

New Modes of Non-Military Intervention Under the Responsibility to Protect: The Case of the Rohingya Crisis in Myanmar's Rakhine State

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The Responsibility to Protect (R2P) is a new and evolving principle in international politics and international law, derived from the concept of humanitarian intervention in the 1990s. At the time, the international community failed to prevent or deal with some of the sovereign countries in the outbreak of the conflict and humanitarian crisis, so the then UN secretary-general, Kofi Annan called on the international community at the UN Millennium Summit in 2000 to deal with serious and systematic human rights violations as such behaviors affect our common humanity faith. With the support of the government of Canada, the International Commission on Intervention and State Sovereignty (ICISS) was established in 2001. Co-chaired by Australia's former Foreign Minister Gareth Evans and Algerian Diplomat Mohamed Sahnoun, ICISS has a total of 12 committee members from a number of countries. The commission released its report in December of that year, which assessed previous theories and practices of "humanitarian intervention," developed for the first time the concept of "the responsibility to protect" and called on the international community to take responsibility for protecting people suffering from genocide and mass atrocities. The 2005 UN World Summit adopted the outcome document on the "responsibility to protect", which means that all countries in the world have unanimously agreed and accepted the principle of "the responsibility to protect". Since then, the "responsibility to protect" has increasingly appeared in the resolutions of the United Nations General Assembly, the Security Council and the Human Rights Council. Ban Ki-moon, then UN Secretary-General, first appointed a special adviser on the responsibility to protect in 2008. The job of the adviser is to report to the Secretary-General on the implementation of the principle, and since 2009 the adviser has issued an annual report on the responsibility to protect to the General Assembly to promote its implementation. After the Rohingya crisis broke out in Rakhine State in western Myanmar in 2012, some international organizations and countries called for intervention following the "responsibility to protect" principle to protect the Rohingya people. Some even called for military intervention in Myanmar. Why did they propose to apply the "responsibility to protect" to Myanmar? What impact will this discourse system have on Myanmar's politics? Through the case of the Rohingya crisis, the author tries to clarify the connotation of the "responsibility to protect" and its non-military intervention means, as well as its potential significance for Myanmar and international politics.

Literature review and research issues

Since the concept of "responsibility to protect" came into being, western academic circles have conducted a series of studies on it and tried to explain some international phenomena with this principle and promote the solution of international humanitarian crisis. Since 2004, some domestic scholars have paid attention to the "responsibility to protect" and written relevant analysis articles. The views of these scholars can be summed up as follows:

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The first view is that "the responsibility to protect" represents a concept shift from sovereignty to protection, i.e. "the responsibility of sovereignty". In *Sovereignty as Responsibility: Conflict Management in Africa*, Francis M. Deng believed that when sovereign states failed to deal with their domestic affairs in accordance with internationally recognized laws and standards, other countries had not only the right but also the responsibility and obligation to intervene. "The responsibility to protect" was first raised in the report of ICISS in 2001. Its core is to determine the relationship between national sovereignty and "the responsibility to protect". The report of ICISS is based on two propositions: sovereignty not only gives a state the right to control its affairs, but also gives it the primary responsibility to protect its people; the international community has a responsibility to intervene if a state fails to provide adequate protection to their people when they suffer serious harm. The "responsibility to protect" includes the responsibility to prevent (that is, to prevent any potential internal conflicts or other crises), the responsibility to respond (to respond to violations of human rights by military or other means) and the responsibility to rebuild (to provide comprehensive assistance to the people after military intervention). Article 138 and Article 139 of the 2005 World Millennium Summit outcome document stipulate that "each individual state has the responsibility to protect its people from genocide, war crimes, ethnic cleansing and crimes against humanity", thereby giving formal status to the "responsibility to protect". The "responsibility to protect" brings forward a new international norm and changes previous discourse system. It sidestepped the sensitive issue of international intervention, focusing instead on the people whose rights are infringed. Sovereign states are the primary bearers of the "responsibility to protect", and the "responsibility to protect" only belongs to the international community when the state is unwilling or unable to do so. Therefore, in this view, the "responsibility to protect" mediates the relationship between international intervention and national sovereignty.

The second view is that the "responsibility to protect" erodes national sovereignty. Quoting Thomas Hobbes' concept of government, Anne Orford argued that the subject of protection gained legitimacy through the concept of the "responsibility to protect", weakening national sovereignty; but this actually promoted "neo-imperialism or neo-colonialism" in the name of the "responsibility to protect". Alex De Waal criticized the concept of "responsibility to protect" in a more radical thinking, and claimed that "humanitarian intervention is equal to imperial occupation. Maybe its purpose is to end genocide or slavery, but kind imperialism is still imperialism, despite its nature being a smaller evil of imperialism." Chen Xiaoding recognized that both the "right to intervene" and the "responsibility to protect" are the discourse hegemony system carefully constructed by the west, whose purpose is to reconcile the contradiction between human rights and sovereignty and provide moral and theoretical support for intervention. Chimni points out that after the illegal armed intervention in Kosovo and Iraq, the theory of humanitarian intervention is increasingly questioned by third world countries and scholars. This theory is replaced by a new concept of sovereignty, which sees the protection of its citizens as a duty, while the concept of "the responsibilities to protect" promotes the legitimization of imperialist politics. According to He Zhipeng, due to the selfish motives of powerful countries, the "responsibility to protect" is likely to become a tool for powerful countries to suppress and sanction small countries, expand their influence and realize their wills.

The third view is that the "responsibility to protect" is a concept that lacks self-consistency and has its own paradox. Robert Cryer notes that two important documents on the concept of "responsibility to protect" differ in their definition. In the first chapter of ICISS's report, "the responsibility to protect" is defined on the precondition of civil war, the oppression of people and the collapse of a country, yet in the

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outcome document of the Millennium Summit, "the responsibility to protect" is clearly limited to core international criminal offences (i.e., genocide, war crimes, ethnic cleansing and crimes against humanity). The report of ICISS sets the criteria and premises for military intervention, but the Millennium Summit document does not cite such criteria. It indicates the lack of consensus in the international community on the implementation of the principle of "the responsibility to protect". Gao Lin doubts that the concept of "the responsibility to protect" is extremely arbitrary. The international community lacks a universally accepted standard to assess whether a government is capable and willing to protect its citizens, and it can even be said that a few countries or institutions controls the right to set the standard. Yang Yonghong believes that Libya's practice shows that the "responsibility to protect" challenges the bottom line of sovereignty and actually promotes regime change and becomes an instrument of anti-government forces. He Zhipeng notes that the "responsibility to protect" is not fully standardized, and the international community should judge the serious situation that constitutes the inability or unwillingness to fulfill the "responsibility to protect" on the basis of international human rights law and international humanitarian law. Qu Xing argued that the *United Nation Charter* does not empower the Security Council to carry out "regime change" in a sovereign state, and that the "responsibility to protect" can be easily abused due to its loose theoretical space for interpretation.

A fourth view is that the "responsibility to protect" increases the likelihood of the use of force. In Article 139 of the report by ICISS, "the international community... take collective action... through the Security Council, in accordance with the Charter...on a case-by-case basis...should...national authorities are manifestly failing to protect their populations..." In 2009, then UN Secretary-General Ban Ki-moon defined the three pillars of the "responsibility to protect" in his annual report of *Implementing the Responsibility to Protect* with the first pillar being the responsibility of each individual state to protect its population from genocide, war crimes, ethnic cleansing, crimes against humanity and their incitement. The second pillar is the responsibility of the international community to encourage and assist states to fulfill that responsibility and to promote international assistance and capacity-building in cooperation with regional and sub-regional organizations. The third pillar is the responsibility of the international community to respond in a timely manner, using appropriate diplomatic, humanitarian, and other means to protect people from these crimes. According to Qiu Meirong, the 2009 report's proposal for unauthorized military intervention, which breaks the limits of international law, means not only that the "responsibility to protect" undermines "the core status of the Security Council," but also that it is acceptable to kill or harm the lives of some people to uphold the basic human rights of others. On the basis of the fairness and justice of the international system, He Zhipeng believes that the "responsibility to protect" theory tries to expand the interpretation of the *UN Charter* flexibly, and ultimately provides a theoretical basis for military intervention on the pretext of protecting human rights, increasing the feasibility of the use of force authorized by the UN. If such theory is recognized and promoted by the international community, it will lead to the "legitimate" expansion of the scope of the use of force in international relations.

In recent years, some scholars also believe that, as the principle of "responsibility to protect" is increasingly influential in the international arena, developing countries cannot reject it; therefore they should actively intervene and transform the concept. Ruan Zongze pointed out that the "responsibility to protect" is "neo-interventionism", and China should advocate "responsible protection", changing its attitude from "conditional application" to "oppose abuse". Former Brazilian President Dilma Rousseff proposed the principle of responsibility while protecting (RwP), which requires all peaceful means to be exhausted before the UN Security Council approves the use of force and considers it.

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All in all, scholars at home and abroad mainly elaborate the "responsibility to protect" from the perspective of its relationship with national sovereignty, self-consistency, the legitimacy of the use of force and so on. Based on the cases of Libya, South Sudan and Syria, the internal mechanism of the implementation of "responsibility to protect" is demonstrated. However, because most of these countries are the target of the western countries to exercise foreign military intervention, the scholars did not focus on how diversified the means of implementation of the "responsibility to protect" are. In fact, in addition to military means, the international community may take such non-military measures as diplomatic pressure, arms embargoes, freezing of assets, income restrictions, suspension of membership in international organizations, financial sanctions and judicial penalties to achieve its objectives. The existing literature has not yet been able to explain the motivation for the international community to adopt different means, that is, what factors promoted the international community to adopt military means and what factors determined the international community to adopt non-military means.

Some Burmese scholars, such as Tin Maung Than, deny any link between Myanmar and the "responsibility to protect", while others, such as John Feffer, acknowledge that the international community has imposed a "responsibility to protect" in Myanmar but conclude that "responsibility to protect" is failing in the country. These views exclude the "responsibility to protect" that uses non-military intervention, and at the same time, do not recognize that the actions including the sanctions against Myanmar's senior officers, the diplomatic isolation against Myanmar and the attempt to Indict Myanmar's Commander-in-chief Min Aung Hlaing at the international criminal court (ICC) are part of the response to the Rohingya crisis by the western countries with the "responsibility to protect". In other words, the western countries did not "ignore" Myanmar, but pressed it in stages and steps according to the principle of the "responsibility to protect". The Myanmar government and army, led by Aung San Suu Kyi, have indeed adjusted their policies towards the Rohingya responding in part to the demands of the United Nations and some countries under heavy pressure.

Based on the above analysis, this paper focuses on the following three issues: first, with the development of the discourse system of the "responsibility to protect", supporters of this concept began to emphasize non-military intervention. ICC and the "responsibility to protect" have played complementary roles, and their roles have been paid more and more attention. Second, facing with the Rohingya crisis, the United States and other western countries have mainly adopted non-military intervention measures to exercise their "responsibility to protect". Due to the political and interest considerations of major powers and disputes over the concept in the international community, they cannot fundamentally solve the Rohingya crisis. Third, China has taken a cautious attitude towards the "responsibility to protect", stressing the principal position of the country concerned and the authority of the UN Security Council, participated in the formation of the principal and constructively intervened in the Rohingya issue.

The Rohingya Crisis from the perspective of the "responsibility to protect"

(I) The Rohingya Crisis

The Rohingya are a special ethnic group in Myanmar's western Rakhine State. Some historians believe that Arab Muslims came to the Rakhine region as early as the 7th or 8th century BC to do business. Later, during the Rakhine kingdom and during the British colonial period, Muslims from Bangladesh migrated to the region and merged with Rakhine and other ethnic groups to form the modern Rohingya people. They speak a language similar to the Chittagong dialect of Bangladesh and live mainly in the three towns of

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Maungdaw, Buthidaung and Ratheedaung. Their current population is about over 1 million. After independence, the U Nu government briefly granted citizenship to the Rohingya people. However successive governments of Myanmar have since refused to treat the Rohingya as citizens. In 1974, the Myanmar government enacted the *Myanmar Emergency Immigration Law*, which required all citizens to register their status, but the Rohingya people could only register as foreigners. In 1978, the Myanmar defense forces launched operation dragon king, which expelled more than 200,000 Rohingya people from the country. In 1982, Ne Win government enacted the *Myanmar Citizenship Act*, which excluded the Rohingya people from Myanmar's 135 ethnic groups, deprived them of citizenship and strictly limited their sphere of action. Tensions in western Rakhine State have risen sharply since Myanmar's political transition in 2011. In June 2012, the government confined more than 120,000 Rohingya to refugee camps after clashes broke out between Buddhists and Rohingya Muslims in Rakhine State.

Since 2016, conflicts in Rakhine State have increased and become violent and terrorized. On October 9, 2016, the Rohingya extremist group Aqa Mul Mujahidin attacked security forces and police posts in Myanmar, leaving nine police officers dead. On August 25, 2017, Arakan Rohingya Salvation Army (ARSA) attacked more than 30 police posts and a military base in Rakhine State, killing 12 policemen and 59 terrorists. The Myanmar government and the military claimed the extremist forces had links with foreign terrorist groups and were trying to occupy the country's territory. As a result, a curfew was declared, and local clearance operations were launched. More than 720,000 Rohingya have fled to Bangladesh, according to the United Nations High Commissioner for Refugees (UNHCR), bringing the number of Rohingya in refugee camps in Bangladesh to more than 900,000. The conflict in Rakhine has spillover effects and created a humanitarian crisis that has become the focus of international attention.

- (II) The response of the international community
 - a. *The response of the United States*

At the beginning of Myanmar's political transition, the policy focus of U.S. toward Myanmar was to promote the democratic transition process in Myanmar, with a stress on the cooperation with the Democrats represented by Aung San Suu Kyi and the Rohingya issue was ignored. On November 19, 2012, U.S. President Barack Obama visited Myanmar, and in his speech at Rangoon University, he simply mentioned that the Rohingya people "deserve human dignity." In April 2016, Patrick Murphy, Acting Principal Deputy Assistant Secretary of State for east Asian and Pacific affairs, testified to the congress that "the election of a Myanmar government led by National League for Democracy (NLD) is in our interest and in the interest of the people of Myanmar, including the Rohingya people." However, as the Rohingya crisis escalated, western countries began to accuse Aung San Suu Kyi of her silence and inaction, and that she did not use her "moral authority" to protect the Rohingya people. The U.S. government has made human rights a secondary issue since Trump took office, and he has said nothing about the Rohingya issue. However, this does not mean the U.S. government has given up on the Rohingya issue. In Corrie Hulse's view, although the U.S. did not specifically invoke the "responsibility to protect" principle, it has lived up to it in practice, responding to the Rohingya crisis through diplomatic pressure, humanitarian aid and economic sanctions.

First, the U.S. issued a series of statements of condemnation to put pressure on Myanmar. On September 20, 2017, U.S. vice President Mike Pence addressed the UN Security Council, saying, "the United States calls on Myanmar's security forces to immediately cease violence and seek a long-term solution... Attacking innocent civilians ultimately endangers the sovereignty and security of the entire region." On

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October 24, 2017, the State Department spokesperson Heather Nauert said, "the United States will take a number of diplomatic and economic measures to call the violence actions that have contributed to Myanmar's 'unprecedented' humanitarian crisis into account." Patrick Murphy, Acting Principal Deputy Assistant Secretary of State, stressed that the United States would investigate Burmese forces involved in the "persecution of Rohingya Muslims," stop their military assistance, and impose economic sanctions on individuals who committed violence under sanction laws such as the *2008 Tom Lantos Act*. On August 28, 2018, U.S. Ambassador to the United Nations Nikki Haley spoke at the Security Council that the U.S. State Department's interviews with 1,024 Rohingya people who fled Rakhine State were consistent with the findings of a UN fact-finding mission that the world should not turn a blind eye to Myanmar's atrocities. On September 3, 2018, two Burmese Reuters journalists Wa Lone and Kyaw Soe Oo were sentenced to seven years in prison by the Yangon Northern District Court for "illegally obtaining intelligence and important classified documents involving security forces" during the conflict in Rakhine State in August 2017. Western countries condemned the move and demanded Myanmar's immediate release. The two journalists' wives were featured on the cover of *TIME* magazine of the year. At the Enlarged Session of ASEAN Summit on November 14, 2018, U.S. vice President Mike Pence said in a meeting with Myanmar's State Counselor Aung San Suu Kyi that violence against the Rohingya is "inexcusable" and that the United States expects Myanmar authorities to make progress in holding those responsible for the Rohingya crisis accountable.

Second, the U.S. imposed targeted sanctions. On December 21, 2017, the Office of Foreign Assets Control (OFAC) of the U.S. Treasury Department announced an asset freeze for Maung Soe, Commander of the western military region of Myanmar. On May 23, 2018, the U.S. House of Representatives passed an amendment to the *National Defense Authorization Act* that requires the President to impose asset freezes and travel restrictions on senior officers of the Myanmar security forces. On February 12, 2018, the U.S. Congress passed the *Burma Human Rights and Freedom Act* proposed by senator John McCain, which imposes economic sanctions and travel restrictions on senior military officers who violated Human Rights in Rakhine State, and prohibits specific military cooperation with the Myanmar military. On August 17, 2018, the U.S. Treasury announced that it imposed sanctions, on the basis of the *Global Magnitsky Human Rights Accountability Act of 2016* and the presidential executive order No. 13818, against 3 high officials of Burma army, 1 commander of BGP and 2 troops of State. By far, a total of five senior Burmese military officials and two troops have been sanctioned with visa ban and asset freeze. On Aug. 27, Facebook shut down 18 military accounts, including that of Min Aung Hlaing, Myanmar military chief.

Third, despite the fact that it's made clear in the UN fact-finding mission's report that the Burmese military committed genocide during the anti-Rohingya campaign, the U.S. government still defines the event as "ethnic cleansing" rather than "genocide," because genocide would force the U.S. to impose more punitive measures on Myanmar. On August 26, 2018, U.S. Secretary of State Mike Pompeo tweeted, "Myanmar security forces launched an offensive campaign of ethnic cleansing, the United States will hold those responsible accountable, and Burma's military must respect human rights." Heather Nauert, the State Department spokesperson of the U.S. said "genocide" is "a very specific legal term," and the government needs to further evaluate and analyze new evidence and information. However, the U.S. Congress and human rights activists have been working actively for the Rakhine conflict to be defined as "genocide". On December 3, 2018, Representative Steve Chabot introduced a bill urging Secretary of State Mike Pompeo to respond to the act of genocide committed by the Burmese military. "The deliberate murder, intimidation and expulsion of the Rohingya people by Myanmar's security forces clearly meets

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the legal standards of genocide," Ed Royce, Chairman of the House Foreign Affairs Committee, said in a statement. *Documenting Atrocity Crimes Committed against the Rohingya in Myanmar's Rakhine State*, an independent report co-written by the United States Holocaust Memorial Museum and the American Public International Law & Policy Group (PILPG), is made public on-line. The report, which claims evidence of crimes against humanity, genocide and war crimes committed by the Burmese military, calls for the establishment of accountability agencies or referral of cases to the international criminal court. After the leak of the confidential report, which was written for the State Department by PILPG, the State Department began a search to find the person who leaked the full report. When asked why the State Department had not classified the Burmese military actions as a crime against humanity, John Sullivan, the Deputy U.S. Secretary of State, responded: "the report does not involve legal judgment, because that is not the focus of the report; it is just a truthful description of what happened."

Finally, the United States provided humanitarian assistance to the Rohingya people. On September 20, 2017, the U.S. State Department announced \$32 million in aid for displaced Rohingya refugees. On May 15, 2018, the U.S. Agency for International Development (USAID) announced \$44 million emergency food aid for Rohingya refugees in Bangladesh. On September 24, 2018, U.S. Ambassador to the United Nations Haley announced \$185 million in aid to Rohingya refugees, including \$156 million to be donated to refugees at Cox's Bazaar in Bangladesh and \$29 million to Rohingya refugees in Myanmar, bringing U.S. assistance to Rohingya refugees to \$389 million.

b. The response of the European Union and Canada

The European Union encourages Myanmar's political transition process. In May 2012, the European Union (EU) suspended, with the exception of arms embargo, all sanctions against Myanmar, including asset freezes and travel bans on individuals impeding the democratic process, and investment restrictions on the country's timber, gem mining and mineral industries. In April 2013, the EU, announced the complete lifting of sanctions against Myanmar except the arms embargo and the resumption of the GSP. After Aung San Suu Kyi's NLD took power in 2016, the EU also stopped submitting annual resolutions on Myanmar's human rights situation to the UN Human Rights Council and the UN General Assembly. On June 1, 2016, the European Commission issued the *Elements for an EU strategy vis-à-vis Myanmar/Burma: A Special Partnership for Democracy, Peace and Prosperity*, recommending support for the democratization process in Myanmar, but acknowledging the challenges of human rights violations in Rakhine State. It states that the EU should "work with the government of Myanmar to combat hate speech and intolerance" and advocates "the elimination of statelessness of the Rohingya people".

On August 25, 2017, after the Arakan Rohingya Salvation Army attacked Myanmar's border guards, the EU first chose the diplomatic strategy. Federica Mogherini, the High Representative of the Union for Foreign Affairs and Security Policy, issued a statement September 6 condemning attacks by violent terrorists on Myanmar's security forces. Since then, EU policy has shifted. Speaking at an emergency session of the European Parliament on September 14, Mogherini said: "we are very concerned about the excessive use of force by Myanmar's security forces in military operations, which has led to a massive influx of refugees into Bangladesh. This is one of the worst refugee crises of our time." As the situation in Rakhine worsens, the EU's attitude is hardening. On 16 October 2017, the European Commission discussed the situation in Myanmar, pointed out that the Burmese army committed "grave human rights violations" and called on the Burmese army to "put an end to violent repression", and urged the Burmese government to cooperate with the fact-finding mission of the UN Human Rights Council. The EU also

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announced it was suspending the invitation of senior military officials and reviewing its military cooperation projects with Myanmar. On November 4, 2017, Christos Stylianides, European Commissioner for Humanitarian Aid and Crisis Management, said what was happening in Myanmar's Rakhine State could be defined as ethnic cleansing. On 26 February 2018, the European Commission issued a statement on the Rohingya issue, condemning the continued human rights violations by the Myanmar military, expressing regret over the Myanmar government's refusal to cooperate with the UN special rapporteur on Myanmar, and calling on Myanmar to become a contracting party to the statute of the ICC and allow the court to exercise its jurisdiction.

At the same time, the EU has adopted some substantial sanctions. On April 26, 2018, the EU decided to expand its arms embargo against Myanmar, prohibit cooperation with Myanmar's military training, and impose a travel ban and asset freeze on military officers who commit human rights violations, saying that the retention of trade preferences depends on Myanmar's respect for human rights. According to the *Guardian*, by August 2018, Myanmar's State Councilor Aung San Suu Kyi had been stripped of seven international honors or awards, including the honorary citizen of Edinburgh and the honorary citizen of Oxford, for refusing to recognize the Rohingya people and denouncing Myanmar's military.

Besides, the EU provided humanitarian assistance to the Rohingya people. On October 23, 2017, the European Union, UN's Office for the Co-ordination of Humanitarian Affairs (OCHA), United Nations High Commissioner for Refugees (UNHCR) and Kuwait held the "Pledging Conference for Rohingya Refugee Crisis" in Geneva. Christos Stylianides, European Commissioner for Humanitarian Aid and Crisis Management, pledged €30m in EU aid to the Rohingya community in Bangladesh. On top of €21m previously given to Rohingya refugees in Bangladesh and Myanmar, the total came to €51m. The EU has also set up a humanitarian and development fund to deal with the Rohingya refugee crisis. In May 2018, the EU announced €40m in humanitarian aid, of which €29m were for food, sanitation, and health services for Rohingya refugees in Bangladesh, €7m for rainy season preparedness and €4m for food and sanitation for Rohingya people in Myanmar. On 12 October 2018, the European commission pledged an additional €5m to provide food aid to Rohingya refugees in Bangladesh.

The EU is also actively promoting for an agreement between Myanmar and Bangladesh on the return of refugees. On November 20, 2017, Federica Mogherini, the High Representative of the Union for Foreign Affairs and Security Policy met with Aung San Suu Kyi at ASEM Ministerial Meeting. During the meeting, he urged the Burmese government to create conditions for Rohingya refugees to return to Rakhine State "voluntarily, securely and with dignity" and that if Myanmar can take full implementation of Kofi Annan's report, EU could consider lifting sanctions on Myanmar.

Some EU members have taken a more radical position than the EU. France has played a leading role in promoting collective action in the EU. Following the Rohingya crisis in August 2017, French President Emmanuel Macron said at the United Nations General Assembly on September 20 that the Rohingya people were victims of ethnic cleansing and genocide and that "the United Nations has the reason to intervene". On February 20, 2018, Boris Johnson, then the British Foreign Secretary, testified in the House of Commons: "this is ethnic cleansing on an industrial scale, but whether it constitutes genocide or not, we still need a professional judicial body to determine." Germany's focus is on providing assistance to Rohingya refugees. On February 18, 2017, German Chancellor Angela Merkel met with Bangladeshi Prime Minister Sheikh Hasina at the 53rd Munich Security Conference, pledging Germany's support for Bangladesh's efforts to resettle the Rohingya. On July 20, 2018, Niels Annen, German Minister of State at

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the Federal Foreign Office, said during his visit to Bangladesh that the German government would provide political support to resolve the Rohingya crisis to ensure the safe and sustainable return of displaced persons to their homes.

As one of the founding members of the "responsibility to protect" principle, Canada has condemned Myanmar's military repression on the Rohingya people and has carried out humanitarian aid operations. Canada resettled more than 300 Bangladeshi Rohingya refugees in Ontario between 2006 and 2010, and plans to resettle over 1,000 more. In 2017, Canada provided \$6.63 million in humanitarian aid to the Rohingya in Bangladesh and Myanmar for women's and children's health. On May 23, 2018, Minister of Foreign Affairs of Canada Chrystia Freeland announced \$300 million in humanitarian aid for the Rohingya people, warning that those responsible for the genocide would have "nowhere to hide." On June 25 of the same year, Freeland announced that Canada had added seven top military officials of Myanmar to its sanctions list. On September 20, 2018, Canada's House of Commons voted unanimously to approve the actions of Myanmar military against the Rohingya as "genocide", urging the UN Security Council to refer the case to the ICC for investigation and prosecution of senior Myanmar military officials who committed "genocide". On September 27, 2018, Canada's House of Commons voted to revoke Aung San Suu Kyi's honorary citizenship.

c. Responses of the UN and the Organization of Islamic Cooperation

Adama Dieng, the United Nations Special Adviser on the Prevention of Genocide, repeatedly expressed his concerns about the human rights of the Rohingya people between 2013 and 2017. At the UN Human Rights Council meeting in March 2017, the human rights situation in Myanmar's Rakhine State became the focus of concern. By resolution 34/22, the Human Rights Council established a fact-finding commission to investigate the events in Rakhine State. On September 11, 2017, UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein issued a report calling the conflict in western Rakhine a "textbook example" of ethnic cleansing. The Secretary-General of the United Nations Antonio Guterres has repeatedly condemned Myanmar's military and police for their actions against the Rohingya people. On August 27, 2018, the fact-finding commission issued a report, according to which, senior Myanmar officials, including Myanmar's Commander-in-chief of Tatmadaw Min Aung Hlaing, are "suspected of committing crimes under international law", including genocide, crimes against humanity and war crimes. The report recommends that they be referred to ICC or to a special international criminal court, on the model of the trial of former Yugoslav President Slobodan Milosevic. On September 6, 2018, the pretrial chamber of the ICC ruled that it had jurisdiction over the Rohingya case.

On September 19, 2017, the Organization of Islamic Cooperation (OIC) met on the sidelines of the UN General Assembly in New York to urge the Security Council to take immediate action on the Rohingya crisis, calling on its members to suspend preferential trade agreements with Myanmar. Egyptian President Abdel Fattah el-Sisi said the Rohingya crisis had become a threat to regional security and the stability of neighboring countries, and he hoped the United Nations could find a lasting solution to the plight of civilians in time. Turkish President Recep Tayyip Erdogan, hoping to use the issue to establish his country's standing in the Islamic world, announced that Turkey would provide humanitarian aid to Rohingya refugees. Since September 2017, the Turkish Cooperation and Coordination Agency (TIKA), the Disaster and Emergency Management Presidency of Turkey (AFAD) and the Turkish Red Crescent Society have set up an aid center in Bangladesh to provide food, shelter, health care and schools for Rohingya refugees and to fund Rohingya students to attend universities.

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d. The response of ASEAN

ASEAN follows the principle of non-interference in the internal affairs of its members, so it has mainly applied diplomatic pressure and mediation to Myanmar, rather than punitive measures. At the same time, ASEAN also discussed the Rohingya crisis at platforms including the ASEAN Summit, ASEAN Regional Forum (ARF), ASEAN Intergovernmental Commission on Human Rights (AICHR) and so on. Semi-official organizations of ASEAN, such as ASEAN Parliamentarians for Human Rights (APHR), also played a role. Malaysia and Indonesia have taken the lead in applying diplomatic pressure. In January 2014, Marty Natalegawa, then Indonesia's Minister for Foreign Affairs, told at ASEAN Foreign Ministers' meeting that the Rohingya issue was having a devastating effect on the entire region, that ASEAN should put pressure on Myanmar and that the "principle of non-intervention" could not be an excuse for ASEAN not to intervene. Malaysian Prime Minister Najib Razak took part in a protest rally against Myanmar's policy of "ethnic cleansing" of the Rohingya on December 4, 2016. At the 30th ASEAN Summit in Manila, Philippines, on April 26, 2017, President of Indonesia Joko Widodo met with Aung San Suu Kyi and said stability in Rakhine State was important not only for Myanmar but also for the entire region. From January 21 to 24, 2018, the APHR sent a fact-finding mission to Bangladesh. The chairman of APHR, Malaysian parliamentarian Charles Santiago, said, "ASEAN as a regional organization can and should play a leading role in solving this crisis." During the 33rd ASEAN Summit from November 13 to 15, 2018, Prime Minister of Thailand Prayut Chan-o-cha said ASEAN should play an important role in resolving the situation in Rakhine State in a constructive, practical, and sustainable way. Prime Minister of Malaysia Mahathir Mohamad urged Myanmar to end its humanitarian crisis and criticized Aung San Suu Kyi for her comments trying to justify military atrocities. However, it will be difficult for ASEAN to change its traditional policy of non-interference in member states, to get involved in the Rohingya issue and take sanctions against Myanmar.

Great-Power Politics and Legitimacy: Deciding factors and Effects of Intervention mode

Some countries and international organizations have called for invoking the "responsibility to protect" concept and even calling for military intervention in the Rohingya crisis. Sara E. Davies and Susan Harris Rimmer argue that Myanmar's mass atrocities against the Rohingya have passed the threshold of the responsibility to protect and that the international community has a responsibility to act. Ali Motahari, Deputy of the Parliament of Iran, said in a parliamentary speech in September 2017, "Why don't we Muslims form a joint military force to intervene in the Rohingya crisis?... Without the use of force, the crimes of the Burmese government will not stop." He compared the actions of the Burmese government and military against the Rohingya to the actions of the Federal Republic of Yugoslavia during the Kosovo crisis.

(I) The Decisive Factor in Non-Military Intervention

But as the intervention in the Rohingya crisis so far has been non-military, this raises the question of what determines whether the international community will use military or non-military means. Taken together, the following factors determine that military intervention is not an option in the Rohingya crisis.

The first is the restriction of great power politics. Military intervention requires legal authorization, and the dominant consensus is that military intervention needs to be authorized by the United Nations Security Council. Aidan Hehir argues that the "responsibility to protect" has been heavily influenced by great-power politics since it was adopted at the UN World Summit in 2005. The outcome document of the

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Summit stipulates that the Security Council, which is heavily influenced by the politics of great powers, decides whether to take military action or not. The continuing wars in Syria and Yemen show that great powers struggle to reconcile conflicts of interest and build consensus. Against this background, the United Nations is constrained by its own resources and strength to make a difference. According to Fu Haina, the international community's response is often based on interests, and even if the military intervention is successful, the interveners will be forced to undertake heavy reconstruction tasks. Great powers do not risk for humanitarian principles without touching their vital interests. From the perspective of realpolitik, Alex Bellamy believes that the United Nations faces constraints from the interests of great powers when making any practical decisions, and the responsibility of protection completely depends on the political will of great powers. There is little chance that the international community will use military intervention in Myanmar, as it is not a geopolitical battleground for great powers so that they have limited interest in intervening militarily in the Rohingya crisis.

The second is that developing countries are wary of military intervention. Due to shared colonial experience, most developing countries are sensitive to national sovereignty and reject the use of force to interfere in the actions of a sovereign state. In the Libyan crisis, NATO used the "responsibility to protect" to promote the change of the Libyan regime by force, which intensified the internal conflict in Libya, disrupted the social order, and led to the suffering of innocent civilians in the war. Following Libya's example, some developing countries oppose the use of force to promote regime change in Syria. As a host of refugees, Bangladesh is opposed to military intervention in the Rohingya crisis because "Bangladesh is opposed in principle to military intervention in a sovereign state that could destabilize Myanmar and affect Bangladesh."

Third, although the international community has generally accepted the abstract concept of "responsibility to protect", there are still disputes between the international community and specific countries on how to fulfill the responsibility to protect in specific circumstances. On 25 June and 4 July 2018, UN member states debated for the first time whether the "responsibility to protect" should be included in the agenda of the General Assembly in September, and 113 members voted in favor. India agreed to put it on the General Assembly's agenda, but called on the assembly not to adopt a resolution, saying "relevant normative concepts need careful consideration," while 21 countries, including Cuba, Syria and Russia, opposed its inclusion, believing it a threat to national sovereignty.

The fourth is the limitation of the guiding principles of regional organizations. Under chapter VIII of the *UN Charter*, one can propose that regional or sub-regional organizations should be the subject of military intervention. As regional organizations, the African Union, NATO and the League of Arab states have used the "responsibility to protect" to intervene in the region's member states by force. However, due to the principle of non-interference in internal affairs and the principle of consensus, it is impossible for ASEAN to reach an agreement on this.

(II) Adjustment and Compromise: Effects of Non-military Intervention

Measures taken by these international organizations and countries have had an impact on Myanmar. First, some senior military officers directly responsible for the Rohingya crisis have been dismissed. According to Min Aung Hlaing's Facebook page, on April 10, 2018, seven Burmese officers and soldiers were sentenced to 10 years in prison for their role in the killing of 10 Rohingya in Inn Din village in northwestern Rakhine State. On May 22, Aung Kyaw Zaw, Director of the Third Special Operations Department, resigned "due to health reasons". On June 25, Maung Maung Soe, Commander of the western military region of

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Myanmar, was removed from his post because of his "weakness in the face of armed attacks on police posts in western Rakhine State in 2016 and 2017".

Second, Myanmar took a series of measures to ease the pressure from the international community. On December 19, 2016, the Myanmar government held an informal meeting of ASEAN foreign ministers on the Rohingya issue in Naypyidaw. Aung San Suu Kyi reported to ASEAN foreign ministers on the latest developments in Rakhine State. By October 2018, the Myanmar government had set up eight investigation committees to investigate the human rights situation in Rakhine State and make recommendations to resolve the crisis. On August 24, 2017, the Advisory Commission on Rakhine State headed by former UN Secretary-General Kofi Annan submitted its final report, suggesting that Myanmar should work to improve the socio-economic development conditions of the low social strata and engage in comprehensive dialogue among ethnic groups in Rakhine to build mutual trust. The government of Myanmar welcomed this and pledged to implement the recommendations made by the commission. Aung San Suu Kyi was absent from the 72nd Session of the UN General Assembly in September 2017 because of international criticism over the Rohingya crisis. Mediated by the international community and countries concerned, the governments of Myanmar and Bangladesh reached an "agreement on a comprehensive and lasting solution to the voluntary return of Rohingya refugees in safety and dignity" on 23 November 2017.

However, the Rohingya crisis cannot be fundamentally solved in a short time because of its complexity and the wide gap between the understanding and cognition of the Rohingya in Myanmar and the international community.

A New Model of Non-Military Intervention and China's Role

(I) A New Model of Non-Military Intervention: From Moral Condemnation to the ICC

From the perspective of the discourse system of "responsibility to protect", in recent years, some supporters of the "responsibility to protect" have turned to emphasize non-military intervention, trying to eliminate the suspicion and repulsion of military intervention from developing countries. Gareth Evans, one of the founders of the concept, explains that the "responsibility to protect" is a broad concept that includes preventive action and reconstruction measures, diplomatic isolation, sanctions and embargoes, ICC, and other response measures. The scope of military intervention is limited to extreme cases such as serious human rights violations, and its legitimacy depends on the approval of the Security Council. The goal of "responsibility to protect" is not limited to small countries. Even great powers may be bound by it, so it is universal. The response of the United States and other western countries to the Rohingya crisis has seen a gradual escalation of these non-military measures, starting with moral condemnation and diplomatic pressure, to individual travel and asset sanctions, to overall economic sanctions and diplomatic isolation, and finally to the ICC.

Alex Bellamy notices that from the cases of Kenya (diplomatic persuasion, the ICC trial), Guinea (diplomatic pressure and embargo), Cote d'Ivoire (diplomatic persuasion, embargo and limited use of force), Burundi (political compromise and conflict prevention) and Southern Sudan (international condemnation, diplomatic pressure, sanctions, ICC trial, economic incentives and peacekeeping) case, non-military means are more successful than military means. Although not as dramatic as military intervention, non-military intervention is more likely to achieve the goals of "the responsibility to protect" without the negative effects of military intervention. Therefore, some NGOs and international organizations are committed to establishing early warning systems in conflict areas and strengthening the

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rule of law and institutional construction. Under the "responsibility to protect" principle, the 2007 Kenya election crisis ended with the mediation by the African elite group led by former UN Secretary-General Kofi Annan. Meanwhile, investigation and prosecution to those responsible for the violence happened during the 2007 election by the ICC in 2012 is believed to have prevented the recurrence of violence during the 2013 and 2017 election. This is regarded as a successful implementation example of the "responsibility to protect".

Therefore, the international community attaches more and more importance to the role of the ICC. The "responsibility of a sovereign state" in the "responsibility to protect" is essentially the same as the "principle of complementarity" of the "Rome statute" of the ICC. The "principle of complementarity" holds that the legal system of sovereign states is held primarily responsible for the investigation and prosecution of crimes against humanity, war crimes, genocide, and aggression, and that the ICC has jurisdiction when sovereign states are unable or unwilling to take legal actions for such crimes. Both the "responsibility to protect" and the ICC stress the responsibility of sovereign states, and that they act only when the state concerned is unwilling and unable to fulfill its responsibilities. The "responsibility to protect" and the ICC form a complementary relationship in practice. According to the 2001 report of the ICISS, judicial measures are one of the "response mechanisms" in the concept of "responsibility to protect". The concept was reinforced in a 2009 report by Ban Ki-moon, then the UN Secretary-General, which said that all states should become parties to the "Rome statute" to assist the ICC in fulfilling the state's "responsibility to protect" (the first pillar). In addition, he emphasized the deterrent role of the ICC in a timely and decisive response (the third pillar) to prevent the occurrence of serious crimes. The ICC provides the basis for the transition of the "responsibility to protect" from concept to practice.

(II) China's Role: International Discourse Shaping Power and Constructive Intervention

Rather than upending the international discourse system of the "responsibility to protect", China has helped shape it. Chen Zheng believes that China should not simply be a receiver of norms, but should participate in the different stages of the evolution of this idea, exert direct or indirect influence, in an effort to prevent its impact on its own interests. Pan Yaling believes that China is cautious about the specific application of the principle and promotes the steady development, rather than extreme rash advance, of the principle from moral consensus to legal norms. China participated in the discussion on the concept of "responsibility to protect" and the opinions on its implementation, accepted the concept of "responsibility to protect" in the outcome document of the 2005 UN World Summit, proposed that military intervention should be limited and restrained, and stressed that the Security Council's authorization of military intervention requires the consent of the state parties concerned. In the July 2009 UN General Assembly debate on the "responsibility to protect", Liu Zhenmin, China's Ambassador to the UN, explained China's position that the abuse of the "responsibility to protect" should be avoided to turn it into another version of "humanitarian intervention". On July 4, 2018, after hearing the speech about "responsibility to protect" by the Secretary-General of the United Nations Antonio Guterres, Yao Shaojun, Counsellor of Chinese Mission to the UN, said, "the international community should exercise caution in the use of force. The adoption of coercive measures and the authorization of the use of force can only be the option after all peaceful means have been exhausted. Military action taken by the international community to protect civilians must be authorized in advance by the Security Council and the terms and means of implementation must be strictly defined."

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Under the guidance of this thought, China has adopted a more inclusive and constructive approach to the Rohingya crisis. On September 28, 2017, Deputy Permanent Representative Ambassador to the UN Wu Haitao said at an open session of the Security Council, "China condemns the recent violent attacks in Rakhine State and supports Myanmar's efforts to maintain domestic stability... The Rakhine issue involves complex historical, ethnic, and religious factors. Many differences and contradictions have accumulated over a long period of time and cannot be resolved overnight." Chinese Foreign Minister Wang Yi visited Bangladesh and Myanmar from November 18 to 19, 2017. During the visit, Wang proposed a three-stage solution to the Rohingya issue. The first stage should be to achieve a ceasefire to stop violence and restore order so that the populaces do not flee again. In the second stage, the international community encourages and supports communication between Myanmar and Bangladesh to find a feasible solution through equal consultation. The third stage is for the international community to increase support for Rakhine region to get rid of poverty so as to drive development and realize long-term stability through development. On August 28, 2018, Deputy Permanent Representative Ambassador to the UN Wu Haitao expressed that the Rakhine issue should be properly handled by Myanmar and Bangladesh through bilateral channels, that Myanmar and Bangladesh should continue to solve problems arising from the implementation of the repatriation agreement through dialogue, and that the international community should continue to provide constructive assistance. On September 27, Chinese State Councilor and Foreign Minister Wang Yi held a trilateral informal meeting with Kyaw Tint Swe, Minister for the Office of the State Counsellor of Myanmar, and the Foreign Minister of Bangladesh Ali at the United Nations headquarters in New York. The three parties reached three important agreements: first, Myanmar and Bangladesh agreed to properly solve the Rakhine issue through friendly consultation. Second, the Bangladeshi side said it was ready to repatriate the first batch of people who had fled the chaos, and the Myanmar side said it was ready to receive the first batch of people who had fled the chaos. Third, the two sides agreed to convene a joint working group meeting as soon as possible to form a roadmap and timetable for repatriation and realize the first batch of repatriation as soon as possible.

Conclusion

Although non-military interventions have been included in the description of the "responsibility to respond", the third pillar of the "responsibility to protect", the practice of Libya, South Sudan, Yemen, and Syria has led to the direct equation of "responsibility to protect" with military intervention. However, conflicts within these countries have been intensified by military intervention, the original social order has collapsed, and innocent civilians have been harmed. These facts have also prompted the supporters of the "responsibility to protect" to reflect deeply. In the case of the Rohingya crisis, non-military interventions are valued. Due to the restriction of great power politics, the sensitivity of developing countries to sovereignty and the dispute over the connotation of the "responsibility to protect", the United States and other western countries exercise the "responsibility to protect" to solve the Rohingya crisis more by means of non-military intervention. In the non-military intervention, the role of the International Criminal Court (ICC) is getting increasingly important. With regards to the challenges of the "responsibility to protect", China stresses the principal position of the country concerned and the authority of the UN Security Council to prevent the issue from being politicized and abused. Its constructive intervention in the Rohingya crisis has yielded some results. In general, the Rohingya crisis provides an important case study for the international community to respond to the "responsibility to protect" with "collective action" through non-military intervention, i.e. diplomatic pressure, humanitarian assistance, peaceful persuasion, economic sanctions, and ICC trials.