

The Politics of Refugee Law and the Rohingya Refugee Crisis

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Abstract:The Rohingyas are the ethnic Muslim minority of Myanmar and the most persecuted minority in the world. Through a series of military-led brutal operations and discriminatory policies, Myanmar's atrocities forced all the Rohingyas to flee to Bangladesh. More than one million Rohingya refugees live in Bangladesh. Myanmar and other international community's responses are minimal so far. Present international refugee law regime does not offer burden-share as a legal obligation. Even northern states' financial contribution to the refugee crisis is motivated by their respective political or other strategic interest. Present international refugee law regime has failed to adjust with new global displacement. Proper international cooperation is urgent for Bangladesh to handle this crisis.

Keywords: *Rohingya, International Refugee Law, Geopolitics*

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1. Introduction

The Rohingyas are the ethnic Muslim minority of Myanmar and the most persecuted minority in the world.¹ They used to live in Northern Rakhine in Myanmar. The history of Rakhine (previously known as Arakan) suggests the Rohingyas were the ancient settlers of the Rakhine.² They settled in the 9th century.³ But after the independence of Myanmar (previously known as Burma⁴) from Britain in 1948, the Rohingyas became stateless, as their citizenship had not been granted. The Myanmar authorities neither recognized the Rohingyas as an ethnic group nor as a citizen. Instead, Myanmar has always treated them as illegal immigrants⁵ and through a series of military

operations; they have tried to deport Rohingyas from the Northern Rakhine. Since August 2017, the world has witnessed a massive Rohingya refugee exodus to neighbouring Bangladesh. Although Bangladesh is not a state party to the Refugee Convention and its Protocol, more than one million Rohingya refugees live in the world's largest refugee camps in Bangladesh.⁶

Whereas Rohingyas have been stateless to over 70 years and have been persecuted, which forced them to flee to Bangladesh and other neighbouring countries, this crisis failed to catch international attention until the final military crackdown in 2017. Myanmar has taken well organized and systematic actions to deport Rohingyas permanently from Rakhine. The United Nations (UN) and other international communities have failed to address and stop atrocities on the Rohingyas by the Myanmar authorities.

In this article, I would like to examine how the refugees are disproportionately distributed and northern donor states politics around the contribution to the refugee crisis. This article further argues that although the present refugee law regime does not term refugees as a

¹Eleonora Costa, "The Rohingya: The World's Most Persecuted Minority", Post Conflict Research Center, 2017. Available at: <http://www.p-crc.org/blog/rohingyabackground> Last visited on August 12, 2108.

² Pamela Gutman, "Burma's Lost Kingdoms: Splendors of Arakan", Orchid Press, 2001. At page 10

³ Ibid, at page 11

⁴ In 1989, Burmese Military Junta changed the name Burma to Myanmar and Arakan to Rakhine.

⁵ Aye Chan, "The Development of a Muslim Enclave in Arakan (Rakhine) State of Burma (Myanmar)", SOAS Vol. 3, No. 2, 2005, *Bulletin of Burma Research*, pp396-420, at page 398

⁶ World Food Program, 'Rohingya Crisis: The World's Largest Refugee Camp', 14 February 2018, available at: <https://wfpusa.org/articles/a-firsthand-look-into-the-worlds-largest-refugee-camp>, Last visited on, August 05, 2018

shared international responsibility, the burden-share policy would be the best durable solution to the current refugee crisis. Finally, this article will mainly focus on international politics around the ongoing Myanmar Rohingya refugee crisis.

2. Present International Refugee Law Regime and Burden-share Mechanism

Refugee law and refugees are important factors of international law and international politics. Hannah Arendt terms refugee as 'an integral aspect of the changing architecture of world politics'.⁷ From both World Wars to post decolonization, from cold war regime to modern globalization, 9/11 attack to modern transnational terrorism threats. In each case, refugees have been breaking out throughout the world and hence 'refugees have been a central feature of world politics'⁸ as well. The refugee laws are regulated by the Convention Relating to the Status of Refugees, 1951 (hereinafter the Refugee Convention) and its 1967 protocol. According to the Refugee Convention, refugees are those who are outside their country of origin for the reason of well-founded fear of persecution.⁹ But this definition also provides five specific grounds of persecution: 'race, religion, nationality, membership of the particular social group and political opinion'.¹⁰ So the approach of this definition is selective and restrictive. Many state representatives stated that 'they could not sign a blank cheque and assume unlimited and indefinite commitments in respect of all refugees'.¹¹

Over time the refugee law regime has shifted to a more restrictive approach by developed countries to take defensive strategies to avoid international legal responsibility posed by the Refugee Convention.¹² Governments are more likely to withdraw their legal duty to

protect refugees, and in practice, refugee protection has now been shifted to an 'inferior or illusory protection'.¹³ Thus, some argue that the refugee law itself is in crisis.¹⁴ So most western countries are now unwilling to compromise their border security and open the door to aliens. It has been experienced that most of the refugee crisis is a protracted one, so it raises a second thought for the refugee host countries before admitting the refugees. Because the refugee law mechanism has failed to 'achieve its fundamental purpose of balancing the rights of involuntary migrants and those of the states to which refugees flee'.¹⁵ That is why refugee distribution is very disproportionate in the world.

As of May 2019, according to the report of the United Nations High Commissioner for Refugees (UNHCR), out of a total of 25.4 million refugees, 85% are in the developing countries.¹⁶ For instance, whereas Bangladesh hosted more than 700,000 new refugees from Myanmar, the United States hosted 29,022 refugees in 2017.¹⁷ Even refugee distribution is disproportionate among the developed countries. This uneven refugee host raises the question of burden-sharing responsibilities by the international community.

The cornerstone principle of the Refugee Convention is non-refoulement¹⁸ of refugees from the host country. But no legal obligation is imposed by the Convention to the other states to share the burden either by sharing refugees or a financial contribution for the cost of refugee protection. This non-legal obligation allows western states to choose when

¹³ Ibid, at page 119

¹⁴ Ibid, at page 128

¹⁵ Ibid, at page 129

¹⁶ UNHCR Statistical Yearbook, available at: <http://www.unhcr.org/uk/figures-at-a-glance.html>, last visited on July 25, 2019

¹⁷ Alan Gomez, "Refugee admissions to U. S. Plummet in 2017", *USA Today*, January 03, 2018,

<https://eu.usatoday.com/story/news/world/2018/01/03/refugee-admissions-u-s-plummet-2017/999903001/>

¹⁸ Non-refoulement is a fundamental principle of international law that forbids a country receiving asylum seekers from returning them to a country in which they would be in likely danger of persecution based on "race, religion, nationality, membership of a particular social group or political opinion. It is a principle of customary international law, as it applies even to states that are not parties to the 1951 Convention Relating to the Status of Refugees or its 1967 Protocol. It is debatable whether non-refoulement is a jus cogens of international law.

⁷ Cited in AlexandarBetts, and Gil Loescher, *Refugees in International Relations*, Oxford, 1989. At page 18

⁸ AlexandarBetts, and Gil Loescher., *Refugees in International Relations*, Oxford 1989. At page 24

⁹ Article 1(A)(2) of the Refugee Convention 1951.

¹⁰ Ibid

¹¹ Cited in Vincent Chetail, *Human Rights and Immigration*, in Rubio-Marin, R ed, Oxford 2014. At page 101

¹² James. C Hathaway & R. Alexandar Neve, "Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection", 10 (1997) Harvard. Human Rights Journal. At page 115

and how much it will contribute to the Southern states' refugee crisis. Betts points out that instead of contributing to protecting refugees in the south, Northern states contribution for refugee protection rather largely depends on the interesting linkage with the Northern states, like security, migration, and trade.¹⁹ Due to the absence of a specific normative and legal framework of burden-sharing provision, the cooperation with other states parties is 'much more dominated by power and interests than issues of reciprocity and legitimacy'.²⁰ Moreover, due to the absence of legal obligation, Southern states have had little bargaining power to gain the expected or adequate contribution from the northern states and burden-sharing as a means of financial incentives largely depends on either UNHCR motivation to Northern states what they offer as discretionary.²¹ Suhrke points out that 'refugee regime has historically been characterized by collective failure'.²²

When lack of effective burden-sharing mechanism is blamed for non-legal obligation, Western states ignore the responsibility, but in practice, despite not being the member parties to the Refugee Convention and no direct legal obligations, Southern states are hosting the large bulk of refugees for the protracted period. For instance, Bangladesh, Pakistan, Jordan, and Lebanon, none of the states are parties to the Refugee Convention, but they are hosting more than a million refugees for over many years. But the Northern states are mostly parties to the Refugee Convention, and hence they have a legal obligation to accept refugees but they have been receiving a very minimum number, compared to non-member Southern states. Most non-state parties to the Refugee Convention open their border for refugees on humanitarian grounds. Still, this humanitarian stand becomes a burden for the host countries without proper cooperation and burden-sharing by the other state parties.

The loopholes of the present Refugee Convention is that it does not term 'burden-sharing' as a separate obligation, rather it puts it in the preamble by the following words, 'the

¹⁹Alexandar Betts, *International Cooperation in the Refugee Regime*, Oxford 1989. At page 33

²⁰ Ibid, at page 34

²¹Supra Note 18 at page no. 39

²² Supra Note 8 at page no. 28

grant of asylum may place unduly heavy burdens on certain countries because of their geographical location, and that a satisfactory solution of a problem of which the United Nations has recognized is international in scope and nature cannot be achieved without international cooperation'.²³ Until now, this international cooperation or collective efforts to redistribute the refugees from the first host countries are insufficient. Because the distribution of refugees from the first host states to the other states has rarely happened, among the durable solutions to the protracted refugee crisis, distribution or resettlement of refugees to the third countries can be placed after the voluntary repatriation. But only 1 per cent of refugees can be re-settled, whereas the UNHCR urged for at least 10 per cent is necessary to re-settle.²⁴ Only the Vietnamese refugees during Indo-china crisis were successfully re-settled to the third countries when the majority of refugees were taken by the United States.²⁵ But the rest of the crisis that the world has experienced throughout the last 70 years, the number of resettled refugees is just one per cent. Refugees are fleeing to neighbouring countries during the crisis, but not at all time countries of the first asylum would be safe. In these situations, re-settlement would be the best durable solutions for refugee protection and the sharing burden for the first host countries.

Although the refugee outbreak happens for many reasons, like Syrian refugee influx to Turkey and other European countries and Myanmar's Rohingya refugee influx to Bangladesh are entirely different prospects, living conditions and other forms of social organizations are different too, but as a single Refugee Convention regulates them all, their legal status is the same, and they are officially under the charge of the same international agency, UNHCR.²⁶

²³ Preamble, The Convention Relation to the Status of the Refugees, 1951. Para 4.

²⁴Hetfield, 2015-16 Symposium Transcript: The Global Refugee Crisis (April 15, 2016), 31 Connecticut Journal of International Law , at page 281

²⁵ Ibid, at page no. 284

²⁶ Cheryl Benard, 'Politics and the Refugee Experience', Vol. 101, No. 4 (1986).*Political Science Quarterly*, pp617-636, at page 619

2.1. Northern States Financial Donation and their Interest

Nevertheless, a significant contribution to the southern refugee protection comes from northern countries. But this contribution is subject to preferences based on their respective interests. Betts shows that US major contribution to the Horn of Africans and Indo-Chinese refugees in the 1980s was part of their strategic interest in promoting anti-communist guerrillas.²⁷ During the refugee crisis of Central America in the late 1980s, the most prominent donors were European countries, because they were motivated to improve regional security to facilitate trade relation with Central America.²⁸ When the UNHCR took the initiative in 2003 to adopt Convention Plus to revisit the existing Refugee Convention developing a normative framework, both the US and Europe had opposed. That time, the worthy initiative had failed due to major donor countries' unwillingness to cooperate.²⁹ When the contribution to refugee crisis does not serve any strategic interest, most Northern donor states remain reluctant. For instances, Due to affiliation to the Soviet Union block, Ethiopian refugees were most under-supplied by the northern donor during the war with Somalia.³⁰ A similar approach was found from the northern donor for the El Salvador refugees in Nicaragua. It does not serve any significant political or trade interest for the northern donors. In the matter of financial cooperation, when refugee crisis gives other political interests, northern donors keep silent on even criticizing the host countries' illegal action on refugees. For example, when Vietnamese refugees fled from communism to Thailand, the Thai authorities detained the Vietnamese refugees in the combat zone. Instead of cooperation from the US, they were very careful even in criticizing Thailand's action on refugees because Thailand is an important regional ally to the US.³¹ So, even the contribution to the refugee protection by the northern countries is not for altruistic purposes; instead, it is partial and closely related to broader political or trade interests.

²⁷ Supra Note 18 at page 41

²⁸ Ibid, at page 41

²⁹ Ibid, at page 45

³⁰ Ibid, at page 51

³¹ Ibid, at page 19

2.2. Refugee Law as Human Rights

Another problem is international legal binding obligations are 'open-textured'.³² States practice shows it allows them to choose when they respond or refuse. Many states are now moving to adopt deterrent policies towards refugee law to skip international obligations.³³ Although refugee law is also international human rights law, again 'international human rights law is strong on principle but weak on delivery'.³⁴ So for execution, reliance on international human rights law would not bring any better situation; rather, it would be a dangerous option. Because human rights laws are 'inadequate alternative source of substantive protection'.³⁵ Many other scholars argue that international human rights laws are insufficiently detailed as it lacks a consistent structure; hence it often sounds either rhetorical or raises fragmentation.³⁶ Although international human rights law and refugee law are inseparable, recognizing refugee law as international human rights law does not offer any further remedy. Right to seek asylum is considered as customary international law but it has always been treated as 'rights of states, not of the individual'.³⁷

2.3. UNHCR's role under present international refugee law

Even International Organization like UNHCR is not an autonomous actor to play an influential role, instead 'it is a structure to do states' bidding'.³⁸ Because UNHCR is dependent on donor states and they need prior permission to operate their aid program from the refugee host country's government. So, UNHCR does not stand in a position to challenge any policies of its fund donor states or host governments and hence in the present refugee regime the

³² Thomas Gammeltoft-Hansen, 'International Refugee Law and Refugee Policy: The Case of Deterrence Policies', Vol. 27, No. 4, 2014., *Journal of Refugee Studies*, pp574-95, at page 580

³³ Ibid, at page 575

³⁴ James McAdam, 'Forced Migration, Human Rights and Security', Hart Publishing, 2008.

³⁵ Supra Note 12, at page 128

³⁶ Kate Jastram, cited in Chetail, V., Supra Note 11, at page no. 103

³⁷ Supra Note 25, at page no. 620

³⁸ Gil Loescher, 'The UNHCR and World Politics, State Interests vs. International Autonomy,' Vol. 35, No. 1, 2001. Center for Migration Studies of New York, at page 218

UNHCR 'merely acts as an instrument of states'.³⁹ Goodwin-Gill argues that UNHCR's humanitarian role is misplaced as it is no longer a 'protection agency' instead, its function is an 'assistance provider'.⁴⁰ The UNHCR's policy in Southeast Asia and Africa is often criticized as it largely responds to the donor governments' policies instead of representing refugees' interest.⁴¹

2.4. *Reasons behind the States' Unwillingness to Accept Refugee*

Although hosting refugees is temporary protection and situation-based human rights, many states take it as against their immigration control policy. Refugee protection is not receiving immigrants but many states are stressed that it is 'an uncontrolled 'backdoor' route to permanent immigration'.⁴² The refugee law regime shows that refugee repatriation processes were largely protracted and only a small portion of refugees repatriated to the country of origin and refugees have gradually moved to permanent immigration. The Refugee laws are policy-based rather than established principles and largely 'governed by the internal and external power relationship with their own rules and regulations'.⁴³ This is one of the major drawbacks of the refugee law because, when it is law and principle, it has strength and enforceability to challenge 'where there are merely policies and guidelines, everything, including protection are negotiable, and that includes refugees'.⁴⁴

For decades, it has been discussed to introduce a new mechanism of international refugee protection that will work to minimize conflict and ensure equitable burden-sharing responsibility by the international community. Many of them were urged to re-shape the 1951's Refugee Convention and its protocol. But no significant sign has ever had to

believe that change will come soon, rather states are 'understandably terrified of reopening the Refugee Convention, they fear we may get something that's far, far worse and assume that states are not going to take on more extensive obligations'.⁴⁵ Instead, in modern times states have shut down their border to prevent refugees so that refugees would not enter the potential asylum states.⁴⁶ Before entering the asylum states, making the barriers is strategically important under the Refugee Convention as the refugees' legal obligation is only imposed when the refugees are within the host country's formal or de facto jurisdiction. Besides, northern states put visa requirements on the refugee-producing states, which is an obstacle to refugees' admission. The northern states impose penal obligations on the airlines and other transport companies if they carry any unauthorized refugee into their territories.⁴⁷ Western Europe push backed the refugees from their land who have arrived by direct transport to the Central and Eastern Europe transit states by way of so-called 'safe third countries' policy.⁴⁸ US and Canada took a similar policy to send back the Central and South American refugees to Mexico.⁴⁹ France detained asylum seekers at their airports by so-called 'international zones' to avoid legal obligations.⁵⁰ European states introduced and have applied on Iraq, Bosnia, and Rwanda the 'right to remain' policy to the refugees, which is a violation of human rights as it means 'no right to flee'.⁵¹ Thus, states are now more reluctant to admit refugees finding new policies to avoid legal obligations, mainly those who accept many refugees, they have had experience of non-cooperation from the other states and temporary admission of refugees ultimately leads to either permanent immigration or long-term responsibility to give protection of refugees.

Moreover, the conditions inside the refugee camps push refugees to engage in crimes to have a better living

³⁹ Ibid, at page no. 215

⁴⁰ Goodwin-Gill, 'Refugee identity and protections fading prospect', in Nicholson, F., & Twomey, P., (ed) "Refugee Rights and Realities: Evolving International Concepts and Regimes" 1999, Cambridge University Press. At page 122

⁴¹ S. Alex Cunliffe, & Michael Pugh, "UNHCR as leader in humanitarian assistance", in Frances Nicholson, & Patrick Twomey, (ed) "Refugee Rights and Realities: Evolving International Concepts and Regimes" 1999, Cambridge University Press. At page 230.

⁴² Supra Note 8, at page 45

⁴³ Supra Note 12, at page 135

⁴⁴ Supra Note 39, at page 117

⁴⁵ Jaya Ramji-Nogales, "2015-16 Symposium Transcript: The Global Refugee Crisis 31, 2016, *Connecticut Journal of International Law*, pp281-363 at page 289.

⁴⁶ Australia and Europe are good examples.

⁴⁷ Ibid, at page 290

⁴⁸ Ibid, at page 288

⁴⁹ Supra Note 8, at page 25

⁵⁰ Ibid, at page 31

⁵¹ Ibid, at page 31

condition. Because refugee camps leave refugees in a 'legal limbo' where in most cases they are deprived of the 'right to have rights' and in majority protracted refugee situations have been facing 'chronic insecurity and injustice' in the refugee camps.⁵² For instance, Somali women refugees in Kenya were victims of rape by the local Kenyan police and military.⁵³ Lack of health care, education, nutrition, chronic diseases are common phenomena in almost all protracted refugee camps. Cheryl Benard rightly points that refugees left their country of origin to save themselves from the persecution or war, but 'this flight, which often makes them a stateless person without documents, without a government, without citizenship- moves them into the arena of political entanglements on a scale much larger than those they left behind'.⁵⁴ Even northern states use refugees as a political tool to gain other political interest. Steve Stedman and Fred Tanner point out that states and non-state actors operate refugee and refugee regimes as a resource of war.⁵⁵ These refugee regimes result from a lack of pragmatic solution-oriented mechanism and reluctance of burden-sharing by the Northern states.

So, equitable burden-sharing by other countries would be the best possible remedy to face current and future refugees' challenges. It seems it would not be possible to reopen the Refugee Convention to introduce a burden-share mechanism as a legal obligation soon, but re-consideration of the refugee policy is inevitable. Like, Thielemann has proposed a market-based burden-sharing combined with quota-based refugee resettlement to ensure an effective and equitable refugee burden-sharing system.⁵⁶ It would be the best idea for refugee resettlement to divide the whole world into

several zones.⁵⁷ Each zone will have a joint fund to regulate the current refugee crisis and the future as well. Thielemann compared this as medical insurance, pay less regularly to assure future contingency as contemporary states practice shows that they are more likely to avoid refugee obligation. Gammeltoft-Hensen nicely describes the northern states present status on refugee law as national tax law, 'where everyone is looking to find out the loopholes and exceptions within the legal framework to minimize the obligations as much as possible'.⁵⁸ Jaya Ramji-Nogales comes up with a more feasible solution, suggesting to create a temporary regime up to 5 to 10 years to revisit the norms and obligation and international cooperation which would be more convenient and 'less politically threatening than a permanent regime'.⁵⁹ In addition to financial cooperation, the international community must come forward to resettle the refugees in case of protracted refugee situations. For the resettlement of refugees, labor migration would be a durable factor to be considered. Current refugee law regime lacks a safe transit route for the migrants; hence it should be revisited.⁶⁰ Panebianco and Fontana state that refugee protection and responsibility to protect can be framed in a similar discourse.⁶¹ Many others are emphasized to take 'solution-oriented temporary protection', which allows the international community to stop the crisis. The international community should take action even before refugees start to flee to other countries. Because prevention is better than cure, the international community and the UN would have a prior concern that conflicts are probable to lead the refugee influx to other countries. Whatever the reasons for refugees fleeing to other countries, either civil war or persecution, it will never happen overnight. The UN and the international community can come forward actively to minimize the civil

⁵² Elizabeth Holzer, 'What Happens to Law in a Refugee Camp?' 47, 2013, *Law & Society Review*. Pp 837-872, at page 837.

⁵³ Supra Note 8, at page 13

⁵⁴ Supra Note 18, at page 22

⁵⁵ Supra Note 8, at page 19

⁵⁶ Eiko R. Thielemann, 'Symbolic politic or effective burden-sharing? Redistribution, side-payment and the European Refugee Fund', Vol 43, No. 4, 2005, *JCMS (London School of Economics & Political Science)* pp 805-25, at page 809.

⁵⁷ Eiko R. Thielemann, 'Burden Sharing: The international politics of refugee protection, (134) 2006, *The Center for Comprehensive Immigration Studies*, pp 1-29, at page 05

⁵⁸ Supra Note 31, at page 583

⁵⁹ Supra Note 44, at page 330

⁶⁰ Ibid

⁶¹ Stefania Panebianco, and LoleFontana, 'When responsibility to protect 'hits home': the refugee crisis and EU response' Vol. 39 No. 1 2018, *Third World Quarterly*, PP 1-17, at page 9.

war-prone or state's persecution before it turns out to be a massive crisis that leads people to flee as a refugee.

The present international refugee law regime is weak and highly motivated by the global politics of interest. Prominent jurists Hathway and Neve postulate that 'the international refugee protection system serves fewer and fewer people, less and less well, as time goes on'.⁶² Probably, northern states will hardly convince to renegotiate the refugee law regime but it is in dire need to have a new refugee law regime that would be able to deal with the contemporary forms of global displacement and cope with the present realities of the worldwide refugee crisis.⁶³ The definition of refugee and present Refugee Convention initially was 'product of cold war and Eurocentric'.⁶⁴ Although the 1967's protocol has globalized it, the identity of refugee status is still at risk, as it classified refugee as a unit of a displaced person, instead of woman, man or child in need of protection.⁶⁵ Moreover, northern states have initiated many deterrent policies to avoid non-refoulement, which is customary international law and applicable irrespective of the status of refugees. This is not a good sign for the present refugee law regime.

Thus, day by day refugee influxes are becoming the burden for the neighbouring states, more particularly to the developing countries as they are presently hosting 84 per cent of total refugees. Without ensuring equitable refugee burden-sharing to the international community the refugees will fall in another vicious trap, because refugee law is not to give mere protection, but need to assure a minimum standard of social and economic well-being.⁶⁶ Developing countries are struggling with their own economy. This uneven distribution of refugees puts undue pressure on them,

⁶² Supra Note 18, at page 25

⁶³ Ibid, at page 25

⁶⁴ Jerzy Sztucki, 'Definition of refugee: Universal or obsolete?', in Frances Nicholson & Patrick Twomey, (ed) "Refugee Rights and Realities: Evolving International Concepts and Regimes" 1999, Cambridge University Press. At page 145

⁶⁵ Supra Note 40, at page 233

⁶⁶ Tuih, 'Rethinking the refugee concept', in Frances Nicholson, & Patrick Twomey, (ed) "Refugee Rights and Realities: Evolving International Concepts and Regimes" 1999, Cambridge University Press. At page 190

and the protracted refugee's situation will be a threat to global security.

2.5. Politics around Rohingya Refugee Crisis

The Rohingya refugee crisis is not an exception to the present refugee law regime practice; both national and international politics have been playing a vital role here also.

2.5.1: Bangladesh: The Bangladesh ruling government has gained political interest from hosting more than one million Rohingya refugees. Initially, the government was unwilling to open the border for more Rohingyas as Bangladesh was already hosting more than 300,000 Rohingya refugees. But leading Islamic movement Hefazet-e-Islam put pressure on the ruling government to host the Rohingyas.⁶⁷ Hefazet-e-Islam is not a political party; it is an Islamic group. Although they are not a political party, they have successfully established their demand for declaring Madrassah education (Islamic education) equivalent to the national curriculum. And they blocked the ruling government's initiative to adopt a new women's rights law allows equal inheritance rights on the property.⁶⁸ Hefazet-e-Islam has a vast number of followers in the southern part of Bangladesh and both the main political parties are trying to take their favour for vote bank. In the last week of December 2018, a parliamentary election has been held, so good relation with Hefazet-e-Islam was indeed a part of political interest for the winning election. Hefazet-e-Islam's motivation was that Bangladesh is a Muslim dominant country and Rohingyas are Muslim too, so saving the Rohingyas lives is a religious duty for Bangladesh. But Bangladesh's unfettered open border gave the Myanmar military the chance to raise the level of persecution to free the whole Northern Rakhine from Rohingya to complete the ethnic cleansing campaign by just a few days of military clearance operation. By hosting more than 700,000 new refugees, the present Bangladesh Prime Minister Sheikh Hasina has gained other political interest. She could successfully raise her acceptability in the Northern States, as she had been criticized for last one-sided parliamentary

⁶⁷ Iffat Idris, 'Rohingya refugee crisis: impact on Bangladeshi politics', 2017, K4D Report, University of Birmingham pp 1-13, at page 5

⁶⁸ Ibid, at page 6

election. The Rohingya Refugee crisis overshadows her political instability and corruption and distracts public attention from electoral politics around the coming parliamentary election.⁶⁹ Prime Minister Sheikh Hasina is also praised locally and many have started to call her 'mother of humanity' and that popularity allows her to continue her power and hasten her move towards authoritarianism.⁷⁰ When the international community's eye was on the Rohingya refugee crisis, the main opposition party leader was kept in prison and has taken harsh measures to suppress any form of criticism by violating freedom of expression.⁷¹ So, the ruling government has gained a full political advantage by hosting Rohingya refugees.

2.5.2: India: Due to prolonged refugee crisis (since the late 1970s), Bangladesh-Myanmar has historically limited bilateral relations. Moreover, maritime boundary disputes and cross-border drug smuggling also played a role to limit trade relations.⁷² India has always been a friendly neighbouring country for Bangladesh. But regarding the Rohingya refugee crisis, India has been supporting Myanmar strongly.⁷³ The Indian strong position in favour of Myanmar is highly motivated by economic interests. India has a couple of big projects, notably the Kaladan Multi-Model Project to connect its northeast states through the Northern Rakhine Sittwe Township.⁷⁴ India has taken the crisis as a means to improve relations with Myanmar. Immediately after the Rohingyas crisis in 2017, the Indian Prime Minister Narendra Modi visited Myanmar. He did not say anything about the refugee crisis, instead mentioned 'extremist violence' in Rakhine and later on declared the

deportation 40,000 Rohingyas from India.⁷⁵ Even India dissociated from the Bali Declaration of World Parliamentary Forum on Sustainable Development when Turkey and Bangladesh introduced clauses on the Rohingya crisis. Despite having amicable relations with Bangladesh, India is not on Bangladesh's side in the cooperation crisis and repatriation process. Rather, due to Indian strategic goals, they have used the crisis as a means to enhance the relationship with Myanmar.

2.5.3: China and Russia: In addition to India, two other permanent members of the UN have been supporting Myanmar strongly. China has a significant geopolitical interest in Myanmar. Through the land of Myanmar, China has direct access to the Indian Ocean. China also funded KyaukPhyu Port to construct an oil-gas pipeline from the Bay of Bengal to the Chinese Yunnan province through Myanmar which shortened the Middle East's supply route.⁷⁶ China has two other big projects to develop a special economic zone in Rakhine.⁷⁷ China has several road development initiatives throughout Myanmar and that entire projects process largely depend on the continuous friendly relationship with Myanmar. Due to its large economic interest, China is supporting Myanmar. Moreover, Myanmar is in the political shift to democracy and the west as well. China has billions of dollars of contracts with Myanmar for selling military weapons. So during these crisis moments, when western countries heavily criticized Myanmar, China's standing as a vocal supporter of Myanmar is a strategic plan to re-establish close relation with Myanmar.

Like China, Russia is also standing firmly in favor of Myanmar. Russia repeatedly stated the Rohingya crisis is Myanmar's internal affair and called other states to refrain

⁶⁹ Ibid at page 7

⁷⁰ Ibid

⁷¹ Ibid

⁷² Syeda Naushine Parnini, Mohammad Redzuan Othman and Amer Saifude Ghazali, "The Rohingya Refugee Crisis and Bangladesh-Myanmar relations". Vol 22 (1), 2013, *Asian and Pacific Migration Journal*, pp 133-46, at page 144.

⁷³ Supra Note No. 66 at page 8

⁷⁴ Bhaumik, 'Why do China, India back Myanmar over the Rohingya crisis?' South China Morning Post, 18 October 2017.

<http://www.scmp.com/weekasia/geopolitics/article/2115839/why-do-china-india-back-myanmar-over-rohingya-crisis>

⁷⁵ Caroline Mortimer, 'India trying to deport 40,000 Rohingya Muslim over 'tries to terrorism'' The Independent, 18 September, 2017.

<https://www.independent.co.uk/news/world/asia/india-rohingya-muslims-deport-burma-40000-supreme-court-terrorists-bangladesh-myanmar-a7953851.html>

⁷⁶ Bertil Lintner, 'The world will soon have a new terror hub in Myanmar if the Rohingya crisis isn't tackled well'. Quartz India. 27 September 2017.

<https://qz.com/1088213/the-world-will-soon-have-a-new-terror-hub-in-myanmar-if-the-rohingya-crisis-isnt-tackled-well/>

⁷⁷ Supra Note 66, at page 10

from interfering in Myanmar's internal issue.⁷⁸ Both Russia and China opposed the United Nations General Assembly Resolution against Myanmar.⁷⁹ Even with China and Russia's veto, the United Nations Security Council (UNSC) resolution to the International Criminal Court (ICC) would not be possible.

Russia does not have geopolitical interests in Myanmar like China. But Myanmar is one of the major military weapons purchasing clients of Russia. Since the 2000s, every year around 6000 army students of Myanmar have been graduated from prestigious Russian universities.⁸⁰ During the Russian Defence Minister's visit to Myanmar in January 2018 to sign a new weapon deal, he said that more than 600 of Myanmar's military personnel are currently studying in Russian military institutions.⁸¹ Myanmar has a very strong military relationship with Russia. Despite having a mountain of western criticism and pressure, Myanmar is hardly worried, because they have two permanent UNSC members Russia and China supporting them.

So, the Rohingya refugee crisis in a small corner of the world is not a sole factor, and it has already been deeply entangled with local, regional and international politics.

3. Conclusion

Rohingyas are undoubtedly the world's most persecuted ethnic minority. For over 70 years, they have remained without citizenship status, without access to fundamental human rights. The Myanmar authorities have taken many discriminatory policies against the Rohingya and have operated brutal military operations to suppress and force them to leave Northern Rakhine. In each military operation, they have killed, raped, destroyed properties razed homes and put severe restrictions on the right to movement, all serious human rights violations and elements of all international crimes like ethnic cleansing and crimes against humanity. As Myanmar's policies and other brutal actions

aimed to eradicate the Rohingya minority, all of their actions were well organized and systemic.

Myanmar claimed Rohingyas are illegal immigrants from Bangladesh, but historical evidence proved that Rohingyas were the original settlers of Rakhine. Myanmar's claim of illegal immigrants is state-sponsored propaganda.

Refugee distribution is very uneven now and the present international refugee law regime has failed to adjust with current global displacement. Presently, more than eighty per cent of refugees are hosted by developing countries. Northern states are not willing to share the refugee burden as burden-share is not a legal obligation under the present Refugee Convention. Northern states financial contribution is also highly motivated by their respective political interest. Myanmar's response to the Rohingya crisis is frustrating. They have refused to accept any allegations and evidence brought regarding the Rohingya refugee crisis. Myanmar is continuing their immunity to its military personnel and is very reluctant to respond to the Rohingya repatriation process. Myanmar razed whole Rohingya villages, bulldozed everything and is now constructing buildings for the border guard base camps. In this way, Myanmar expressed its unwillingness to accept Rohingya repatriation. The international response is also minimal. Neighbouring India and two other regional giants, China and Russia, favour Myanmar, considering their respective geopolitical and strategic interest. So, further action to be held accountable for international crimes by the UNSC or ICC will hardly be possible.

⁷⁸ Supra Note 66, at page 10

⁷⁹ Genocide Watch, <http://www.genocidewatch.com/single-post/2017/12/26/China-Russia-oppose-UNGA-resolution>

⁸⁰ AungZaw, "Myanmar Seeks Advanced Weapons from Russia, but China Remains the Key Player", 2018, Research-gate online article. Pp 1-44, at page 5.

⁸¹ Ibid, at page 12