1951 does not apply to the persons fleeing from the generalized violence of international turmoil, persecution, or violence in their home countries (Hailbronner, 1988). States in many cases permit persons who are not the convention refugees to stay in their territory, if they cannot return to their origin, either it is not possible or advisable regarding article 33 of the 1951 convention, article 3 of the Convention against torture (CAT) or article 7 by International Covenant on the Civil and Political Right (ICCPR).

However, the state may permit the migrants to remain for compassionate reason, and that does not come along the legal conception of "complementary protection."

According to McAdam (2005), the complementary protection is granted by states based on an international protection need outside the 1951 convention framework. It may be based on a human rights treaty or more general humanitarian principles. The primary function of such complementary protection is alternative protection beyond the 1951 refugee convention to avoid the obligation which does not mandate time or quality of the status for the migrants. Therefore, it is not derived by the exclusion clauses but constrained by the human rights or humanitarian protection triggered by states` expanded non-refoulement obligations (McAdam, 2005). The Bangladesh treatment of the Rohingyas predominantly rests upon complementary protection law. Bangladesh followed the normative means of non-refoulement because the situation was very hostile for Rohingyas following the ARSA (Arakan Rohingya Salvation Army) attack in August 2017. Bangladesh accepted many international human rights treaties and even the soft instruments such as the Bangkok principle, whose provisions directly promote the rights of refugees. However, in practice, the human rights are not enforceable in courts of law unless specific requirements are incorporated in existing municipal statutes or given effect through separate legislation (Al Imran & Mian, 2014), which also reflects the Bangladesh position of Rohingya treatment.

4.5.1.6 Role of United Nations (UN) and International Governmental Organizations (INGOs)

Recently, the International Court of Justice (ICJ) under the administration of the United Nations (UN) ruled an ordered Myanmar to take urgent measures to protect the Rohingya refugee from genocide (The Guardian, 2020). The ICJ imposed emergency "provisional measures" on the country – intervening in its domestic affairs by instructing the civilian government of Myanmar to respect the requirements of the 1948 genocide convention. The court stated that estimate 600,000 Rohingya that were remaining in Myanmar were "extremely vulnerable" to attacks by the military. In January 2020, the International Court of Justice (ICJ) in The Hague delivered orders that have binded Myanmar and created legal obligations. The provisional measures imposed by the court require the Myanmar government to prevent genocidal acts, ensurement of military and police forces do not commit genocide, preserve evidence of genocidal acts and report back

on its compliance within four months. The orders were automatically sent to the UN Security Council, where Myanmar's response will be assessed. Myanmar received diplomatic support from China, which is one of the five permanent members of the UN Security Council (ibid). These orders were favored and respected by human rights advocates as it was a first concrete justice for the Rohingya people. However, the protection of the Rohingya's rights will depend on the diplomacy that follows.

Apart from the legal action, the UN plays a major role in providing humanitarian assistances in both Myanmar and Bangladesh. After the Rakhine crisis, UN officials, humanitarian actors, and human rights groups have repeatedly called on Myanmar to allow observers and humanitarian actors into Rakhine State and cooperate with UN inquiries set up by the UN Human Rights Council. During the interview of six key informants, only the Interviewee No. 3 (03, 2019) trusted that the UN could be a potential actor in cooperation with ASEAN to resolve the problems.

The UN agencies, together with NGOs have provided humanitarian assistance in many areas between 2017 and 2019: biometric registration, individual identity documentation to children age 12 and lower, food, shelters, water and sanitation, health protection and education. These assistances have costed around US$ 650 million against US$ 921 million requested by the Bangladeshi government and other agencies. In the 2020, the UN agencies and NGOs partners are working on 'Joint Response Plan: JRP' and will focus on safe return to Myanmar. Until repatriation is possible, Bangladesh's government and NGO partners continue working together to assist the Rohingya refugees and local Bangladeshis living nearby and to improve their lives. The 2020 JRP places a more explicit and stronger emphasis on public service, infrastructure, access to sustainable livelihoods, recovery of the environment, and energy initiatives project *(ibid)*.

This proves that UNHCR still plays an important role in humanitarian aid to those vulnerable, especially the case of Rohingya refugees in both Myanmar and Bangladesh according to the Interviewee No. 03 (03, 2019).

4.6 Conclusion

This chapter has been able to identify the roles of ASEAN towards the Rohingya Refugee Problems. The researcher has also summarized potential solutions for the Rohingya problems. The next chapter, the researcher shall try to draw general conclusions from this study as well as proffer recommendations to the issues raised in this research.

The table below shows the analysis of the researcher on what mechanism to use in order to tackle the Rohingya refugee problems.

Relevant Actors	Legal Frameworks and Approaches that could Tackle the Rohingya Refugee Problems		
	National Level	Regional Level	International Level
Myanmar	1. Human Rights approach through development assistances	1. Human Rights approach through development assistances	1. Article 14 of the UDHR 1948
		2. Advisory Commission on Rakhine State 2017	2. Article 22 of the CRC and CEDAW 1979
			3. SDGs of the United Nations 2015
			4. Bali Process 2002
Malaysia	1. Immigration Act 1959/63 amended the Act in 1997 and 2002	1. Article 16 of the AHRD 2013	1. Article 14 of the UDHR 1948
	2. Section 5 of the Passport Act 1966	2. Bali Process 2002	2. Article 22 of the CRC and CEDAW 1979

	3. Human Rights approach through development assistances	3. Human Rights approach through development assistances	3. SDGs of the United Nations 2015
			4. Bali Process 2002
Thailand	1. Immigration Act of 1979	1. Article 16 of the AHRD 2013	1. Article 14 of the UDHR 1948
	2. Anti-Trafficking in Persons Act B.E. 2551 Regulation	2. Bali Process 2002	2. Article 22 of the CRC and CEDAW 1979
	3. Working Aliens Act B.E. 2551	3. Human Rights approach through development assistances	3. SDGs of the United Nations 2015
			4. Bali Process 2002
Bangladesh	1. Passport Act 1920	N/A	1. Article 14 of the UDHR 1948
	2. Naturalization Act 1926		2. Article 22 of the CRC and CEDAW 1979
	3. Registration of Foreigners Act 1939		3. SDGs of the United Nations 2015
	4. Foreigners Act 1946		4. Bali Process 2002
	5. Bangladeshi Citizenship Act 1951		

	6. Bangladeshi Control of Entry Act 1952		
	7. Registration of Foreigners Rules 1966		
	8. Bangladesh Citizenship (Temporary Provision) Order 1972		
	9. Bangladeshi Passport Order 1973		
	10. Extradition Act 1974		
ASEAN		1. ASEAN Ministerial Meeting on Transnational Crime	
		2. ASEAN Convention Against Trafficking in Persons, Especially Women and Children 2015	
		3. ASEAN Treaty of Amity and Cooperation 1976	
		4. The ASEAN Intergovernmental	

		Commission on Human Rights	

Table 5:The analysis on what mechanism to use in order to tackle the Rohingya Refugee Problems (Source: the researcher)

CHAPTER 5

Conclusions and Recommendations

This chapter concludes the roles of ASEAN in response to the Problems of the Rohingya Refugees by presenting data analysis from six experts interview and a thirteen-person focus group. Ideally, there should be multiple plans and actions in national, regional, and international platforms in different aspects by protecting the Rohingya refugees by law in the circumstance of being victims of people smuggling and human trafficking networks. At the same time, ASEAN member states and Bangladesh should provide humanitarian assistance to the Rohingya refugees who fled from Myanmar due to the political crisis on a short and long-term basis. Also, supports from the international community can be one of the factors that tackle this issue. ASEAN must promote basic refugee laws to officials who are involved with the migrant and refugee procedures. Finally, ASEAN must promote and monitor the human rights approach through AICHR or AIRCH in cooperation with INGOs.

The plight of the Rohingya refugees today is a harsh reminder of the failure of nonequivalence of basic human rights in this group of people. According to the UNHCR, forced migration in 2017 has reached unprecedented levels and is threatening security in nearly every region of the world. Although it is one part of a much larger global dilemma, the Rohingya crisis and its impact on ASEAN and extra-regional ASEAN has become one of the most severe humanitarian crises in the world. To seek regional solutions to the Rohingya refugee crisis, there should ideally cover multiple plans and actions in national, regional and international platforms. ASEAN has to counter trafficking and smuggling in person, protect Rohingya during their flight and from persecution. It must also address the root cause of the crisis as a preventive measure. In addition, ASEAN must promote human rights and basic knowledge of 'refugee law' among state officials is a must-do action according to one of the recommendations of the research's focus group.

The objective of this study shall be re-emphasized here, thus:

1. To study ASEAN's solutions in responding the Rohingya refugee problems on a national and international level

2. To analyze the ASEAN's perspective on human rights.

3. To discover the ASEAN regional approach towards the Rohingya refugee problems.

The methodology applied in this research was qualitative, interviews, and focus group interviews method—various sources of available documents, texts, and published books that addressed the relevant issue of this topic. The former relied on information gotten from the personal views and opinions of the experienced researchers in this field, including the diplomats. In-depth interviews of respondents and a focus group interview persons were chosen on their level of experience and availability. The choice was limited due to a sense of sensitivity on the Rohingya issue to the respondents. Therefore, the summary of the results and findings will be presented in the most simplistic form in this last chapter. The researcher will draw conclusions from results and findings and make significant recommendations at the end of this chapter.

5.1 Summary and Conclusions

5.1.1 Results for Research Question 1

In order to address and examine the Rohingya refugee problems in ASEAN countries, there clearly needs three different levels of analyses. The first one is the regional level, by engaging with ASEAN to play a role of a regional body and, then examining the extent to which ASEAN establishes a regional framework and collaboration to strategically address and resolve the Rohingya refugee problems in the region. This level of analysis is mainly founded on the fact that refugee is a global issue, connecting one country to the others. It is indeed not a single and isolated crisis. The second one specifies for individually domestic ASEAN countries. The last level of analysis on larger than ASEAN level; namely ASEAN and Bangladesh or other superpower countries such as China, India and the United States. The real crisis exists within the countries; therefore, a rigorous account for refugee

crisis in the region should deal with and bridge the contrasting levels of micro and macro analyses of refugee. Domestic laws, polices and best practices should be applied building on the foundation of ASEAN ways to resolve the Rohingya Refugee problems in the region. ASEAN has experiences in dealing with refugee issues in the region for many decades but most of the ASEAN member states have not ratified the 1951 Refugees Convention and 1967 Protocol. There are almost no operational legal frameworks established by the ASEAN countries to deal with refugees in the region, except for immigration act, lumping refugees under category of illegal migrants. As a result, these ASEAN countries tend to develop their own specific and typical policies and practices in dealing with refugee crisis following the dynamic of refugees in their countries. These policies and practices are mostly featured by their changeable, ad-hoc, and optional characteristics. These policies and practices are non-obligatory, and them being non-parties to the Convention, they are made particularly to strengthen and endorse their interests, particularly in terms of domestic security and development, rather than prioritizing the interest and destiny of the refugees, especially the Rohingya refugees. Almost no ASEAN member states have put forth any individual or regional plan to address the ongoing humanitarian needs of the Rohingya. In most of the case, ASEAN member states have been putting much focus on immediate and temporary solutions, instead of preventive, durable and innovative ones. ASEAN should start thinking of new paradigm of addressing refugees, exploring the best collective approaches and regional policies, and going beyond conventional models of dealing with refugee. If not, refugee crisis will be there in the region and no one knows when it will come to an end.

ASEAN must look closely at this dimension of Bangladesh and connect the host country Myanmar and the receiving country Bangladesh to solve this problem.

Result for research question 1 concludes that:

1. Many experts and scholars confirmed that one of the root causes of Rohingya refugee problems is the 1982 citizenship law of Myanmar that discriminates Rohingya people from their Myanmar citizenship. This became the underlying cause of illiteracy, inequality of economic opportunities and livelihoods, property ownership, freedom of movements and of speech, and the lack of many other rights as human beings.

2. Due to being deprived of basic human rights, the Rohingya people were pushed into people smuggling and human trafficking networks in Thailand and Malaysia.

3. Most ASEAN member states have not ratified the refugees and stateless treaties, and they were not in favor of the human rights scheme, and it leads to human rights violations in their countries.

4. The Rohingya refugee problems have been affecting ASEAN and its member states in many aspects and layers. The problems of irregular movement of the Rohingya are not a single state problem but rather a global problem.

5.1.2   Results for Research Question 2:

1. The main obstacle was the difference in the political approach in ASEAN member states. It is clear that the majority of ASEAN countries practice the 'realist' approach, which is well known for its focus on national interests rather than that of humanity.

2. The human rights scheme has not been in favor of ASEAN member states even though ASEAN has established the human rights body: ASEAN Intergovernmental on Human Rights, in order to promote human rights and peace in the region.

3. The ASEAN Parliamentarians for Human Rights (APHR) was organized in order to investigate the root cause of the Rohingya crisis in the latest violence of August 2017, and continue working with governments and multilateral bodies to ensure accountability and uphold and enforce international human rights laws. The APHR conducted a fact-finding mission. to Bangladesh from 21 to 24 January 2018 in order to examine the root causes, impacts, and implications of the crisis and the consequence from the violence event in August 2017.

5.1.3   Results for Research Question 3:

1. ASEAN is considered as the most effective actor to cope with the Rohingya refugee problems, as suggested by the six key informants and some trusted scholars, in spite of many critiques of ASEAN's failure on responses towards the issue.

2. Recently, ASEAN tried to act proactively upon the Rohingya refugee issue with several entities within and beyond ASEAN. ASEAN Parliamentarians for Human Rights (APHR) conducted a fact-finding mission in Bangladesh in order to seek for sustainable solution for both Myanmar and Bangladesh.

3. China proposed a three-stages-plan solution to Bangladesh and Myanmar.

4. The Advisory Commission on Rakhine State by Kofi Anan recommended Myanmar to grant citizenship to the Rohingya people as a long-term plan, which was similar to the three-stages-plan of the Chinese government.

5. United Nations agencies play an important role in resolving the Rohingya problems in cooperation with NGO partners in the perspective of emergency relief and strengthening policies through top-down approach in both Myanmar and Bangladesh.

5.2 Recommendations

The Rohingya refugee problems are complex for either it is the problem of being a victim of human trafficking or a refugee. Those who fled to the maritime borders of Thailand, Malaysia, and Indonesia through the human trafficking network should be treated differently than those who fled to Bangladesh. (Bali Process, 2002) Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime was founded in 2002, and as of today it has forty-eight members consisting of forty-two countries, three territories, and special administrative territories, and three organizations, including ASEAN member states. It was suggested the Bali Process should be used as an official

regional mechanism for those affected countries and to protect the Rohingya as the victims *(ibid).*

The list below presents recommendations in three levels:

5.2.1 National Level

According to many scholars and the key informants, the Rohingya refugee problems are complicated and has to be manage in different aspects of each state.

5.2.1.1 Malaysia

1. The government of Malaysia should waive the penalty to the Rohingya, who was trafficked by people smuggling and human trafficking networks.

2. Malaysia should support the UNHCR of its registration process in order to resettle them to the third country.

3. Malaysia should coordinate with The Organisation of Islamic Cooperation (OIC) to put pressure on human rights violation acts of Myanmar government.

4. Malaysia should provide refugee children a certain degree or full access to the same standard as other resident children. This policy and practice will certainly help prepare refugees for either resettlement or repatriation and continuing their education or pursuing jobs.

5. Malaysia should cooperate with the UN agencies, INGOs and NGOs in handling the Rohingya Refugees on vocational training and formal educational standard.

5.2.1.2 Myanmar

1. Myanmar should initiate a positive human rights scheme by stopping the violent attacks on the Rohingya people in Arakan Region as well as on other minority groups.

2. The government of Myanmar should provide equal treatment among refugees, regardless of their countries of origin. This treatment includes practices of documentation and administration, providing access to primary education, economic opportunities and health care services

3. Myanmar should cooperate closely with Bangladesh and facilitate what needs to be complete on the "Safe-Repatriation Process" agreement.

5.2.1.3 Thailand

1. The Rohingya people who were trafficked by the human trafficking networks should enjoy the protection as victims of trafficking in person according to Thailand's Anti-Trafficking Act of 2008 as amended in 2015 and 2017. In addition, the government of Thailand must strictly enforce the Act and seriously prosecute the human trafficking cases.

2. Thailand should eradicate practices of corruption and bribery in all aspects and implement the process to address refugee issues, which involves diverse stakeholders both in public and private sectors. They also should strongly combat human trafficking that pray on vulnerable migrants and refugees, and eliminate arbitrary razing and detention of refugee.

3. As of April 2019, most children stay at a shelters in Suratthani and Pang Nga got to go to school. A shelter also operated a kindergarten. UNHCR and IOM covered their schooling, Thai government covered their education per head when attending Thai public school.This policy and practice should be applauded and encouraged to continue as this undoubtedly help prepare refugees for either resettlement or repatriation and pursuing their career. As of April 2019, Rohingya who are victims of human trafficking who stayed at the shelters of the Ministry of Social Development and Human Security (MoSDHS) could have remunerated jobs according to their capacity after having lived in the shelter for a while, and they had proven that they are trustworthy, they got jobs in the community. This practice follows a cabinet resolution and it should be encouraged to continue.

4. Thailand should cooperate with the UN agencies, INGOs and NGOs in handling the Rohingya Refugees on vocational training and standard educational system.

5.2.2 Regional Level and the Human Rights Approach

1. ASEAN governments should promote basic knowledge of refugees' law/convention among the government officials so they would know how to deal with the Rohingya refugees and meet international standard.

2. "Human rights" approach should be promoted and practiced in every single ASEAN country as it is not well-understood by people in ASEAN countries, especially the government officials.

3. ASEAN should strengthen the "human rights" approach and other law enforcements relating to human trafficking and people smuggling based on international standard.

4. The human rights approach should be implemented in Myanmar as a long-term national plan by the supports of ASEAN and INGOs and the Myanmar government and INGOs.

5. ASEAN should support the AICHR in promoting human rights scheme in ASEAN member states.

7. ASEAN should adhere global standard of human rights so it can be the new identity of ASEAN according to Dr. Srivithaya (Srivithaya, 2019). He suggested that the two basic levels should be studied in application of human rights in ASEAN. The first level is the internal affairs and cultures, and the second level is the external affairs. The internal affairs entails that each ASEAN member state promotes its plural identities, respects the differences, and find suitable mechanisms to live in diversity, protects the rights of the minority groups and promotes the equal rights of all members of the community (Srivithaya, 2019). (03, 2019) (Uddin D. K., 2019).

8. According to Dr. Uddin (Uddin D. , 2019)(Uddin, 2019), the root cause of the Rohingya issue is human rights violation and discrimination in Myanmar. Therefore, the Rohingya people in Myanmar must have the right to obtain Myanmar nationality; they will obtain other rights following a nationality. The right to obtain a nationality cannot succeed without having support from ASEAN, UN agencies, and the international community.

5.2.3 International Level

1. ASEAN should apply the 1976 ASEAN Treaty of Amity and Cooperation (TAC) that mooted more than two decades ago by the late Dr. Surin Pitsuwan, then Foreign Minister of Thailand, in a flexible engagement approach. The TAC can be the best diplomatic way to resolve the Rohingya Refugee problems as it is based on non-interference policy. Therefore, the member states need to express its commitment to collectively respond to the Rohingya issues with Flexible Engagement as potential springboard. Relevant non-ASEAN stakeholders should also be involved to the extent that does not cause diplomatic unease. Rohingya refugee crisis is no longer confined within Myanmar border and it thus needs collective response. ASEAN may seek to implement the response under the principle of 'ASEAN Way' but the issue; nonetheless, needs regional response to seek a viable and sustainable solution to one of the most prosecuted population in the modern world.

2. ASEAN should establish a strategic regional instrument and should strengthen collaboration among ASEAN countries for effectively addressing refugee issue and combating human trafficking, and people smuggling in the region.

3. ASEAN should actively reinforce cooperation with UNHCR and other non-state actors for refugee protection and strengthen collaboration between INGOs and ASEAN and among INGOs in addressing refugee's issues.

4. ASEAN should support and facilitate cooperation between Myanmar and Bangladesh on the safe return of the Rohingya Refugees as initiated and signed by both parties in 2018. It should mediate between Myanmar and Bangladesh through APHR for the safe-repatriation process of the Rohingya refugees.

5. ASEAN should encourage its member states to strengthen the Bali Process among all parties to cope with the Rohingya refugees systematically according to the core mandate of the Bali Process.

6. The International Criminal Police Organization (INTERPOL) and ASEAN Chiefs of National Police (ASEANAPOL) should collaborate regarding the Rohingya refugee

problems because the Rohingya refugees use the sea migration route responsibility of the two organization. The INTERPOL and ASEANAPOL should tackle the regional networks of people smuggling and human trafficking by strengthening the law and enforcement towards the smugglers or traffickers rather than the victims. The creation of regional practice supports ASEANAPOL to tackle human trafficking and people smuggling in the ASEAN region, especially the Rohingya Refugee problems.

5.3 Recommendation for Further Academic Research

This thesis is an extensive topic in terms of the actors, the layer of state authorizations, and the complexity of the issue relating to international human rights law. The researcher has only analyzed the surface level to answer the three research questions. It is interesting to do in-depth research on human rights compliance in Myanmar. The ultimate analysis focuses on the bilateral cooperation between Myanmar and Bangladesh with supports of ASEAN. Future research should consider assessing the progress of the agreement on safe repatriation of the Rohingya refugees from Bangladesh to Myanmar. The researcher could not analyze the progress on this dimension due to the time constraint. Apart from that, while completing this research, there was an event Gambia filing Myanmar over the allegation genocide acts against Rohingya population at the International Court of Justice (ICJ) in Hague. It would be interesting to study the aftermath of the ICJ's order over Myanmar.

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The interview questions via Line video call

Interview 01

Date: September 19, 2019

Informant: A Well-Informed Official

Position: A Professional at the Ministry of Foreign Affairs, Thailand

1. **How should the ASEAN response towards the Rohingya Refugee crisis be, both at national and international level?**

ASEAN should respond to the issue of the Rohingya refugees at the regional level rather than the international level because relevant ASEAN and non-ASEAN member states can resolve the Rohingya refugee problems. According to the Chairman's Statement at the 26th ASEAN Regional Forum (ARF) in Bangkok on the 2nd August 2019, it reflects ASEAN's point of views and position towards the Rohingya issue that:

1.1 ASEAN has been trying to find the best solution by implementing several platforms such as the ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management (AHA Centre), the Preliminary Needs Assessment (PNA) Mission conducted by officials from the Government of Myanmar. The PNA has finalized further with the recommendations and prepared for the Comprehensive Needs Assessment (CNA) based on ASEAN's mandate.

1.2 ASEAN has welcomed and admired the extension of the Memorandum of Understanding (MOU) between the Myanmar Government with the United Nations Development Programme (UNDP) and the Office of the United Nations High Commissioner for Refugees (UNHCR) to facilitate the repatriation process of the displaced persons from Rakhine State and looked forward to the full implementation of the MOU.

1.3 ASEAN encouraged Myanmar and Bangladesh to continue constructive and effective dialogue to facilitate the repatriation process for those Rohingya refugees who voluntarily return to Myanmar in a safe, secure, and dignified manner.

1.4 ASEAN also encouraged the government of Myanmar to continue implementing the remaining recommendations of the final report of the Advisory Commission on Rakhine State. The Ministers stressed the need to find a comprehensive and durable solution to address the root causes of the conflict and create a conducive environment so that the affected communities can rebuild their lives. They expressed their continued support for Myanmar's efforts to bring peace, stability, the rule of law, promote harmony and reconciliation among the various communities, and ensure sustainable and equitable development in Rakhine State.

In conclusion, ASEAN should resolve the Rohingya refugee problems at the regional level and the relevant ASEAN and non-ASEAN member states. The best mechanism that I would see is to implement development assistance through the ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management (AHA Centre) throughout Myanmar. The development assistance program should be implemented in all communities, whether it is Buddhist, Islamic, or Christian.

2. Can ASEAN alleviate the problems among the Rohingya Refugees by using a human rights approach?

Utilizing of the Human Rights approach has neither helped, nor resolved the Rohingya issue. Even though Myanmar has transitioned towards democracy, with Aung San Suu Kyi as its democracy leader, Aung San Suu Kyi has not been able to fully exercise the authority of her position within the complex dynamics of Myanmar's parliament. Fundamentally, Aung San Suu Kyi has struggled to address the Rohingya concerns in Myanmar, primarily due to the pressure of the Buddhist Myanmar population. ASEAN should rather take a stronger leadership role on this matter than permitting the intervention of international organizations, which would end up increase tensions. The international organizations have

been investigating and reporting on the ongoing the 'ethnic cleansing' of the Rohingya people in Rakhine State through the Fact-Finding Mission (FFM). The FFM consisted of representatives from the UN Special Rapporteur on the situation of human rights in Myanmar, Asian Human Rights Commission (AHRC), and Independent Investigative Mechanism for Myanmar (IIMM). Hopefully, their actions will bring about solutions for Myanmar and encourage them to seek a peaceful resolution.

3. What should be the larger regional approach of cooperation towards resolving the Rohingya refugee problems?

The Organization of Islamic Cooperation or OIC would be an ideal party that could coordinate with ASEAN, as well as support Aung San Suu Kyi's administration. As for Thailand, it should focus on a diplomatic rather than isolationist approaches. Moreover, Myanmar has placed its trust in ASEAN's role to assess humanitarian needs and concerns, ASEAN should then not allow a third party like China to take the initiative in resolving this issue; as it will merely add to current tensions.

Furthermore, the ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management (AHA Centre) has been assigned by ASEAN to assess humanitarian and other needs in the facilitation and repatriation of the Rohingya people from Bangladesh to Myanmar. And while the AHA Center's objectives may not be directly linked with 'refugees' issues, it at least shows willingness from ASEAN to tackle the problems.

Interview 02

Date: September 19, 2019

Informant: An INGO Staff

Position: Migration Field Officer

1. **How should the ASEAN response towards the Rohingya Refugee crisis be, both in national and international levels?**

ASEAN consists of ten member countries. Thailand, Malaysia, and Indonesia are the most notable because Malaysia has many Rohingya communities; Indonesia shelters refugees from Myanmar, while Thailand detains them. Also, while we hardly ever heard about it, there are Rohingya in other countries: i.e., Singapore, Laos, Cambodia, the Philippines, and Brunei). Each country handles the issue differently. Each nation should address it bilaterally with Myanmar, and collectively, if the issue still persists. The countries that are not affected directly should also share the burden because the confrontation between Myanmar and the fellow ASEAN nations could lead to regional tension.

2. **Can ASEAN alleviate the problems among the Rohingya Refugees by using a human rights approach?**

Ideally, yes, but ASEAN needs a lead to discuss this. Human Rights Approach, especially the right to life; citizenship; education; and employment. The Rohingya issue should be a priority on the agenda of ASEAN. Discussing the Rohingya rights could be an ideal chance to discuss human rights generally. Basic rights are entitled to all human beings, including Rohingya. Nevertheless, we know the human rights scheme promotion was not vigorous within the ASEAN environment comparing to other parts of the world. While ASEAN has taken a non-intervention approach towards the Rohingya issue regionally, it should not come as a surprise that human rights are not a principle to which ASEAN member states adhere to.

3. **What should be the larger regional approach of cooperation towards resolving the Rohingya refugee problems?**

The larger regional approach could also involve Bangladesh, as Bangladesh has been involved in dealing with refugees. Bangladesh also appears interested in discussing and finding solutions with the ASEAN member states. India is regarded as a respected power in the region, and there are a number of Rohingya in India, as appeared in media that India were to deport Rohingya to Myanmar. Australia is a destination for Rohingya as well as other asylum seekers. ASEAN could engage these countries to discuss and pressure Myanmar to be more open to discuss and address their internal issues.
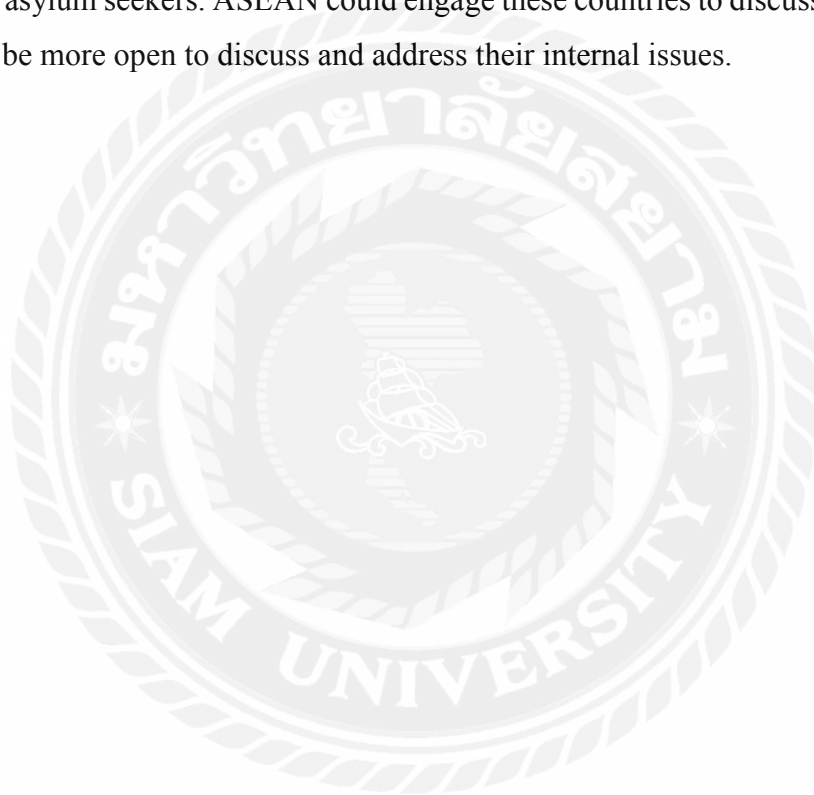
Interview 03

Date: September 19, 2019

Informant: An INGO Staff

Position: Protection Data Manager, INGO staff in Bangladesh

1. **How should the ASEAN response towards the Rohingya Refugee crisis be, both in national and international levels?**

For ASEAN over the past 2 years, the voice against the Rohingya crisis was not so loud. However, as time passes ASEAN can support in establishing a midterm strategy to elevate the crisis and cooperate to safe repatriation of the Rohingya to Myanmar. Critically, these efforts must be pursued alongside continued humanitarian aid, cooperate to secure justice and policy reforms for sustainable return of Rohingya. Nationally, ASEAN could provide humanitarian assistance to the camps and assess the situation how it is affecting the host community. Also, a group of representatives from ASEAN can come to Bangladesh and arrange meetings with the government to assess the need of the crisis and see how ASEAN can help to gather international support to repatriate Rohingya to Myanmar. On the other hand, internationally, ASEAN should put it in their agenda of annual summit and discuss thoroughly with the member countries how they can support to repatriate and restore Rohingya in Myanmar.

2. **Can ASEAN alleviate the problems among the Rohingya Refugees by using a human rights approach?**

After the Rakhine crisis, UN officials, humanitarian actors, and human rights groups have repeatedly called on Myanmar to allow observers and humanitarian actors into Rakhine State and cooperate with UN inquiries set up by the UN Human Rights Council. ASEAN could play an important facilitating role for reforming and communicating to Myanmar that if it ignores concerns it may face intensifying economic sanctions and travel bans as well as removal of Myanmar from important regional and international military and economic activities. On the other hand, providing reference of the Geneva convention

as well as International humanitarian laws, ASEAN can build a strong stand against the Rohingya crisis internationally and put pressure on Myanmar to repatriate Rohingyas and reinforce to gain justice against the humanitarian crisis.

3. **What should be the larger regional approach of cooperation towards resolving the Rohingya refugee problems?**

ASEAN and the international community could play a supportive role in providing humanitarian support like restoration of infrastructure and providing aid to returning Rohingya refugees. Also, ASEAN should be clear that no repatriation takes place until Rohingya refugees can make free and informed decisions about return, with the full involvement of the UN High Commissioner for Refugees.
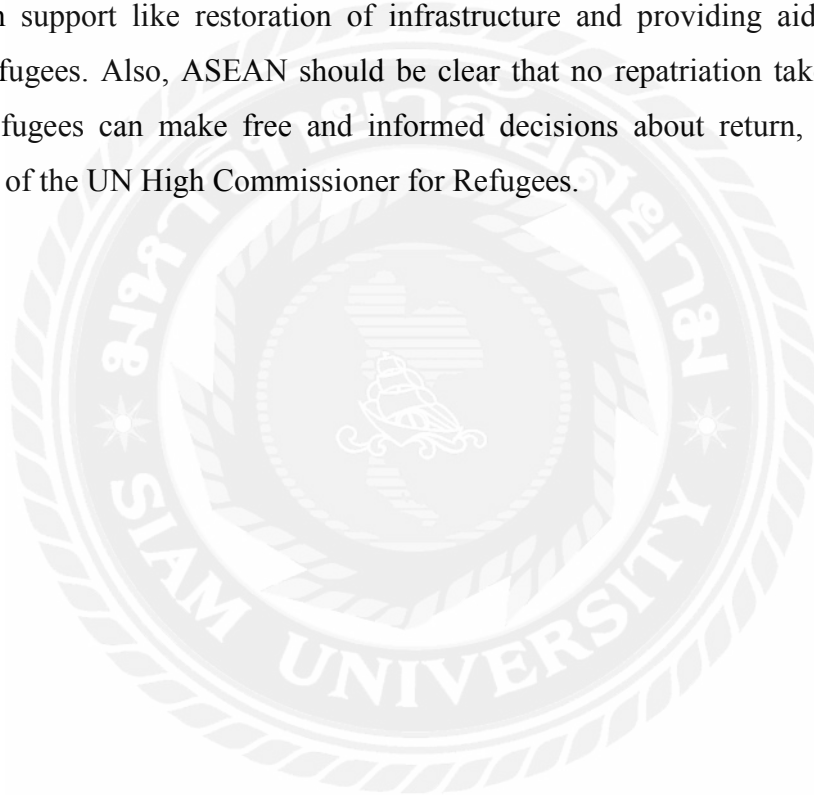
Interview 04

Date: September 19, 2019

Informant: Dr. Suraphol Srivithaya

Position: A Professor at Siam University, Bangkok, Thailand

1. **How should the ASEAN response towards the Rohingya Refugee crisis be, both in national and international levels?**

    I believe that mixed approaches would be ideal when looking to solve the Rohingya refugee problems rather than a stand-alone method. ASEAN member states must strengthen their domestic laws related to human trafficking and people smuggling, for instance, the increase of penalties to the human trafficking charge and also should be more coordination between ASEAN countries to tackle this issue.

    Each country should strengthen its laws and regulations regarding human trafficking and people smuggling in line with the UN Convention and the International Court of Justice or ICJ.

    Also, neighboring countries like Thailand, Malaysia, and Indonesia should create an emergency and cooperative network along their maritime borders. Furthermore, there should have human trafficking assistances and investigation unit, medical coordination agencies, and refugees' registration unit; especially, the registration unit, where the cooperation should expand further from the mentioned countries to Myanmar and Bangladesh; as origin and destination countries, they have more accurate information about the Rohingya identities.

2. **Can ASEAN alleviate the problems among the Rohingya Refugees by using a human rights approach?**

    The Human Rights approach in Asia is seen as not as strong as in Europe. Practicing human rights depends on the level of economic and democratic development of that particular country. AICHR is seen to have loosened engagement and coordination rather than serious enforcement of the human rights approach among the member states.

Actually, human right is a natural law that above state laws. The state cannot argue or against natural law. If the state's laws contradict the natural law, then state law cannot be enforced. However, Myanmar was in a sympathized position due to the minorities' problems. Yet, the Government of Myanmar 's treatment towards the Rohingya people, was not acceptable.

In the end, ASEAN has its core principle, which is ASEAN WAY or non-interference of domestic affairs of member states. Therefore, facilitating the coordination platform between Myanmar and Bangladesh is seen as the potential solution for this issue.

3. **What should be the larger regional approach of cooperation towards resolving the Rohingya refugee problems?**

In response to this question, I support the models of ASEAN plus Myanmar or ASEAN plus Bangladesh, rather than letting a third party intervene. The so-called 'development diplomacy' suggests that ASEAN should find a conducive environment to make Myanmar accept the issue of the Rohingya and seek a solution along bilateral lines.

Besides, the suggestion of China, regarding the Rohingya issue is interesting, because it is similar to, and in line with Thailand and ASEAN. China strongly believes in a bilateral approach between Myanmar and Bangladesh for a permanent solution.

In conclusion, ASEAN must cooperate with Bangladesh and Myanmar to solve this issue positively by using various methods such as development coordination inside and outside of both countries. ASEAN should facilitate this with experts in medical, vocational training, water and sanitation and education from the member states that are home to both Muslims and Buddhist Rakhine.

Interview 05

Date: September 23, 2019

Informant: Raksit Waropas

Position: An expert and experienced in international humanitarian development and INGO staff in Thailand

1. **How should the ASEAN response towards the Rohingya Refugee crisis be, both in national and international levels?**

First of all, the Rohingya Refugee crisis is cross-border in nature and has escalated to one of the largest refugee crises globally. There has been systematic discrimination, targeted violence and different forms of prosecution that exacerbate the situation of statelessness among Rohingya population in Rakhine. While the situation has somewhat stabilized, it left unprecedented influx of refugees in Cox's Bazaar, Bangladesh and instances of Rohingya boat people are still present constituting the multi-dimension of the challenges.

It is worth revisiting the regional body's staunch commitment to the non-interference principle that has guided how member states conduct their diplomatic relations. Yet, the rigidness of this principle also time and again stands in the way of meaningful regional response to the emerging crisis that requires cross-border initiative. Thus, for the regional bloc, home to estimated 647 million populations, to stay relevant, the non-interference principle should not be handled in absolute term and must be subject to reality check and adjusted to enable the region to respond in critical issues such as the Rohingya refugee crisis.

In connection to this, the Flexible Engagement approach mooted more than two decades ago by the late Dr. Surin Pitsuwan, then Foreign Minister of Thailand, should be considered as the key starting point. The key components in the approach still remains within the 1976 ASEAN Treaty of Amity and Cooperation (TAC) and there is no reason to see the Flexible Engagement as complete abandonment or deviation from TAC or ASEAN's diplomatic culture. It is merely the necessary evolvement for the regional bloc to stand the test of reality and emerging challenges in the world that see an ever increase in interconnectedness. Therefore, the member states need to express its commitment to

collectively respond to the Rohingya issues with Flexible Engagement as potential springboard. Relevant non-ASEAN stakeholders should also be involved to the extent that does not cause diplomatic unease. Rohingya refugee crisis is no longer confined within Myanmar border and it thus needs collective response. ASEAN may seek to implement the response under the principle of 'ASEAN Way' but the issue, nonetheless, needs regional response to seek a viable and sustainable solution to one of the most prosecuted population in the modern world.

2. Can ASEAN alleviate the problems among the Rohingya Refugees by using a human rights approach?

Yes, but, by this, it must remain within locally agreeable nuance to the approach as well as with disciplined diplomacy. It is unfortunate that the human rights approach has also been politicized or used as pretext to political meddling by certain powers – hence, mistrust is understandable. Myanmar's transition to complete civilian administration could take years but at least there has been positive development that the region could move from constructive engagement with Myanmar to a more deepened interaction that open ways for coordinated responses to this crisis and also natural disasters in the future.

Assistance and relief made on humanitarian ground would make a sound case to collectively respond to the immediate needs of the Rohingya refugees, and ASEAN should look into ways to maximize the effort of non-state actors – national and international – to at least find a breakthrough to settle and prevent the socio-political upheaval in the Rakhine and relieve the pressure that Bangladesh bears.

Political will is needed to make the case for deeper regional engagement to put in place longer-term solution agreeable by all stakeholder countries. It is again back to the question of to what extent ASEAN member states can be flexible to allow a collective response to an issue that has long been claimed as internal affair by Myanmar. Perhaps, even more critical is the animosity on people-level in Rakhine that could potentially further radicalized the violent conflict and needs even greater delicate response and with the government of Myanmar as the party to the conflict, a neutral international mediating mechanism – that could go beyond ASEAN - would be needed to mitigate the communal

acrimony and, if at all possible, restorative justice would be needed to normalize the situation in Rakhine in longer-term.

3. **What should be the larger regional approach of cooperation towards resolving the Rohingya refugee problems?**

To begin with, the Rohingya issue has long been shelved for decades, in large part owing to the fact that Myanmar regards this as internal affair. The issue of Rohingya refugee is multi-faceted in fact. In recent years, the causes stem clearly from violence and discriminated persecution. However, one would need to look into economic factor that push the Rohingya people on the move as well.

Being cross-border in nature, the issue needs regional inter-ministerial body to find a feasible political solution that looks into the aspects of humanitarian aid, resettlement, counter-human trafficking/smuggling and economic migration while ethno-social divide in Rakhine state would need even more delicate measure that Myanmar's strong political will is needed. On the pressing humanitarian ground, there are areas of health, security and protection, and education would be among top priorities.

In addition, international community would need to pull their resources together but it would be more feasible for ASEAN to be in the driving seat to drive this envisioned cooperation to address the problem.

Interview 06

Date: October 19, 2019

Informant: Dr. Kamal Uddin

Position: A Myanmar expert and a professor at Siam University, Thailand

1. **How should the ASEAN response towards the Rohingya Refugee crisis be, both in national and international levels?**

I would say that the solution of the Rohingya people cannot be solved on an 'international' level but rather it is best solved with a 'bilateral' approach between Myanmar and Bangladesh. The United Nations: UN can play a major role in the safe repatriation process of the Rohingya refugees in Myanmar to Bangladesh.

2. **Can ASEAN alleviate the problems among the Rohingya Refugees by using a human rights approach?**

Definitely, the human rights issue is an essential instrument that can be used to solve in the Rohingya Refugee crisis. However, ASEAN must give a clear definition of human rights among the ASEAN member states. The basic human rights of

1.) The rights to life

2.) The rights to liberty (freedom of speech, freedom of movements, etc.)

3.) The rights to property (rights on lands)

The above-mentioned human rights have never been existed in the case of Rohingya people in Myanmar. First of all, the Government of Myanmar should re-consider granting citizenship to the Rohingya. This provides them with further rights and hope for a potential resolution. This answer leads to answer number 3 which address China as a mediator.

3. **What should be the larger regional approach of cooperation towards resolving the Rohingya refugee problems?**

The international media have said that Myanmar wants to have an export industrial and tourism zone along the Naf River, which lays along with Myanmar and Bangladesh. This explains why Myanmar would like to push the Rohingya into Bangladesh. If this is an underlying hidden agenda, then ASEAN must look into it. The Rohingya issue is complex due to many factors inside Myanmar. Not only the military junta have their agenda, but so to do the extremist Buddhist monks in opposition to the Rohingya people.

China could play a role in resolving this issue because of its large investment inside Myanmar over many years. However, India and Russia are also considered to be major nations that can play a role. These three superpowers have a geopolitical economic strategy towards Myanmar. India has supported Bangladesh in many aspects, not only the Rohingya but also Myanmar. India has supported Myanmar in geopolitical matters, especially during the tension between India and Pakistan and Bangladesh.

Ultimately, whether Myanmar relies on China rather than ASEAN, we will have to wait and see what China decides. ASEAN negotiates with Myanmar with the support of china then the Rohingya problem may be solved rather more swiftly.

APPENDIX 2

List of Focus-Group Participants

No.	Full name	Position	Organization	Focus Group Interview Conducted on
1.	Pol. Lt.Col. Parinya Sriboonsom	Inspector of Investigation Sub-Division Immigration Division 1	Immigration Bureau	3 November 2019
2.	Kanyarad Pinseethong	Legal Advisor	Former employee of International Committee of the Red Cross: ICRC	3 November 2019
3.	Paisit Pusittrakul	International Humanitarian Law Consultant	Former employee International Committee of the Red Cross: ICRC	3 November 2019
4.	Azeez Taofeek	Instructor	Kasetsart University	3 November 2019
5.	Onabure Ichalen Moses Oriabojie	MAPD Student	Siam University	3 November 2019
6.	Onabure Ichalen Abumere Jackson	MAPD Student	Siam University	3 November 2019
7.	Bile Nov Gedi	MAPD Student	Siam University	3 November 2019
8.	Yusuf Baba Abelvulaye Moma Gunele	MAPD Student	Siam University	3 November 2019
9.	Konthea Thlang	MAPD Student	Siam University	3 November 2019
10.	Farah Aser	MAPD Student	Siam University	3 November 2019
11.	Sopheanoth Phan	MAPD Student	Siam University	3 November 2019
12.	Dr. Emmanuel Okafor	MBA Professor	Siam University	3 November 2019
13.	Azzez Taofeek	High School Teacher	A teacher at a school under the administration of Kasetsart University	3 November 2019