

ปัญหาชนกลุ่มน้อยโรฮิงญาในประเทศเมียนมา:
บทบาทและการให้ความช่วยเหลือของประเทศบังคลาเทศ

Rohingya Crisis of Myanmar:
The Role and Aid of Bangladesh*

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บทคัดย่อ

บทความนี้ได้นำเสนอผลกระทบจากการที่ประเทศเมียนมาได้กระทำต่อชนกลุ่มน้อยชาวโรฮิงญาทำให้มีผลเป็นการอพยพไปสู่ประเทศเพื่อนบ้านใกล้ๆ โดยเฉพาะประเทศบังคลาเทศ โดยดูจากจุดกำเนิดของวิกฤตการณ์และกฎหมายที่เกี่ยวข้องตลอดจนสถานการณ์ปัจจุบันจุดยืนขององค์การสหประชาชาติและสหรัฐอเมริกา จีน รวมทั้งอินเดียซึ่งถือว่าเป็นประเทศที่มีอิทธิพลภายในภูมิภาค โดยเฉพาะอย่างยิ่งการมีอิทธิพลเหนือประเทศบังคลาเทศ

บทความนี้ได้ข้อสรุปว่า แม้ว่าประชาคมของโลกจะรู้สึกเห็นอกเห็นใจต่อผู้ลี้ภัยไร้รัฐชาวโรฮิงญา แต่ประชาคมโลกก็ยังไม่สามารถที่จะยื่นมือเข้าไปช่วยเหลือหรือหาทางออกเพื่อแก้ไขวิกฤตการณ์ในครั้งนี้นายได้กรอบของกฎหมายระหว่างประเทศที่เกี่ยวข้อง การจะเสนอแนวทางแก้ไขปัญหาในเรื่องนี้มีความเกี่ยวข้องและแรงกดดันจากประเทศต่างๆ เช่นจีนและอินเดียซึ่งถือว่าเป็นมหาอำนาจในภูมิภาคและยังมีแรงกดดันจากประชาคมโลกอย่างเช่นกลุ่ม G8 ซึ่งพยายามมีบทบาทในวิกฤตการณ์มนุษยธรรมต่างๆ ตลอดจนความรับผิดชอบร่วมกันของนานาประเทศซึ่งส่งเสริมให้เกิดความสามารถในด้านของโครงสร้างพื้นฐานและระบบเศรษฐกิจ คำตอบสุดท้ายสำหรับกรณีของชาวโรฮิงญาอาจจะเป็นไปได้คือ ประชาคมโลกร่วมกันแสดงท่าทีกดดันให้เมียนมารับเอาผู้อพยพชาวโรฮิงญาพร้อมทั้งให้สิทธิในสัญชาติแก่คนเหล่านั้น

คำสำคัญ: ปัญหาผู้อพยพชาวโรฮิงญา, การละเมิดสิทธิมนุษยชน, ความสัมพันธ์ระหว่างบังคลาเทศและเมียนมา, คดีแกมเบียและเมียนมาในศาลโลก

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Abstract

This article presents the effects of Myanmar's persecution of its Rohingya minority population that, in effect, triggered an exodus to their nearest bordering country Bangladesh. It looks at the origins of the crisis and relevant laws, current situation, position of the United Nations, the United States, China and India being major influences in the region, and the overall role of Bangladesh.

The article concludes that although the global community appears to be sympathetic towards the plight of stateless Rohingya refugees, they are unable or not very keen on seeking a swift resolution to the crisis resolve the crisis in line with the pertinent international legal framework. The recommended solutions to this ongoing crisis involves a greater amount of involvement and pressure from states such as China and India, considered to be the region powers, as well as the more influential global communities such as the G8 taking a tougher stance to the humanitarian crisis, and finally an approach of shared responsibilities among countries with established infrastructures and economic capabilities. A lasting answer to the Rohingya crisis may be plausible only when the global community takes a firm stance in favor of compelling Myanmar to repatriate the Rohingya refugees with full citizenship rights.

Keywords: Rohingya Refugee Crisis, Human Rights Violation, Bangladesh Myanmar Relations, The Gambia vs. Myanmar International Court of Justice

1. Introduction

Conflicts in the Rakhine region of Myanmar involving the alleged humanitarian crimes and violent prosecution of the Rohingya ethnic community resulted in the surge of illegal migration from the region into the neighbouring country of Bangladesh. This sudden and provoked influx in massive numbers of the Rohingya community into Bangladesh piled on to the already struggling nations population, economic, socio-cultural factors as well as presenting major environmental shifts and ecological concerns for the host country. The sheer number of refugees flocking into Bangladesh to Bangladesh has rapidly given rise to national security issues as it is near impossible to clearly distinguish the local population and the refugee population outside of camp confinements.

There have been three major areas where the impacts are very crucial for the country. First is an environmental and socio-economic disaster; the second is political

adversity and the adverse effect on the issue of permanent residency if the Rohingyas refuse to their own country as their safety is doubtful in the Rakhine state. The third is ascertaining the proper number of refugees to be accepted by the Myanmar government, as there are issues of conflicting figures, further solidifying the reluctance of the Myanmar government in the repatriation of the refugees. Security threats have also become a vital issue, given the added pressure of managing a group of people that amount to over three times the local population in Cox's Bazar district.

Furthermore, this on-going concern has substantially affected Bangladesh-Myanmar negotiations on several projects involving enhancement of infrastructure in the region such as the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (*BIMSTEC*),¹ the Asian Highway, and the Kunming road connection which is slated to go through the state of Rakhine. Projects such as these have the potential of creating substantial economic gains for both nations.

The immigration of refugees poses a security threat for Bangladesh in addition to the humanitarian aid that one of the poorest nations in the world must shoulder.² According to Rahman.³ the crisis is a major dilemma for Bangladesh that must fulfil the interest of its country while upholding the human rights and security issues of the Rohingya Muslims. Another significant security concern is the growth of militant groups that inhabit the border area.⁴ When the Rohingya crisis first surfaced in 1978, the Saudi charity Rabitat al Alam al Islami donated money to open a hospital in Ukhia, south of Cox's Bazar. The aid did not end there; militants started acquiring missiles and launching attacks inside Burma. The major militant group at that time was the Rohingya Solidarity Organization (RSO) that amassed endorsement from groups stemmed from similar

¹ Kaul, M. M. (2006). Regional groupings: An overview of BIMSTEC and MGC. *South Asian Survey*, 13(2), pp.313-322.

² Parnini, S. N., Othman, M. R., & Ghazali, A. S. (2013). The Rohingya refugee crisis and Bangladesh-Myanmar relations. *Asian and Pacific Migration Journal*, 22(1), 133-146.
Rahman, U. (2010). The Rohingya refugee: A security dilemma for Bangladesh. *Journal of Immigrant & Refugee Studies*, 8(2), pp. 233-239.

³ Rahman, U. "The Rohingya refugee: A Security Dilemma for Bangladesh". *Journal of Immigrant & Refugee Studies*, 8(2) (2010), pp. 233-239.

⁴ Lintner, B. (2003). THE PLIGHTS OF ETHNIC AND RELIGIOUS MINORITIES AND THE RISE OF ISLAMIC EXTREMISM IN BANGLADESH.

ideology. The early 1990's saw the growth of RSO, when the group obtained an exceptional amount of publicity in both international as well as local media.

On the environmental front, in a report published by the Cox's Bazar Forest Department showed there was a significant loss of forest resources with an estimated worth of BDT 2,420 crore (around US\$28billion) with houses constructed on reserved forests amounting to 6,164 acres with an additional 1,837 acres of forest land razed to collect firewood. As a result, the biodiversity in the area suffered heavy damages, including the movement of wildlife, particularly the endangered Asian elephant. Incidents involving elephants have since risen, claiming the lives of at least 12 refugees.⁵

The researcher aims to study the various impacts this unfortunate exodus has had on the host country of Bangladesh along with the relevant international legal frameworks that is applicable to this ongoing crisis in hopes of recommending learned measures towards resolving the plight of both the Rohingya refugees and Bangladesh concurrently. As there is no scope of taking a quantitative approach to this study, the researcher has taken a qualitative approach using both primary and secondary data coupled with relevant books, journals, news and media articles, international press releases along with legal frameworks and relevant statues based on an empirical analysis.

2. Origins of the crisis and relevant laws

The Rohingya minority has been suffering from several forms of violence in the Rakhine state including detention, abuse, extortion, rape, and various other violations to their basic human rights. Myanmar government has rebuffed the minority group their fundamental rights as citizens of the country, and labelling the population as originating from Bangladesh and immigrating illegally.

The point of intrigue in this situation is the responsibility of the neighbouring countries along with the global community. The primary points under consideration can be summarized as follows:

1. Bangladesh has fulfilled its obligations under international law.

⁵ Hasan, R. (2019, October 18). Rohingya Settlements: 8,000 acres of forests razed. *The Daily Star*. Available at <https://www.thedailystar.net/frontpage/news/rohingya-settlements-8000-acres-forests-razed-1815400>. (Last visited 13 May 2020)

2. A legitimate solution to the Rohingya crisis requires international cooperation and adherence to international law.

To further elaborate and increase the spectrum of contention, the author raises some questions to seek clearer explanations. The following questions reinforce the main objectives as well as speculating on the possibilities of future conduct. They are as follows:

1. What are the root-causes of the Rohingya Crisis?
2. Is the Rohingya Crisis a refugee problem under international law?
3. What are Bangladesh's obligations towards the Rohingya refugees under international law?
4. What measures did the Bangladesh Government take as a response to the crisis?
5. What are the responsibilities of the international community towards Rohingya refugees under international law?
6. What should be the solution to the Rohingya Crisis?

One of the clear roots to the origin of the conflict come from a certain law passed back in 1982 on citizenship that requires all minority groups within the country to submit proof of having resided in Myanmar before the Anglo-Burmese war in 1823.⁶ Adding to that point of contention, the Rohingya Muslim population, with distinctive difference in their language, sharing the same religion and homogenous physical appearance with the Bengali population became easy targets. Given the already shaky ground the minority stands on in their own country, the threat and notion of growing religious extremism connected to Islam in 2011 with the rise of the Islamic State, gave birth to the Buddhist extremist movement in the region. Potential threats posed by spreading Islamic extremism was used to justify the further prosecution of the Rohingya population.⁷ Till this day, the Rohingyas' lineage is heavily deliberated among the global academic society, but is universally used to distinguish the Muslim majority living in Myanmar.

⁶ Mahmood, S. S., Wroe, E., Fuller, A., & Leaning, J. (2017). The Rohingya people of Myanmar: health, human rights, and identity. *The Lancet*, 389(10081), pp.1841-1850.

⁷ Francoise, J., & Seward, P. (2015). Brief Version of Rohingya Paper "The Future Geopolitics of ASEAN: Rohingya Case"

The United Nations provision of ‘Responsibility to Protect,’⁸ accepted by the ASEAN nations can arguably applied to the Rohingya population, but not been highly enforceable in this particular case. The doctrine’ guiding principles elaborates that:

1. The protection of all groups of people within a country from ethnic cleansing, war crimes, genocide and crimes against humanity is born by the state.

2. Responsibility to provide aid, support, or any sort of assistance required by the state to accomplish such responsibilities are to be shared by the international community.

3. Should the state act as instigators or are found in violation of failing to protect their populations, the international community shares the responsibility of applying appropriate peaceful, humanitarian, diplomatic, and other more vigorous means including the involvement of the UN Security Council resolve the situation and ensure justice.

Taking these rudimentary provisions highlighted by the ‘Responsibility to Protect Doctrine,’ it is clear that Myanmar as a state has struggled to protect the Rohingya people on their own land. This also provides a basis for the international community to step up and share the responsibilities in ensuring that acts of violence and human rights violations occurring in the region is met with the appropriate response. The adherence to these basic, yet unenforceable provisions can serve to protect the alleged atrocities this minority group is facing in Myanmar.

Furthermore, this case can take into consideration the core legal framework stated in the *1951 Refugee Convention*⁹ and supplemented by the United Nations High Commission for Refugees, with the principle goal of refugee protection. Considering these previous aspects, the most workable and immediate response involves resettlement and voluntary repatriation. Although the *1951 Refugee Convention* does not directly refer to a repatriation process, several clauses exist may be applicable to this particular situation. Primary clauses provided in Article 1C(4) of the convention declares the cessation of the refugee status if a refugee voluntarily returns to their country of origin. Article 1C (5) and (6) further elaborates on the situation that a

⁸ United Nations General Assembly resolution 60/1. *2005 World Summit Outcome, A/RES/60/1* (16 September 2005) Available at <https://undocs.org/A/RES/60/1>

⁹ Clark, T., & Crépeau, F. (1999). Mainstreaming Refugee Rights. *The 1951 Refugee Convention and International Human Rights Law. Netherlands Quarterly of Human Rights*, 17(4), pp.389-410.

repatriation program that is voluntary indicates a scenario where the original reasons and circumstances of the refugees fleeing has changed, thus their status is subject to change.¹⁰

Voluntary repatriation in the case of the Rohingya population in Bangladesh is not a clear-cut situation for various reasons. Bangladesh has faced similar situations in 1978 and 1992, where the repatriation took place without the consent of the displaced refugees, further complicating the situation as the physical and diplomatic safety of the returnees were not ensured. The involuntary repatriation processes were halted once in 1992 and as recently as 2005, as they did not facilitate any change or stop further prosecutions.¹¹¹² Elaborating on safety situations upon the return of refugees in their land of origin, the existing provisions in terms of overall security, legal, and personal are considered. For instance, the existence of land mines or other life-threatening ordnances, assurance of the returnees' legal documents and full citizenship rights, the ability to recover lost property, income generating opportunities and basic survival needs. As the matter of resettlement is concerned, the core focus is sharing the burden of hosting with a third country. According to ExCom Conclusion No. 90 (LII) 2001¹³, it provides a more long-term approach to resolving the issue, considering the sheer number of Rohingya refugees. However, in this current situation involving the Rohingya minority, resettlement would be a highly inadequate attempt at diffusion.

¹⁰ A. Azad, & Jasmin, F. "Durable Solutions to the Protracted Refugee Situation: The Case of Rohingyas in Bangladesh". *Journal of Indian Research*, 1(4) (2013), pp.25-35.

¹¹ M. Barnett, "UNHCR and Involuntary Repatriation: Environmental Developments, the Repatriation Culture, and the Rohingya Refugees". Paper submitted to the International Studies Association, Los Angeles, 2000.

¹² Kiragu, E. Rosi, A. L., & Morris, T. *States of Denial: A Review of UNHCR's Response to the Protracted Situation of Stateless Rohingya Refugees in Bangladesh*. Policy Development and Evaluation Service, UNHCR, 2011. Available at <http://www.unhcr.org/4ee754c19.pdf>. (Last visited 27 October 2018).

¹³ Executive Committee of the High Commissioner's Programme, Conclusion on International Protection No. 90 (LII) - 2001, 5 October 2001, No. 90 (LII), available at: <https://www.refworld.org/docid/3bd3e3024.html>, (Last visited 15 September 2019)

3. Current Situation

On paper, the United States is dedicated to the protection of civilians in Myanmar by offering humanitarian aid and working together with the government and the UN. However, the US is not boldly acting in the interest of the Rohingyas and does not appear to be earnestly committed to atrocity prevention and civilian protection as a whole.¹⁴

In the case of India and China, a distinctly varied approach is seen with the evidence of both diplomatic and economic pressure being applied with the combination of large scale investments as well.¹⁵ India has invested in a project called The Kaladan Road Project. This project will give a sea-river-land link from India to Myanmar. Meanwhile China has invested in a project called Kyauk Phyu port. This project will serve as a railroad link and an oil-gas pipeline from Myanmar to China. It can also be surmised that these two regional power houses are volleying for influence in Myanmar, given that their militaries engage sporadically in the Himalayan border region. However, in regards to the plight of the Rohingyas, both share the same stance.¹⁶

4. Position of the United Nations

An immediate cessation of organized campaigns run by the military on the Rohingya was called for by the UN general assembly and further requested a special envoy be appointment to observe the situation in spite of facing resistance from several countries in the region along with Russia and China.¹⁷ The Organization of Islamic

¹⁴ Hulse, C “The Rohingya, R2P, And Civilian Protection.” Foreign Policy in Focus (22 February 2018) Available at <https://fpif.org/rohingya-r2p-civilian-protection/>. (Last visited 20 May 2020)

¹⁵ Bhaumik, S. “Why do China, India back Myanmar over the Rohingya Crisis?” *South China Morning Post*. At <https://www.scmp.com/week-asia/geopolitics/article/2115839/why-do-china-india-back-myanmar-over-rohingya-crisis>. (Last visited 21 October 2018)

¹⁶ Ibid p. 8

¹⁷ Agence France-Presse at the United Nations. “China and Russia Oppose UN Resolution on Rohingya.” *The Guardian*. Guardian News and Media, December 24, 2017.

Cooperation (OIC) put forth this resolution at the United Nations facing resistance from Cambodia, Philippines, China, Laos, and Russia among others but was adopted with 122 yes votes. Further elaborating on terms, the purpose of such resolution was to make certain of the refugees return along with the declaration of citizenship for all, aid workers to be granted full access, as well as the appointment of a special envoy subject to budgetary clearance.¹⁸

5. International Court of Justice: The Gambia vs. Myanmar

In January 23, 2020, Myanmar had to defend themselves at Hague regarding the Rohingya situation at the International Court of Justice (ICJ).¹⁹ The case was called *The Gambia v. Myanmar* and was concerned with applying the Convention on the *Prevention and Punishment of the Crime of Genocide*.²⁰ As a result, ICJ's ruling states that Myanmar is required to take actions to prevent the genocide against the Rohingya Muslims. This case was started in November 2019, when Gambia brought it at ICJ with the backing of 57 countries (mostly Muslim nations), accusing Myanmar of breaching the 1948 UN Convention on Genocide.²¹ Gambia requested the court to consider if there was jurisdiction over the case and to impose provisional measures to stop any kind of genocidal violence.

Since the trial took place on the 23 of January 2020, the Myanmar government was instructed to cease and desist all acts of violence such as the incineration of villages, sexual harassment and rape, mass murder and the likes by their military and

Available at <https://www.theguardian.com/world/2017/dec/24/china-russia-oppose-un-resolution-myanmar-rohingya-muslims>. (Last Visited 21 October 2018)

¹⁸ Patrick Wintour "Aung San Suu Kyi seeks new relationship with UN over Rohingya crisis" *The Guardian*. At <https://www.theguardian.com/world/2018/apr/28/aung-san-suu-kyi-un-relationship-rohingya-crisis>. (Last visited 21 October 2018)

¹⁹ International Court of Justice. "Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)," 2020. At <https://www.icj-cij.org/en/case/178>. (Last visited 8 March 2020).

²⁰ Lippman, M. "The Drafting of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide." *BU Int'l LJ* 3 (1985): 1.

²¹ Kunz, L. J. "The United Nations Convention on Genocide." *American Journal of International Law* 43, no. 4 (1949), pp. 738-746.

similar forces. Myanmar was also instructed to produce and conserve any and all evidence of such acts and their preventions for the purpose of future as well as the ongoing trials. Furthermore, the ICJ requires the Myanmar government to produce reports in the interval of 4 months from the first date of the trial in January 2020, in addition to a bi-annual report of progress to be presented to the international community to demonstrate their adherence to the ruling stipulated by the ICJ.

6. Overall Role of Bangladesh

Bangladesh played two significant roles in handling the Rohingya crisis. The first was to provide shelter and humanitarian support to the refugees, and the second was to attempt resolution of the issues and conflicts through diplomatic channels by involving the international community.

From a diplomatic perspective, Bangladesh has remained very vocal at the UN to draw international attention to resolve this refugee crisis. However, Myanmar's economic allies in the region, mainly China, India, and Russia, have tried to restrain the efforts using various methods. Their responses there appeared to have a jamming effect on both the UN and Bangladesh's efforts at resolving the issue.²² In a seemingly instigative move, Myanmar helicopters and drones violated Bangladesh airspace repeatedly. At the same time, the country's border forces have been witnessed to open fire on Rohingyas preparing to cross into Bangladesh.²³

In the initial stage, Myanmar did not agree to involve UNHCR in the repatriation talks, but Bangladesh constantly kept Myanmar under pressure to include the UN body in an overseer role throughout the process. Through successful diplomacy, Bangladesh managed to sign a MoU with Myanmar with uncertainty looming over the subject of

²² Agence France-Presse at the United Nations. "China and Russia Oppose UN Resolution on Rohingya." The Guardian. Guardian News and Media, December 24, 2017. Available at <https://www.theguardian.com/world/2017/dec/24/china-russia-oppose-un-resolution-myanmar-rohingya-muslims>. (Last Visited 21 October 2018)

²³ Al Jazeera and News Agencies. (2017, August 26). "Myanmar troops open fire on civilians fleeing attacks." Al Jazeera Media Network. 26 August 2017) Available at <https://www.aljazeera.com/news/2017/08/myanmar-violence-traps-rohingya-bangladesh-border-170826101215439.html>. (19 May 2020)

repatriation. at a time when there had been uncertainty over Rohingya repatriation. A further bilateral agreement was signed by the two governments in November 2017.²⁴

Consequently, in February 2019, Myanmar was presented with a list of 8032 Rohingyas by the Bangladesh government, of which approximately 700 were verified and marked eligible for return. No such action has taken place thus far. A further recommendation of adding the UNHCR as a third party was rejected by Myanmar, and as a result the MoU was only signed by Bangladesh and the UNHCR.²⁵

Bangladesh continues to accept economic assistance from the UN and other organizations for the Rohingya refugees, but it is declining as time passes. This decline in funding has increased the fear of both the government and the general public regarding the long-term effects on the economy, as the country struggles to balance its own financial load with the added burden of hosting nearly one million refugees.

According to Debapriya Bhattacharya, at the Centre for Policy Dialogue (CPD), the two major areas of expenditures related to the Rohingya population are both direct in health services and food; with indirect costs heavily involving the environment and community. He further states that the brunt of these expenses should not only come from the host country of Bangladesh and the UNHCR, but also contributions from other various INGOs should be expected.²⁶

²⁴ Oliver H. and agencies. (2017, November 23). Myanmar signs pact with Bangladesh over Rohingya repatriation. *Reuters*. Available at <https://www.reuters.com/article/us-myanmar-rohingya-bangladesh/bangladesh-agrees-with-myanmar-to-complete-rohingya-return-in-two-years-idUSKBN1F50I2>. (last visited 16 October 2019)

²⁵“Bangladesh and UNHCR agree on voluntary returns framework for when refugees decide conditions are right.” United Nations High Commission for Refugees. (13 April 2018) Available at <https://www.unhcr.org/news/press/2018/4/5ad061d54/bangladesh-unhcr-agree-voluntary-returns-framework-refugees-decide-conditions.html>. (Last visited 21 October 2019)

²⁶ Hossain, I. (2017, September 13). How much does it cost to house Rohingya refugees? *The Dhaka Tribune*. Available at <https://www.dhakatribune.com/bangladesh/2017/09/13/cost-house-rohingya-refugees/>. (Last visited 10 May 2020)

7. Conclusion and Recommendation

As the refugee crisis is a constantly changing process, a concrete or final conclusion is difficult to be drawn from this study. The study has been conducted by considering the prevailing situation, and the conclusion has also been arrived at by taking into account the overall scenario.

It can be concluded that Bangladesh has acted according to international and humanitarian laws despite being a highly populous and resource poor country to begin with thus making my first hypothesis correct. The burden of hosting nearly 1 million refugees for an indefinite period has taken a massive toll on its environmental, socio-economic, and cultural factors as well as national security. Bangladesh has rightfully called for international aid and assistance to alleviate its own pressures as well as to find an effective repatriation solution with Myanmar to ensure the safety and recognition of the refugee population. The global community and donor agencies have responded providing Bangladesh with monetary and other humanitarian assistances.

No decisive legal, enforceable action has been taken against Myanmar till now, and warnings or reprimands by the international community have remained confined to mere voicing of sanctions and condemnation. The Organization of Islamic Cooperation, US, and the UN have so far resorted to issuing only basic condemnations.²⁷²⁸ However, out of the regional nations with a majority of Muslim population, only Indonesia has sent their foreign minister to Myanmar to induce dialogue concerning the matter.

Furthermore, international legal framework appears to be ineffective in this case since legal proceedings cannot follow the path previously tread by the International Court of Justice in the cases against former Yugoslavian leaders for crimes against humanity, since laws regarding crimes against humanity was derived mainly from the

²⁷ Associated Press in New York (2019, December 28). UN condemns Myanmar over human rights abuses against Rohingya. *The Guardian*. Available at <https://www.theguardian.com/world/2019/dec/28/un-condemns-myanmar-over-human-rights-abuses-against-rohingya>. (Last visited 9 May 2020)

²⁸ Radio Free Asia (2018, May 7), OIC slams Myanmar for 'ethnic cleansing' of Rohingya Muslims, available at: <https://www.refworld.org/docid/5b2222334.html>. (Last visited 9 May 2020)

basis of customary international law.²⁹ No international convention collates crimes against humanity at present. This lack of codification has given the international community a drive to establish a treaty focused on such crimes, led by the ‘Crimes Against Humanity Initiative’.³⁰ Implementation of such a treaty would require much time and effort to turn to fruition.

According to the findings stated previously, the recommended approach to resolving this issue is both delicate and complicated at the same time. The first step of a possible solution lies with the regional superpowers, India and China. As discussed earlier, both these heavily influential nations are heavily invested in Myanmar, creating an opposing effect and lean towards the Myanmar government at present. It is because of their heavy lean and investments in the area that both China and India can exert considerable amount of pressure towards the Myanmar government to resolve this issue peacefully and systematically. Economic, developmental, as well as diplomatic incentives can be given by these important neighbours in exchange for complete transparency and flow of international organizations to facilitate smooth repatriation.

Following that notion, as the second recommendation, the rest of the international community led by the U.S, and the rest of the G8 nations should consider a tougher stance when it comes to sanctions and trade bans. The direct and immediate effect of such sanctions and trade bans would be difficult to ignore for the Myanmar government as it is essential to their development and economic progress to stay connected to the global community. This recommendation also requires the global community coming together in cooperation to oppose and provide justice for the alleged crimes against humanity.

Tying in the third recommendation with the mobilization of the international community, is the humanitarian appeal. Developed countries with established infrastructures and economic capabilities need to come together and devise a sustainable plan to alleviate the urgent sufferings of the Rohingyas. Nations with strong refugee programs such as Canada should lead a movement of sharing and accommodating this significant number of refugees. An international agreement is

²⁹ Goldstone, R. J., & Hamilton, R. J. (2008). *Bosnia v. Serbia: Lessons from the encounter of the International Court of Justice with the International Criminal Tribunal for the Former Yugoslavia*. *Leiden Journal of International Law*, 21(1), 95-112.

³⁰ The Center for Justice and Accountability. *Crimes Against Humanity*. Available at <https://cja.org/human-rights-issues/crimes-against-humanity/>. (Last visited 10 May 2020)

recommended in hosting, protecting, and providing refuge to the displaced Rohingya population. If accomplished, this would balance out the strain of one country shouldering the economic and geo-political burden that has predominantly fallen on Bangladesh.

In order to solve this crisis Myanmar must cooperate. Therefore, the fourth and final recommendation is the cooperation of Myanmar. Myanmar will need to recognise the crisis in their own country and take steps towards repatriation of the Rohingya Refugees. UN has responded to the issue very seriously by creating plenty pressure on Myanmar. However, as long as the genocide situation in Myanmar isn't resolved it's not safe for the Rohingyas to return and this matter cannot be solved entirely. Myanmar needs to let agencies like UNHCR get involved so preparation for repatriation can begin. The fact remains that they do not want the Rohingyas in their country. After all these years as the crisis has been recognised as a problem under international law leading the ICJ to get involved. Myanmar till date denies all allegations of genocide against the Rohingya Muslims.

Bibliography

Journals

- A. Azad, & Jasmin, F. "Durable Solutions to the Protracted Refugee Situation: The Case of Rohingyas in Bangladesh". *Journal of Indian Research*, 1(4) (2013), pp.25-35.
- Clark, T., &Crépeau, F. (1999). *Mainstreaming Refugee Rights. The 1951 Refugee Convention and International Human Rights Law*. *Netherlands Quarterly of Human Rights*, 17(4), pp.389-410.
- Goldstone, R. J., & Hamilton, R. J. (2008). *Bosnia v. Serbia: Lessons from the encounter of the International Court of Justice with the International Criminal Tribunal for the Former Yugoslavia*. *Leiden Journal of International Law*, 21(1), pp.95-112.
- Kaul, M. M. (2006). *Regional groupings: An overview of BIMSTEC and MGC*. *South Asian Survey*, 13(2), pp.313-322.
- Kingston, L. N. (2015). *Protecting the world's most persecuted: the responsibility to protect and Burma's Rohingya minority*. *The International Journal of Human Rights*, 19(8), pp.1163-1175
- Kiragu, E. Rosi, A. L., & Morris, T. *States of Denial: A Review of UNHCR's Response to the Protracted Situation of Stateless Rohingya Refugees in Bangladesh*. Policy Development and Evaluation Service, UNHCR, 2011. Available at <http://www.unhcr.org/4ee754c19.pdf>. (Last visited 27 October 2018).
- Kunz, L. J. "The United Nations Convention on Genocide." *American Journal of International Law* 43, no. 4 (1949): 738-746.
- Lippman, M. "The Drafting of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide." *BU Int'l LJ* 3 (1985): 1.
- M. Barnett, "UNHCR and Involuntary Repatriation: Environmental Developments, the Repatriation Culture, and the Rohingya Refugees". Paper submitted to the International Studies Association, Los Angeles, 2000.
- Parnini, S. N., Othman, M. R., & Ghazali, A. S. (2013). *The Rohingya refugee crisis and Bangladesh-Myanmar relations*. *Asian and Pacific Migration Journal*, 22(1), 133-146.
- Rahman, U. (2010). *The Rohingya refugee: A security dilemma for Bangladesh*. *Journal of Immigrant & Refugee Studies*, 8(2), pp.233-239.
- Paris, R. (2014). *The 'Responsibility to Protect' and the structural problems of preventive humanitarian intervention*. *International Peacekeeping*, 21(5), pp.569-603.

Rahman, U. "The Rohingya refugee: A Security Dilemma for Bangladesh". *Journal of Immigrant & Refugee Studies*, 8(2) (2010), pp.233-239.

Mahmood, S. S., Wroe, E., Fuller, A., & Leaning, J. (2017). The Rohingya people of Myanmar: health, human rights, and identity. *The Lancet*, 389(10081), pp.1841-1850.

Research Papers

Lintner, B. (2003). THE PLIGHTS OF ETHNIC AND RELIGIOUS MINORITIES AND THE RISE OF ISLAMIC EXTREMISM IN BANGLADESH. Available at http://asiapacificms.com/papers/pdf/ethnic_and_religious_minorities_bangladesh.pdf. (Last visited 13 May 2020)

Francoise, J., & Seward, P. (2015). Brief Version of Rohingya Paper "The Future Geopolitics of ASEAN: Rohingya Case." Available at https://www.academia.edu/download/45468632/Brief_Version_of_Paper-Jeanne_Francoise.pdf (Last visited 19 November 2019)

Newspaper

Agence France-Presse at the United Nations. "China and Russia Oppose UN Resolution on Rohingya." *The Guardian*. Guardian News and Media, December 24, 2017. Available at <https://www.theguardian.com/world/2017/dec/24/china-russia-oppose-un-resolution-myanmar-rohingya-muslims>. (Last Visited 21 October 2018)

Al Jazeera and News Agencies. (2017, August 26). "Myanmar troops open fire on civilians fleeing attacks." Al Jazeera Media Network. 26 August 2017) Available at <https://www.aljazeera.com/news/2017/08/myanmar-violence-traps-rohingya-bangladesh-border-170826101215439.html>. (19 May 2020)

Associated Press in New York (2019, December 28). UN condemns Myanmar over human rights abuses against Rohingya. *The Guardian*. Available at <https://www.theguardian.com/world/2019/dec/28/un-condemns-myanmar-over-human-rights-abuses-against-rohingya>. (Last visited 9 May 2020)

Hasan, R. (2019, October 18). Rohingya Settlements: 8,000 acres of forests razed. *The Daily Star*. Available at <https://www.thedailystar.net/frontpage/news/rohingya-settlements-8000-acres-forests-razed-1815400>. (Last visited 13 May 2020)

- Hossain, I. (2017, September 13). How much does it cost to house Rohingya refugees? *The Dhaka Tribune*. Available at <https://www.dhakatribune.com/bangladesh/2017/09/13/cost-house-rohingya-refugees/>. (Last visited 10 May 2020)
- Oliver H. and agencies. (2017, November 23). Myanmar signs pact with Bangladesh over Rohingya repatriation. *Reuters*. Available at <https://www.reuters.com/article/us-myanmar-rohingya-bangladesh/bangladesh-agrees-with-myanmar-to-complete-rohingya-return-in-two-years-idUSKBN1F50I2>. (last visited 16 October 2019)
- Patrick Wintour “Aung San Suu Kyi seeks new relationship with UN over Rohingya crisis” *The Guardian*. At <https://www.theguardian.com/world/2018/apr/28/aung-san-suu-kyi-un-relationship-rohingya-crisis>. (Last visited 21 October 2018)
- SubirBhaumik “Why do China, India back Myanmar over the Rohingya Crisis?” *South China Morning Post*. At <https://www.scmp.com/week-asia/geopolitics/article/2115839/why-do-china-india-back-myanmar-over-rohingya-crisis>. (Last visited 21 October 2018)

Press Releases

- Advisory Commission on Rakhine State: Final Report. Kofi Annan Foundation. (2017, August 24). Available at <https://www.kofiannanfoundation.org/mediation-and-crisis-resolution/rakhine-final-report/>. (Last visited 10 May 2020)
- “Bangladesh and UNHCR agree on voluntary returns framework for when refugees decide conditions are right.” United Nations High Commission for Refugees. (13 April 2018) Available at <https://www.unhcr.org/news/press/2018/4/5ad061d54/bangladesh-unhcr-agree-voluntary-returns-framework-refugees-decide-conditions.html>. (Last visited 21 October 2019)
- The Center for Justice and Accountability. *Crimes Against Humanity*. Available at <https://cja.org/human-rights-issues/crimes-against-humanity/>. (Last visited 10 May 2020)

Media Stories and Electronic Sources

- Executive Committee of the High Commissioner’s Programme, Conclusion on International Protection No. 90 (LII) - 2001 , 5 October 2001, No. 90 (LII), available at: [https:// www.refworld.org/docid/3bd3e3024.html](https://www.refworld.org/docid/3bd3e3024.html) (Last visited 15 September 2019)

International Court of Justice. “Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar),” 2020. At <https://www.icj-cij.org/en/case/178>. (Last visited 8 March 2020).

International Court of Justice. “Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar),” 23 January 2020. <https://www.icj-cij.org/files/case-related/178/178-20200123-PRE-01-00-EN.pdf> (Last visited 8 March 2020)

Radio Free Asia (2018, May 7), OIC slams Myanmar for 'ethnic cleansing' of Rohingya Muslims, available at: <https://www.refworld.org/docid/5b2222334.html>. (Last visited 9 May 2020)

United Nations General Assembly resolution 60/1. *2005 World Summit Outcome*, A/RES/60/1 (16 September 2005) Available at <https://undocs.org/A/RES/60/1>. (Last visited 9 May 2020)