

# Why ASEAN Fails to Play Role in the Rohingya Situation from the Perspective of ASEAN Charter

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## Abstract

This article is written in a sense of law to answer the question of why ASEAN fails to play role in the Rohingya situation from the perspective of ASEAN Charter. Article 1(7) of the ASEAN Charter allocates ASEAN to promote and protect human rights as their core commitment. But in the view of the world, ASEAN seems to fail to commit their protection on human rights in the Rohingya situation. This article examines the ASEAN Charter and found that ASEAN is designed to protect the principle of non-interference more than the human rights protection and the decision-making mode of ASEAN under Article 20(1) of the ASEAN Charter cannot apply into the Rohingya situation in practice because there is a lock of law making ASEAN to respect and rely on principle of non-interference which plays the key role to keep ASEAN together and stays for this last long. Hence the author proposes ASEAN to revise the ASEAN Charter by concerning more on the protection of human rights.

**Keywords:** ASEAN, Rohingya, ASEAN Charter, ASEAN Summit, Non-interference

## Introduction

Since ASEAN ratified the ASEAN Charter in 2007 and reformed its organization in 2008. The issue of human rights is the key unavoidable commitment of ASEAN to be recognized as the modern intergovernmental organization. The obligations of ASEAN to promote and protect human rights in Southeast Asia region are reconfirmed under the ASEAN Charter which is the most significant fundamental ASEAN instrument. According to Article 1(2)(7) of the ASEAN Charter, it stated that “the purposes of ASEAN are: ...to promote and protect human rights and fundamental freedoms...”. (ASEAN, 2016) The Rohingya situation in the state of Rakhine, Myanmar is now the biggest human rights issue against ASEAN. Therefore ASEAN needs to observe these human rights commitments under the ASEAN Charter to satisfy the world. (Asia Times, 2017; Bangkok Post, 2017; Diplomat, 2017) More interestingly unless the human rights commitments, ASEAN is as well obligated with its member states to respect the principle of non-interference under Article 2(e) of the ASEAN Charter, which stated that “ASEAN and its Member States shall act: ...non-interference in the internal affairs of ASEAN Member States.”. Consequently the Rohingya situation is the big task of ASEAN to prove ASEAN itself to the world as the most reliable rule-based regional intergovernmental organization in Southeast Asia region concerning on the human rights as well as to keep relying on the ASEAN’s principle of non-interference to please the ASEAN Member States and stay away from the ASEAN Member States’ problem as ASEAN normally does. (Time, 2017)

However it seems to the world that ASEAN disregard and kept silence to react with the Rohingya situation instead of acting strictly under their commitment on human rights. This response of ASEAN also took ASEAN to be spotted and be questioned on the failure of ASEAN human rights commitment. (Amnesty International, 2017; ECHO, 2017; OHCHR, 2017; Human Rights Watch, 2012) Therefore this journal will explain why ASEAN fails to play role in the Rohingya situation from the perspective of ASEAN Charter.

## **Rohingya Situation and ASEAN**

**Rohingya Situation:** The Rohingya are an unofficial ethnic and stateless group living in the western coastal state of Rakhine, Myanmar. In 2012 the Human Rights Watch publicly released the report on the Rohingya situation blaming Myanmar with the responsibilities of denial of citizenship rights to the Rohingya, Killings by security forces, Mass arrests of the Rohingya, Excessive use of force against the Rohingya, Violation of religious rights, Violations of property rights, Forced relocations, and returns of displaced persons, and others. (Human Rights Watch, 2012) Then in 2016 after a crackdown of Myanmar for the Rohingya in Rakhine, more than 500,000 Rohingyas have fled Myanmar to Bangladesh. The world saw the news showing the Rohingya was shot while they tried to cross the border. Some of them were pushed away by Bangladesh. (Aljazeera, 2017; Time, 2017)

The tension of situation is getting more worse when the Rohingya has been mentioned as the most persecuted minority in the world and Myanmar government was accused of carrying out ethnic cleaning of the Rohingya with many released documents by both of international organizations and NGOs such as the UN High Commissioner for Human Rights, the European Commission, Amnesty International, the Human Rights Watch, and others. (Amnesty International, 2017; ECHO, 2017; OHCHR, 2017; Human Rights Watch, 2012)

This world tension also dragged both Myanmar and also ASEAN into the same bracket. Myanmar was accused of failing to protect the human rights. ASEAN as the key intergovernmental organization in Southeast Asia region also was accused of playing no role in this situation and was hard-pressed by the world to get involved directly in the Rohingya situation. (Asia Times, 2017; Bangkok Post, 2017; Diplomat, 2017) Finally ASEAN keeps playing no role in the Rohingya situation. This reaction of ASEAN dissatisfied the world and effected the ASEAN external relations.

**ASEAN:** The Association of Southeast Asian Nations (ASEAN) was officially established on 8 August 1967 at Bangkok, Thailand by the ASEAN Declaration (Bangkok Declaration) with the five Founding Member States such as Indonesia, Malaysia, Philippines, Singapore, and Thailand. Now the ASEAN is consisted of five more-Member States such as Brunei Darussalam, Vietnam, Lao PDR, Myanmar, and Cambodia (ASEAN, 2017). Then on 15 December 2008 ASEAN launched the ASEAN Charter to reform its organization structure as well as the ideal of building ASEAN Community (AC) by 2020 which comprising three pillars, namely ASEAN Economic Community (AEC), ASEAN Political-Security Community (APSC), and ASEAN Socio-cultural Community (ASC). (ASEAN, 2013) At last this ideal of building AC was accelerated by the ASEAN Member States in 2007 and then finally came true in 2015. (ASEAN, 2017; Ewing-Chow, Michael & Hsien-Li, 2013) Without any doubts ASEAN now has seen as one of the most present successful rule-based regional intergovernmental organization in Southeast Asia region. The next goal for ASEAN is to fully and effectively implement the APSC, AEC and ASC's Blueprints 2025 to establish the rules-based, people-oriented, people-centred ASEAN Community by 2025. (ASEAN, 2017)

**ASEAN Summit:** The ASEAN Summit serves ASEAN as the supreme policy-making body of organization which consists of the ten heads of government of each ASEAN Member States under Article 7(2) of the ASEAN Charter. The scope authority of the ASEAN Summit is to set the direction for ASEAN policies and objectives which deliberates, provides policy guidance, and takes decisions on key issues relating to the objectives of ASEAN, important matters of interest such as signing or endorsement of agreements, and the issuance of declarations by the ASEAN Leaders at the Summit. To practice their authority, the ASEAN Summit arranges the meeting twice a year and makes decision based on their own method of decision making under Article 21 of the ASEAN Charter which is called consultation and consensus. (ASEAN, 2017) Next round of the ASEAN Summits is the 31<sup>th</sup> round which would be held between 13-14 November 2017 at Manila, Philippines. (ASEAN, 2017)



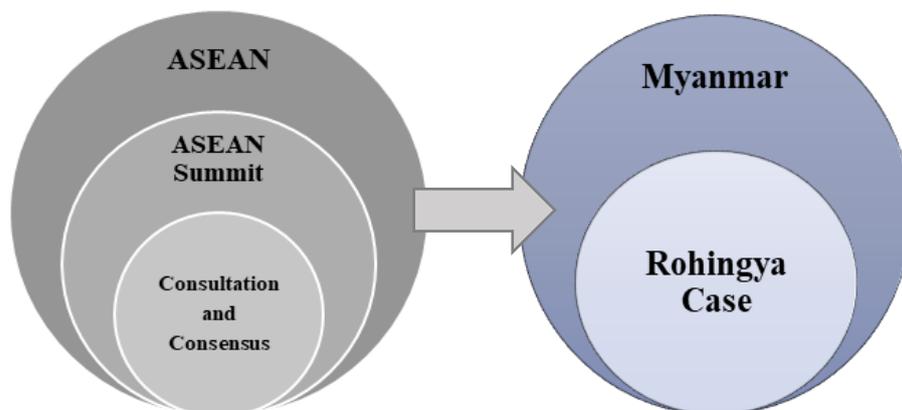
As shown on Figure 1, the ASEAN organization structure is mentioned under Chapter 4 (Article 7-15) of the ASEAN Charter. The main ASEAN bodies are mainly consisted of ASEAN Summit, Secretariat-General of ASEAN, ASEAN Coordinating Councils, ASEAN Community Councils, ASEAN Sectoral Ministerial Bodies, Secretary-General of ASEAN and ASEAN Secretariat, Committee of Permanent representatives, ASEAN National Secretariats, ASEAN Human Rights Body and ASEAN Foundation. (ASEAN, 2016)

For the hierarchy of ASEAN bodies, ASEAN is the intergovernmental organization model which was established with the ideal of Top Down power. Henceforth the ASEAN Summit is designed to be the power center of ASEAN. As shown on Figure 1, all ASEAN bodies such as Secretariat-General of ASEAN, ASEAN Coordinating Councils, ASEAN Community Councils, ASEAN Sectoral Ministerial Bodies, Secretary-General of ASEAN and ASEAN Secretariat, Committee of Permanent representatives, ASEAN National Secretariats, ASEAN Human Rights Body such as ASEAN Intergovernmental Commission on Human Rights (AICHR), ASEAN Foundation, are the non-independent bodies with the limitation of decision-making power under Article 20 of the ASEAN Charter. When these ASEAN bodies cannot make decision, the decision-making issue then belongs to the ASEAN Summit for the final decision making. (ASEAN, 2016)

When the ASEAN Charter needs to be interpreted, the role of Charter interpretation shall belong to ASEAN Secretariat. Nevertheless the decision of ASEAN Secretariat is not a legal binding finding and in case of doubt, the issue will be referred to the ASEAN Summit to make a final decision. (Limsiritong, 2016a)

For the decision-making mode of ASEAN Summit, the ASEAN Summit shall make all decisions for related ASEAN key issues on a basic principle of consultation and consensus under Article 20(1) of the ASEAN Charter. (ASEAN, 2016) ASEAN principally apply the method of positive consensus which requires all ASEAN Member States in the ASEAN Summit to agree with decision. In case there is only one ASEAN Member State disagrees, the consensus will not be reached, and the ASEAN Summit cannot act lawfully on behalf of ASEAN at all. (Limsiritong, 2016b)

**Limitation of ASEAN to get involved into the Rohingya situation under the ASEAN Charter:** To explain the limitation of ASEAN to get involved into the Rohingya situation under the ASEAN Charter, there are two matters such as (1) the ASEAN principle of non-interference, and (2) the problem of applying Article 20(1) of the ASEAN Charter in case of the Rohingya.



**Figure 2** Relations between ASEAN and the Rohingya situation under the ASEAN Charter

As shown on Figure 2, for the matter of the ASEAN principle of non-interference, this situation of Rohingya is under the territory and sovereignty of Myanmar which is also the

ASEAN Member State. This would mean that the ASEAN principle of non-interference in the internal affairs of ASEAN Member States under Article 2(e) would be directly applied to the Rohingya situation because of the ASEAN's membership of Myanmar. As long as the principle of non-interference is the commitments of ASEAN Member States under the ASEAN Charter, ASEAN has no right to get involved in the Rohingya situation without the consent of Myanmar.

For the problem of applying Article 20(1) of the ASEAN Charter in case of the Rohingya, this article requires the ASEAN Summit which is the top authority of ASEAN to make any decisions on a basis of consultation and consensus. To get positive consensus, it requires all ASEAN Member States to agree on the matter. This situation is locked down by the fact that Myanmar on the one hand is one of ASEAN Member State and on the other hand is the Party in the Rohingya situation. Importantly to get consensus in the Rohingya situation, it would mean that all ASEAN Member States included Myanmar need to agree on the Rohingya situation. The interesting question is how possible Myanmar as a ASEAN Member State will agree on the Rohingya situation against himself in the meeting of ASEAN Summit. The answer is not difficult to guess at all. So even ASEAN would really like to get involved in the Rohingya situation, it is impossible to happen in practice because Myanmar will not take their own risks to agree on the Rohingya situation against himself without an answer to their peoples and this is as well the limitation of ASEAN to act on the Rohingya situation.

### **Conclusion and Recommendation**

To summarize, as mentioned above, the decision-making mode of ASEAN based on consensus under Article 21(1) of the ASEAN Charter is mostly the prerogative of the ASEAN Summit which is the supreme body of ASEAN and is composed of the heads of state of each Member State who mostly take decisions based on political interests. It obviously shows that both of Article 2(e) and Article 21(1) of the ASEAN Charter are designed to confirm the principle of ASEAN Way which guarantees that none of ASEAN Member State will interfere in the activities of another no matter what the situation is and all of ASEAN decisions will be decided by consensus only.

Hence without the authorization of Myanmar, ASEAN has no right to get involved in the Rohingya situation because ASEAN needs to respect and rely on principle of non-interference under the ASEAN Charter. More importantly this principle of non-interference plays the key role to keep ASEAN together and stays for this last long. Importantly it is definitely high risk for ASEAN to break their own rules and properly ASEAN security to please the world instead. That is why ASEAN continues to observe non-interference as a guiding principle in intra-ASEAN relations.

For recommendation, to resolve this limitation of ASEAN Summit in this case, the ASEAN Summit can apply a specific decision under Article 20 (2) of the ASEAN Charter which stated that "where consensus cannot be achieved, the ASEAN Summit may decide how a specific decision can be made". This article empowers ASEAN to use their considerations to apply other way of decision making modes such as majority vote or negative consensus (reverse consensus) for the ASEAN Summit in case of some specific situations such as the Rohingya. (Limsiritong, 2016b; Van Damme, 2010) As an optional approach, ASEAN can use ASEAN Human Rights Declaration 2012 which is not considered as a legal binding instrument, to address and discuss this issue.

### **New challenging in future**

This is not the first time that ASEAN was challenged by the world under the regional human rights issue. As long as ASEAN still decided to prefer and strictly rely on the principle of non-interference more than the human rights issue, it is unavoidable for ASEAN to confront the pressures from the world. For the best interests of ASEAN itself, there is undeniable that

ASEAN needs to keep well balance between the intra-ASEAN Member States and the ASEAN external relations as well. More interestingly the issue of human rights in this century turned to be the matter in both levels of regional and international. Hence in order to keep the Southeast Asia region in peace and security for last long as ASEAN wishes, it is the time to revise the ASEAN Charter especially seriously concerning on the promotion and protection of human rights to deal with the ASEAN external relations.

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