



RESILIENCE IN THE FACE OF DISRUPTIONS

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Disruptions in Rakhine State and Its Implications to Malaysia

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INTRODUCTION

Violence and instability in Rakhine State have become one of Southeast Asia's most tragic, deplorable and sensitive socio-political conundrums with implications to not only Myanmar but its neighbouring countries as well. Indeed, developments over the past few years – namely the Andaman Sea crisis in May 2015 and attacks on Myanmar border police posts in October 2016 – highlight the extent to which disruptions in Rakhine have affected, are affecting and will continue to affect forced displacement in the region for the foreseeable future. Such developments have also reinforced the fact that forced migration is a borderless, transnational issue with profound security implications for the region.

Yet, it is not (and it has never been), in the interests of ASEAN Member States to assume internationally binding legal responsibilities for irregular people movements. The issue is that any policies adopted will be seen as welcoming of irregular migrants and encouraging an influx of people smuggling and trafficking networks, both of which can burden national systems. The European experience of handling the Syrian refugee crisis has demonstrated that forced migration can be a political and social liability to governments of the day.

However, ongoing movements of the Rohingya into Bangladesh since disruptions began in August 2017, indicate that there could be a repeat of the Andaman Sea crisis. As days go on, it is not a question of if but when boats will start to set sail from the Bangladesh-Myanmar border, which will result in an outflow of Rohingya refugees into neighbouring countries like Malaysia.

Malaysia is already facing a significant forced migration issue. The ongoing plight of the Rohingya over the years has resulted in the country shifting from a transit point to one of final destination for refugees. This serves as

a reminder that Rohingya refugees, who have already been in the country for generations, are unlikely to return home anytime soon.

What are the implications of recent disruptions in Rakhine State to Malaysia? What are the options available for the Malaysian Government moving forward? This paper will argue that, in essence, Malaysia must further develop its policy (of not having a policy) on refugees, asylum seekers and displaced people. Specifically, the Malaysian Government should consider a comprehensive policy on the Rohingya in order to better prepare for their impending arrival and its impact on the country's national interests and national security.

WHAT IS THE CURRENT SITUATION?

Since August 2017, an estimated 700,000 Rohingya have fled Rakhine State to refugee camps along the Bangladesh-Myanmar border, with an estimated 100,000 internally displaced or stuck in “no man's land” between the two countries. The overall Rohingya population in Cox's Bazar is estimated to have reached 1.1 million, with some reports stating that the largest growing camp in the area has reached 1.2 million.¹⁴⁸ In other words, the Rohingya crisis has shifted from Rakhine State to Bangladesh and the situation along the Bangladesh-Myanmar border is likely to deteriorate in the near future.

First, the temporary camp conditions could worsen. There are no guarantees that aid will continue, and the monsoon season could put more lives at risk and result in a public health emergency. For instance, the Rohingya have stripped away 1,650 hectares of Bangladeshi land (which estimates up to roughly US\$18 million) as they rely heavily on firewood for cooking. This could increase their vulnerability due to the upcoming cyclone and monsoon seasons.¹⁴⁹ Furthermore, USAID has reported that the Rohingya lack basic infrastructure, are denied access to education and freedom of livelihoods, and are left dependent on emergency humanitarian relief for food and medi-

148 Solomon, Feliz. “About 60 Rohingya Babies Are Born Every Day in Refugee Camps, the U.N Says”. *TIME*, May 16, 2018. <http://time.com/5280232/myanmar-bangladesh-rohingya-babies-births/>.

149 “Bangladesh Begins Distributing Cooking Fuel for Rohingya Refugees”. *Benar News*, May 21, 2018. <https://www.rfa.org/english/news/myanmar/refugees-fuel-05212018174815.html>.

cal care.¹⁵⁰ Strengthening humanitarian assistance to Bangladesh, in terms of food, health and social welfare, is of utmost importance to cater for the immediate plight of the Rohingya. However, history has shown that pledges of humanitarian aid are often only partially fulfilled in the end.

Second, there are reservations as to whether arrangements between Myanmar and Bangladesh of the return of displaced persons from Rakhine State can be implemented. For starters, the Rohingya continue to trickle into Bangladesh, almost on a daily basis, to escape disruptions in Rakhine. The Myanmar-Bangladesh Agreement on Rohingya Repatriation is also not a feasible or sustainable solution, as Myanmar is only accepting a small fraction of names – those with documentation. Myanmar has urged Bangladesh to start the repatriation of 1,101 verified Rohingya out of the 8,032 who have qualified for the terms of the agreement thus far (of which there are 778 Muslims and 444 Hindus).¹⁵¹ The majority of the Rohingya is stateless and will consequently not qualify for return.

Furthermore, there are not many Rohingya left in Rakhine and there are uncertainties if they were to return home. The agreement does not address the legal status of the Rohingya moving forward, safeguards for the Rohingya against violence, whether the Rohingya will be allowed to return to their land, and cooperation between Myanmar's security personnel in key positions, particularly since any sign of compromise will be seen as weakness by the military.

WHAT COULD HAPPEN NEXT?

The assumption must be made that the Rohingya will remain in refugee camps in Bangladesh for the foreseeable future, before boats are being deployed for countries of final destination like Malaysia. It must be said that refugee resettlement programmes for the Rohingya to third countries also seem unlikely. Indeed, there is little sign of such programmes in the pipeline.

150 USAID Office of Press Relations. "USAID Administrator Mark Green's Visit to Rakhine State in Burma". Last updated May 21, 2018. <https://www.usaid.gov/news-information/press-releases/may-21-2018-usaid-administrator-mark-green-visit-rakhine-state-burma>.

151 "Myanmar wants repatriation of 1,101 verified Rohingya". *The Dhaka Tribune*, May 18, 2018. <https://www.dhakatribune.com/world/south-asia/2018/05/18/myanmar-wants-repatriation-1101-verified-rohingyas>.

History has shown that the temporary refugee camps along the Bangladesh-Myanmar border could eventually become permanent settlements. The Palestinian camps in Lebanon and Jordan are notable examples, with each housing 448,599 and 2 million refugees respectively.¹⁵² The Dadaab refugee camp in Kenya, set up in 1991, is still growing, and the more recent Zaatari camp in Jordan is also on the verge of becoming a refugee township as it caters to 80,000 Syrians.¹⁵³

However, the status of the Rohingya camps in Bangladesh is dependent on a steady stream of financial aid coming in (of which this paper has argued there are no guarantees), and the Bangladeshi Government allowing these camps to exist for a prolonged period. Although they have generally welcomed aid for the Rohingya, there are also pressing concerns for the Bangladeshi Government that the improvement of camp conditions could lead to cementing the permanent presence of the Rohingya within its borders.

The Bangladeshi Government is also facing political pressure as elections are due at the end of the year. Locals are wary of the Rohingya overcrowding an already overpopulated country, which has resulted in accusations that Bangladesh is currently being burdened by refugees – a situation that it simply cannot afford. The Government's struggle for its own population is further compounded by climate disasters, which have killed thousands and are costing millions. Finally, there are also concerns regarding national security and public order and stability, given reports that the recent violence in Rakhine was an act of terrorism by a Rohingya insurgency group. The experiences of managing the Syrian refugee crisis in European countries like Germany, in which refugees resorted to crime and radicalisation as a means of coping with being contained in camps, also serve as a means of caution to Bangladeshis.

These scenarios indicate that refugees will start to depart Bangladesh for neighbouring countries, either on their own accord or with some encouragement by local authorities who simply cannot cope. Malaysia is likely to be

152 "Palestine refugees: locations and numbers". *Irin News*, January 16, 2010 (last updated January 16, 2018). <http://www.irinnews.org/report/89571/middle-east-palestinian-refugee-numberswhereabouts>.

153 Lee, Joi. "Syria's War: Inside Jordan's Zataari refugee camp". *Al Jazeera*, April 1, 2018. <https://www.aljazeera.com/indepth/inpictures/syria-war-jordan-zaatari-refugee-camp-180326115809170.html>.

the most attractive destination for the majority, as it is no longer a transit country for the Rohingya. Reasons for this changeover, of which there are many, are outlined below.

WHAT ARE THE IMPLICATIONS FOR MALAYSIA?

First and foremost, Malaysia's status as a country of final destination for the Rohingya is not a new development. This transition can be attributed to a number of pull factors such as the relatively short travel distance between Myanmar and Malaysia (in comparison to other destinations), economic opportunities, religious similarities and the fact that there is already an established Rohingya community in the country who been here for up to three generations. Previous interviews have indicated, for instance, that the Andaman Sea crisis was not a "one-off" as boats dock at Malaysian shores regularly.¹⁵⁴ Malaysia's attractiveness is because it is a relatively well-to-do Muslim country with a demand for cheap labour and a large immigrant population.

Second, not being a signatory to the 1951 Refugee Convention and its 1967 Protocol does little to prevent refugees from entering the country. Due to a constant flow of refugees and asylum seekers into the country, Malaysia has a "responsibility to protect" vis-à-vis the principle of *non-refoulment* and the obligations of the shipmaster as outlined in international maritime law. Whether or not a country is a party to the 1951 Convention, its government has an obligation to ensure that no refugee should be returned to any country where he or she is likely to face persecution or torture. *Non-refoulment* makes an even stronger case for the Malaysian Government to facilitate and increase refugees' self-reliance and inclusion in society, particularly the Rohingya.

On the other hand, international maritime law codifies the obligation for rescue at sea in a number of instruments. According to the United Nations High Commissioner for Refugees (UNHCR), "the shipmaster has

154 There has always been a steady stream of refugees trickling into Malaysia. However, the Andaman Sea crisis garnered media attention specifically because the boats were abandoned at sea. The influx of large numbers like those seen in the Andaman Sea crisis normally occur when there are sudden anomalies that serve as a trigger. This can include a sudden crackdown on smuggling networks, as per 2015, or an uptake of violence at the source countries or regions.

an obligation to render assistance to those in distress at sea without regard to their nationality, status or the circumstances in which they are found.”¹⁵⁵ It is also worth mentioning that the Rohingya community in Malaysia suffers from a relatively low rate of resettlement abroad. Those who have been here for generations are either unhappy at their options for resettlement, refuse to split up with their families or prefer to remain in Malaysia. Such conditions indicate that Malaysia will continue to host a large, growing number of Rohingya in the long run.¹⁵⁶

There are also expectations for Malaysia to absorb the Rohingya in Bangladesh from certain quarters, namely the Rohingya, Myanmar and ASEAN. Such expectations are the result of the Malaysian Government’s outspokenness on the ongoing crisis in Rakhine. Malaysia’s tough stance on the matter has included summoning the Burmese ambassador in Kuala Lumpur, a solidarity march, referrals of “genocide” and “ethnic cleansing” in its press statements and last minute cancellations of football matches in Myanmar. We should not underestimate the impact and possible implications of these developments, not only to the Myanmar Government and the wider ASEAN circle but also to the Rohingya themselves, with regards to expectations that refugees will be welcomed into Malaysia. There is also a general dissatisfaction by all ASEAN Member States with Malaysia over how it has approached the Rohingya crisis, with Malaysia being deliberately excluded from informal discussions on the issue.

HOW CAN MALAYSIA MOVE FORWARD?

In the short term, because the crisis has shifted from Rakhine State to the Bangladesh-Myanmar border, the priority should be to address the primary needs of the Rohingya. Efforts should also be focused on garnering immediate results to the humanitarian situation along the border. This necessitates a continuation of assistance and aid – such as food, health and social welfare – to ensure that camp conditions remain sufficient and do

155 This is based on the 1982 United Nations Convention on the Law of the Sea (UNCLOS Convention Art. 98(1)) and the 1974 International Convention for the Safety of Life at Sea (SOLAS Convention Chapter V, Regulation 33(1)).

156 As of March 2018, there are 69,880 Rohingya refugees and asylum seekers registered with UNHCR Malaysia. The exact number of those who remain off the grid is unknown, although estimates have pointed to at least 150,000.

not deteriorate. Such efforts will also help to reduce the likelihood of the Rohingya departing for neighbouring countries like Malaysia. Some of the Malaysian Government's initiatives thus far include establishing hospitals in Cox's Bazar and securing funding from Saudi Arabia and the United Arab Emirates to support Malaysian efforts in Bangladesh.

Malaysia should also put pressure on signatories of the 1951 Convention and its 1967 Protocol to play a bigger role in the crisis. Regional signatories, in particular, should measure up to their international obligations with regards to resettlement and mutual assistance. It should be recognised that Malaysia hosts a large number of refugees and displaced persons who are allowed to live and earn a living albeit illegally. Despite obvious shortcomings, in practice, it appears that Malaysia does more than some countries that have signed both treaties.

In the long term, however, the Malaysian Government should re-examine its efforts to pressure Myanmar on disruptions in Rakhine State. As this paper has already established, the number of Rohingya in Rakhine State is at a minimal, and most either do not qualify for repatriation or do not want to return. And should the tables turn and conditions improve, any peaceful solution to the issues surrounding Rakhine State must involve Myanmar in order to be sustainable. Alienating the Myanmar Government, and indeed the rest of ASEAN as a result of Malaysia's position on the Rohingya will do very little to facilitate this process.

Domestically, the Malaysian Government should consider developing a "comprehensive policy" on the Rohingya in order to better prepare for their arrival when boats start to depart Bangladesh. The current "policy of not having a policy" on refugees will no longer be sufficient to address the ongoing plight of the Rohingya (both within and outside of Malaysia) and its impact on the country's national interests and national security. Such a policy will also not prevent them from coming to the country, nor is the Government's dependency on international organisations like the UNHCR is sustainable in the long run.

A COMPREHENSIVE POLICY ON THE ROHINGYA

Although a comprehensive policy on the Rohingya is not tantamount to the Government acceding and ratifying such commitments like the 1951

Convention and its 1967 Protocol, challenges and potential deal-breakers to such a policy remain. These include:

- i. Will a comprehensive policy on the Rohingya lead to pressure for the Malaysian Government to have an official policy on refugees overall?
- ii. Will there be domestic pushback to the idea of a Rohingya policy in Malaysia?
- iii. Will there be expectations to grant citizenship to the Rohingya who have already been in Malaysia for generations?

In order to address these issues, a policy on the Rohingya in Malaysia should, first and foremost, include proper stakeholder consultation with local non-governmental organisations (NGOs), Rohingya community groups and organisations, aid agencies and international organisations. This would avoid the failure of a pilot programme that aimed to formally employ 300 Rohingya in the plantation and manufacturing sectors in March 2017, which simply did not appeal to its targeted audience.¹⁵⁷

Moreover, a policy on the Rohingya should consist of three key initiatives. The first is the registration of the Rohingya with UNHCR Malaysia to ensure that refugees undergo the organisation's Refugee Status Determination process – a stringent procedure that will result in refugees receiving the most technically advanced and secure UNHCR card. Second, to cater for national security concerns, a Rohingya policy should also formalise or regularise their status in a national database and issue appropriate identification documents. These may include humanitarian visas or permits for “temporary residents” and “guests”, which will reinforce the fact that a Rohingya policy will not be tantamount to naturalisation. Third, a Rohingya policy should introduce a regulated work scheme as originally planned by the Government in 2017. Besides being a competitive labour pool, refugees will be financially independent and improve their skills set. These initiatives would strengthen the Rohingya's integration capacity in Malaysia and increase their chances of being resettled overseas to third countries of final destination, particularly if there is sufficient and reliable information on them.

157 UNHCR Malaysia contacted 4,000 Rohingya refugees, of whom only 10 per cent expressed interest in participating in the pilot programme. Out of the 400 names who were interested, only 14 eventually started on the first day in March 2017. As of August 2017, there were no refugees participating in the pilot programme.

The regularisation of status and permission to work for the Rohingya will assist in tackling the potential challenges of a Rohingya policy in Malaysia outlined above. For instance, possible spill-over effects of problems in refugee communities should be minimised if refugees are registered with proper identification and given opportunities to be self-sufficient. Any negative perceptions of refugees or backlash against these individuals by locals would be better managed if they are seen as “legal” individuals with “real” identities, as the notion of “anonymous” individuals constituting a “threat” to national security should fade. Perhaps most importantly, a national database will ensure the proper conduct of law enforcement without the arbitrary arrest, bribery, detention or deportation of refugees. This will improve local confidence in the Government’s management of forced migration flows if it is able to control their borders and mitigate potential threats against public safety and security.

In essence, a comprehensive policy on the Rohingya will ensure that the Malaysian Government is prepared for their arrival, able to identify and register them once they reach Malaysia, and provide humanitarian assistance and support to these communities without compromising Malaysia’s national interest and national security.

Biographies of Contributors

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Against a rapidly changing global environment, societies are now having to deal with a host of challenges to their security and way of life. Many of these challenges had a significant disruptive impact on human security. In the 21st century, how societies respond to disruption(s) and manage their transformative effects would largely be defined by the extent to which they are able to comprehend the complex consequences of such disruption on their social, economic and political institutions that shape their everyday lives.

A key element in dealing with disruption is building resilience. This was the key theme of the 3rd Annual Conference of the Consortium of Non-Traditional Security (NTS) Studies in Asia, held on 27-28 March 2018, in Singapore. This monograph compiles the papers presented by members of the Consortium. They examine the kinds of human insecurities and uncertainties brought on by disruptions, analyse the current responses by states and other actors, and point to specific recommendations on how societal resilience can be built in the face of disruptions.

