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# THE PRINCIPLE OF NONREFOULEMENT AND THE NATIONAL SECURITY DILEMMA: ADDRESSING THE ROHINGYA CRISIS IN BANGLADESH

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## I. ABSTRACT

The Rohingya of Myanmar are one of the world's most persecuted minority populations, lacking citizenship. Rohingya refugees from the Arakan state of Myanmar have sought refuge in Bangladesh multiple times to escape state-sponsored persecution, with a significant influx occurring in 2017. Although Bangladesh is not a party to the 1951 Refugee Status Convention, it has, on humanitarian grounds, sheltered the refugees and adhered to the principle of non-refoulement. However, this humanitarian consideration has become a burden for Bangladesh, which must balance it with national security concerns. On the one hand, the principle of non-refoulement under customary international law and human rights treaties obliges states to protect refugees. On the other hand, various international instruments, including several United Nations resolutions on the elimination of acts of terror, mandate ensuring that no refugee is involved in acts of terror or any serious criminal activities. This paper will examine the obligations under the principle of non-refoulement and its challenging implications for national security.

## II. KEYWORDS

Rohingya refugee, asylum seeker, non-refoulment, national security, Bangladesh

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### III. INTRODUCTION

Since August 25, 2017, hundreds of thousands of ethnic Rohingya Muslims have fled Burma's Rakhine State to escape mass atrocities by government security forces.<sup>3</sup> An estimated one-third of Burma's Rohingya population of 1.2 million have crossed into Bangladesh in one week, due to military action of killings, shelling, and widespread arson in an ongoing campaign of ethnic cleansing launched following a coordinated attack by a Rohingya armed group.<sup>4</sup>

But this humanitarian and human rights violation is not new,<sup>5</sup> Though in 2017 it has been on a large scale.<sup>6</sup> Before this also Rohingya came to Bangladesh due to persecution.<sup>7</sup> This prolonged refugee crisis in Myanmar is making the border of Bangladesh vulnerable and unstable. The Rohingya refugee crisis is a contentious issue that has strained Myanmar-Bangladesh relations since the late 1970s.<sup>8</sup> The Rohingya crisis emanated from the military junta's widespread violations of human rights in Myanmar against the Rohingya Muslims in Rakhine.

Tens of thousands have been internally displaced inside Burma, without access to vital humanitarian aid, and have faced decades of discrimination and repression for citizenship. Due to the denial of citizenship under the 1982 Citizenship Law, they are one of the largest stateless populations in the world.<sup>9</sup>

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<sup>3</sup> Rohingya Crisis, Human Rights Watch, < <https://www.hrw.org/tag/rohingya-crisis> > last accessed on 04 December 2024

<sup>4</sup> Ibid

<sup>5</sup> Akm Ahsan Ullah, 'Rohingya Refugees to Bangladesh: Historical Exclusions and Contemporary Marginalization' (2011) Vol. 9.2, Journal of Immigrant & Refugee Studies, pp 139-161.

<sup>6</sup> Protect Human Rights, United Nations, <http://www.un.org/en/sections/what-we-do/protect-human-rights>, 04 December 2024

<sup>7</sup> Currently around 32,000 Rohingya are registered with the United Nations High Commissioner for Refugees (UNHCR) in Bangladesh. Read further, Sabyasachi Basu Ray Chaudhury and R. Samaddar, 'The Rohingya in South Asia' (2018) The Rohingya in South Asia. See also, Ashraful Azad, and Fareha Jasmin 'Durable Solutions to the Protracted Refugee Situation: The case of Rohingyas in Bangladesh' (2013) Vol. 1 (4) Journal of Indian Research, pp. 25-35.

<sup>8</sup> Utpala Rahman, 'The Rohingya Refugee: A Security Dilemma for Bangladesh' (2010) Vol 8(2) Journal of Immigrant & Refugee Studies, pp. 233-239.

<sup>9</sup> The Citizenship Act, 1982 Myanmar

The Rohingya fit the definition of refugees as set out in the United Nations Convention on the Status of Refugees: people country because of “a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group”. The Rohingya consider themselves indigenous citizens of Myanmar, but the country claims they are from Bangladesh. Ethnic-religious tensions between the majority of Buddhists and the Muslim Rohingya have resulted in violence, including looting, house burning, and sexual violence.<sup>10</sup>

#### IV. THE PRINCIPLE OF NON-REFOULEMENT IN INTERNATIONAL LAW

The principle of non-refoulement well-known concept in the framework of international protection of refugees and or asylum seekers. The Term “non-refoulment” derives from the French word “refouler” which is defined as “to drive back”.<sup>11</sup> Nonrefoulement means the State shall not expel or return a refugee or asylum seeker in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group, or political opinion.<sup>12</sup>

The concept of no-refoulement becomes a principle under international law, which is relevant to the protection of human rights, especially in relation to the freedom of torture or cruel, inhuman, or degrading treatment or punishment.<sup>13</sup> In the context of

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<sup>10</sup> Rineeta Naik, ‘Explainer: India cannot Deport Rohingya Refugees without Violating International Law, (2017)

<https://scroll.in/article/847355/why-india-cannot-deport-rohingya-refugees-without-violating-international-law>

<sup>11</sup> Harun Ur Rashid, ‘Refugee and the Legal Principle of Non-refoulement (Rejection) (2005) Vol. 197 “, Dimuat Dalam Law and Our Rights.

<sup>12</sup> Guy S Goodwin-Gill, “*The Refugee in International Law*” (Second Edition, Oxford: Oxford University Press 1988) 117.

<sup>13</sup> Amelia Bondegård, ‘The Reach of the Principle of non-refoulement in Extraterritorial Asylum Processes: an International Law and Human Rights Perspective on the Proposal to Locate Asylum Processes Outside the EU’ (2024). See also, Sir Elih u Lauterpacht and Daniel Bethlehem, ‘The Scope and Content of the Principle of Non-Refoulement’, in Erika Feller, Volker Turk and Frances Nicholson (eds), *Refugee Protection in International Law: UNHCR’s Global Consultations on International Protection* (Cambridge University Press,2003). Pp 87-164.

international refugee law, the principle of nonrefoulement is a fundamental concept and is considered the backbone of the whole framework of international protection for refugees and asylum seekers and is also institutionalized into various national as well as international instruments.<sup>14</sup>

This principle of non-refoulement is also considered to apply in a human rights context to prohibit the forcible sending or returning or in any other way transferring a person to a country where he or she may face torture.<sup>15</sup> The non-refoulment principle is primarily related to the principle of human rights protection, particularly the prohibition of torture and cruel, inhuman, and degrading treatment or punishment.<sup>16</sup>

The iteration of the principle in a human rights context makes it applicable to all persons and not only to refugees or asylum seekers.<sup>17</sup> The main document related to non-refulment is the Refugee Convention 1951. This principle is incorporated in Article 33 of the refugee convention which provides that, “ No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”.

Further, it also included in the 1967 New York Protocol as well as in the development of other relevant areas of international law such as international human rights and humanitarian law. This principle has been ascertained in the Convention relating to the

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<sup>14</sup> Heribertus Untung Setyardi, ‘The Origins of the Non-Refoulement Principle and Refugee Admission Considerations in the Refugee Protection Framework’, (2023) Vol. 7(2) Jurnal Kewarganegaraan, pp 2471-2480.

<sup>15</sup> Sir Elihu Lauterpacht CBE QC and Daniel Bethlehem, ‘The Scope and Content of the Principle of Non-Refoulement (Opinion) 20 July 2001, para. 132, available from the website of the UN High Commissioner for Refugees, Global Consultations, Second track, expert meetings, at <http://www.unhcr.ch>. Last accessed on 04 December 2024

<sup>16</sup> Sir Elihu Lauterpacht and Daniel Bethlehem, ‘The Scope and Content of the Principle of Non-Refoulement: Opinion’ (Cambridge University Press, 2003) pp. 87-164.

<sup>17</sup> Non-Refoulement must be distinguished from expulsion or deportation or forced removal. Expulsion or deportation is imposed when a foreign resident is alleged with acts against the host country’s interests, or he is the offender of criminal conducts in one country and escapes from criminal justice process.

International Status of Refugees of 1933 so long before the Refugee Convention of 1951 was accepted by the international society.<sup>18</sup>

This has been affirmed by numerous international instruments, including Article 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>19</sup> Obligations under the principle flowed from international law, a state is banned or prohibited from expelling or returning a refugee or asylum seeker to a territory where he would encounter persecution or torture that endangers his life on account of his race, religion, nationality, membership of a particular social group or political opinion.<sup>20</sup>

The basic notion of such a principle has also been confirmed by The United Nations General Assembly in the 1967 Declaration on Territorial Asylum which was adopted unanimously.<sup>21</sup> Article 3 of the 1967 Declaration affirms that everyone entitled to seek asylum is prohibited from being expatriated or rejected by a state where he is applying for an asylum request. This asylum seeker must not be returned to any state where he encounters the risk of persecution.<sup>22</sup>

At the regional level, the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa of 1969 gives expression in binding form to some important principles relating to asylum, including the principle of non-refoulement.<sup>23</sup> Article III(3) provides a member State may subject no person to measures such as rejection at the frontier, return, or expulsion, which should compel him to return to or remain in a territory where his life, physical integrity, or liberty would be threatened for the reasons

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<sup>18</sup> Atle Grahl Madsen, *Commentary on the Refugee Convention 1951*, Published by the Division of International Protection of the United Nations High Commissioner for Refugees, UNHCR: Geneva. p. 226.

<sup>19</sup> United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted 10 December 1984, entry into force 26 June 1987.

<sup>20</sup> *Ibid* (n-15) 89.

<sup>21</sup> UNGA Res. 2312 (XXII), 14 December 1967

<sup>22</sup> UNGA Res. 2312 (XXII), 14 December 1967, Article 3(1)

<sup>23</sup> Oau Convention Governing the Specific Aspects of Refugee Problems in Africa, Adopted on 10 September 1969 by the Assembly of Heads of State and Government. CAB/LEG/24.3. It entered into force on 20 June 1974.

set out in Article 1, paragraphs 1 and 2. Again, Article 22(8) of the American Human Rights Convention adopted in November 1969 provides that, In no case may an alien be deported or returned to a country regardless of whether or not it is his country of origin if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status or political opinions.<sup>24</sup>

Non-refoulement Principles concerning the Treatment of Refugees adopted by the Asian-African Legal Consultative Committee at its Eighth Session in Bangkok in 1966, it is stated that no one seeking asylum in accordance with these Principles should, except for over-riding reasons of national security or safeguarding the population, be subjected to measures such as rejection at the frontier, return or expulsion which would result in compelling him to return to or remain in a territory if there is a well-founded fear of persecution endangering his life, physical integrity or liberty in that territory.<sup>25</sup>

In addition to statements in the above international instruments adopted at the universal and regional levels, the principle of non-refoulement has also found expression in the constitutions and ordinary legislation of a number of States. However, there is no specific provision in the constitution of Bangladesh specifically, neither yet any legislation has been adopted in this regard.

## **V. BANGLADESH'S OBLIGATIONS UNDER INTERNATIONAL LAW**

Bangladesh is a party to a number of treaties, whose provisions indirectly promote the rights of refugees such as,

- Universal Declaration of Human Rights (UDHR) 1948.
- The International Covenant on Civil and Political Rights (ICCPR) of 1966.<sup>26</sup>

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<sup>24</sup> The American Convention on Human Rights ,adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969

<sup>25</sup> Ibid , Article III(3)

<sup>26</sup> Bangladesh Accession(a) on 06 September 2000

- The International Covenant on Economic Social and Cultural Rights (ICESCR) of 1966.<sup>27</sup>
- The Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, 1984.<sup>28</sup>
- The Convention on the Rights of the Child, 1989.<sup>29</sup>
- International Convention on the Elimination of All Forms of Racial Discrimination, 1966.<sup>30</sup>
- The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) 1979.<sup>31</sup>
- Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949).<sup>32</sup>

Although Bangladesh is not a signatory to the 1951 Refugee Convention and its 1967 Protocol, it can be claimed that Bangladesh is complying with its international refugee law obligations. The asylum seekers who departed in 1978 and 1992 were accorded refugee status by the Government of Bangladesh under “Executive order”.<sup>33</sup> However, Rohingya refugees who departed for Bangladesh after 1992 have not been granted any status under any such order.<sup>34</sup>

Furthermore, there is no individual asylum application procedure has been introduced. So, they are staying without as departed based on the humanitarian crisis without any status. Based on that, it's been clear they are not entitled to claim any rights flowed from international law.

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<sup>27</sup> Bangladesh Accession(a) on 05 October 1998

<sup>28</sup> Bangladesh Accession(a) on 05 October 1998

<sup>29</sup> Bangladesh Signed on 26 January 1990 , ratified on 03 August 1990

<sup>30</sup> Bangladesh Accession(a) on 11 Jun 1979

<sup>31</sup> Bangladesh Accession(a) on 6 Nov 1984

<sup>32</sup> Bangladesh Accession(a) on 04 April 1972

<sup>33</sup> For Example during 1978 and the time between 1991 to 1992, the Rohingya asylum seekers from Myanmar, were provided refugee status under Executive order's of the Government of Bangladesh. They were granted prima facie refugee status.

<sup>34</sup> Syeda Naushin Parnini, 'The crisis of the Rohingya as a Muslim Minority in Myanmar and Bilateral Relations with Bangladesh', (2013) Vol. 33 (2) Journal of Muslim Minority Affairs, pp 281-297.



Like many other common law countries, Bangladesh typically follows a dualist approach. This means that international law is not automatically regarded as a source of domestic law and requires enabling or implementing legislation to be effective within the domestic sphere. The constitutional design and several court decisions make it clear that Bangladesh follows dualism,<sup>35</sup> Though the Constitution or any statute does not specifically deal with the domestic application of international law, the dualist approach can be found in some relevant constitutional provisions. For instance, Article 152(1) of the Constitution defines 'law' as "any act, ordinance, order, rule, regulation, bye-law, notification, or other legal instruments, and any custom or usage, having the force of law in Bangladesh."

So international treaties have not been included as 'law' under the constitution, the advice constitution of Bangladesh does not recognize international treaties as a direct source of domestic law in Bangladesh.<sup>36</sup> Therefore, in reality, international human rights are not enforceable in courts of law unless specific provisions are incorporated into existing municipal laws or given effect through separate legislations.<sup>37</sup> In case jurisprudence international human rights treaties were invoked before the Supreme Court of Bangladesh. However, the view of the court is that in order to give effect to a treaty in the national jurisdiction there must be an enabling legislation.<sup>38</sup>

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<sup>35</sup> *Kazi Mukhlesur Rahman vs Bangladesh Another* (1974). However, Bangladesh had been following the practice of dualism even before this case was decided in 1974.

<sup>36</sup> And in Article 145A of Constitution of the People's Republic of Bangladesh which states that—"All treaties with foreign countries shall be submitted to the President, who shall cause them to be laid before Parliament: Provided that any such treaty connected with national security shall be laid in a secret session of Parliament".

<sup>37</sup> Syed Mynuddin Hussain and Mohammed Mahbul Haque Joarder, 'Status of International Law in Bangladesh Courts' (1984) 7(2) *Law and International Affairs* 67; Sheikh Hafizur Rahman Karzon and Abdullah-Al-Faruque, 'Status of International Law Under the Constitution of Bangladesh' (1999) 3(1) *Bangladesh Journal of Law* 23

<sup>38</sup> *Dr Shipra Chaudhury & another v. Government of Bangladesh and Others* 29 BLD (HCD) (2009)

However, there are several constitutional provisions under fundamental rights that have been ensured for everyone, irrespective of citizen requirements.<sup>39</sup> Furthermore, as a part of fundamental state policy (judicially unenforceable) under Article 25 provides that Bangladesh respect international law,<sup>40</sup> As part of Fundamental Principles of State Policy of the Constitution, this provision is judicially unenforceable.

Despite having no implemented legislation in several cases it has been held that in the absence of domestic laws and principles, the international covenants and treaties signed by the state are to be read into the fundamental rights of the Constitution,<sup>41</sup> And Courts should not straightaway forget the obligations of the state under the international law.<sup>42</sup> Furthermore, if any international law emerges as customary international law that shall be considered a part of domestic law.<sup>43</sup> Based on this consideration Bangladesh is obliged to comply with customary international law principles.

## VI. EMERGED PRINCIPLE OF CUSTOMARY INTERNATIONAL LAW?

The principle of non-refoulement is one of the fundamental concepts in the international protection system for refugees and asylum seekers.<sup>44</sup>As discussed in the previous part

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<sup>39</sup> The Constitution of the People's Republic of Bangladesh 1972, Article 31: The Right to Protection of Law; Article 32: Protection of Right to Life and Personal Liberty; Article 33: Safeguards as to Arrest and Detention, Article 34: Prohibition of Forced Labour; Article 35: Protection in respect of trial and punishment. Further Article 102 everyone can seek remedy by filing an writ petition. It provides that "The High Court Division on the application of any person aggrieved, may give such directions or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate for the enforcement of any of the fundamental rights conferred by Part III of this Constitution".

<sup>40</sup> The State shall base its international relations on the principles of respect for national sovereignty and equality, non interference in the internal affairs of other countries, peaceful settlement of international disputes, and respect for international law and the principles enunciated in the United Nations Charter [...].

<sup>41</sup> Bangladesh National Women Lawyers Ass'n v. Gov't of Bangladesh 29 BLD (HCD) (2009) 415

<sup>42</sup> Prof. Nurul Islam v. Gov't of Bangl., 52 DLR (2000) 413

<sup>43</sup> *Chief Prosecutor v. Professor Ghulam Azam* [ICT-BD case No. 06/2011] 40; *Chief Prosecutor v. Salauddin Quader Chowdhury* [ICTBD Case No. 02/2011] 40; *Human Rights & Peace for Bangladesh v Bangladesh* (2019) WP No 13989/2016, Judgment delivered on 30 January 2019 and 03 February 2019, at 279

<sup>44</sup> Aoife Duffy, 'Expulsion to Face Torture? Non-refoulement in International Law' (2008) Vol. 20(3) International Journal of Refugee Law, pp. 373-390.

the principle has been institutionalized into various international instruments. However, those countries are not party to those instruments, are may oblige under customary international law. In the scholarship, it has been widely accepted that the principle of non-refoulment has emerged as a rule of customary international law, and is binding on all states whether they have signed the convention or not.<sup>45</sup>

Because of its wide acceptance at the universal level, it is increasingly considered in jurisprudence and the work of jurists as a recognized principle of international law.<sup>46</sup> Though, the principle of non-refulgent is to acknowledge as the customary international law,<sup>47</sup> But not emerge as just conges. Therefore, Bangladesh is not a part of the Refugee Convention but also has an obligation under the principle of non-refulment.

But this question of accepting the non-refulment principle is over as Bangladesh has accepted Rohingya as a refugee. Is this principle limited to entering into the country or till repatriation? Now the question lies in how long Bangladesh obliged under this principle. As per Article 33 of the Refugee Convention, the principle of non-refoulment exists till the threat of persecution, so Bangladesh has now no option to send back Rohingya until there is no fear of persecution.

This principle applies to refugees and asylum seekers regardless of their formal recognition. Regarding asylum seeker, the principle of non-refoulement provision is applied so long as their status is determined based on fair procedure.<sup>48</sup>

## VII. NATIONAL SECURITY CHALLENGES AMID THE ROHINGYA CRISIS

Many scholars argue that the Rohingya crisis is no longer only a humanitarian calamity

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<sup>45</sup>Nils Coleman, 'Non-Refoulement Revised-Renewed Review of the Status of the Principle of Non-Refoulement as Customary International Law' (2008) Vol.5 *Eur. J. Migration & L.*, 23.

<sup>46</sup>Tamas Molnar, 'The Principle of Non-Refoulement Under International Law: Its Inception and Evolution in a Nutshell' (2016) Vol. 1 *Corvinus Journal Of International Affairs (COJOURN)*.

<sup>47</sup> Expert Roundtable Meeting<sup>13</sup> held by UNCHR in collaboration with the Lauterpacht Research Centre for International Law, University of Cambridge, UK on 9-10 July 2001

<sup>48</sup> UN General Assembly, Convention Relating to the Status of Refugees 1951, Article 33

but a potential threat to Bangladesh's internal stability.<sup>49</sup> A number of national and international organizations also highlighted the security dilemma.<sup>50</sup> Bangladesh finds itself in a fix trying to fulfill the national interests of the country and uphold the human security issues of Rohingya. But what about national security? Many militant and terrorist groups have called for jihad in response to the prolonged Rohingya crisis in Rakhine State. Transnational terror organizations are calling for recruitment for jihad in Myanmar as stories of thousands of Rohingya victims are broadcast on the Internet. The possibility of prolonged ethnic conflict in Myanmar might create a hotbed of terror as foreign fighters set eyes on the region. The security dilemma comes into question.

There are several United Nations General Assembly- and Security Council Resolutions, most recently Resolution 1373 of 28 September 2001, and international refugee law jurisprudence, exclusion of persons involved in terrorist acts from refugee status may be based on either of the three grounds listed in the exclusion clause under Article 1(F), depending on the circumstances of the case. Under Security Council Resolution 1373, every state has an obligation to ensure that refugee status will not be abused by the perpetrators of terrorist acts.

As mentioned take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated, or participated in the commission of terrorist acts,<sup>51</sup> and calls upon to ensure, in conformity with international law, that refugee status is not abused

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<sup>49</sup> Utpala Rahman 'The Rohingya refugee: A Security Dilemma for Bangladesh', (2010) Vol. 8(2) Journal of Immigrant & Refugee Studies, pp. 233-239.

<sup>50</sup> Saddam Hossain, et al. 'Rohingya Refugee Crisis: Security Concerns for Bangladesh' (2020) Vol (2) South Asian Journal of Social Studies and Economics, pp. 24-34. See also, Rising Criminality in Refugee Camps; (The Daily Star 9 July, 2018) <https://www.thedailystar.net/editorial/rising-criminality-refugee-camps-1602052>, last accessed on 04 December 2024

<sup>51</sup> UN Security Council, Security Council resolution 1373 (2001) para 3 (f) [on threats to international peace and security caused by terrorist acts], 28 September 2001, S/RES/1373 (2001), available at: <http://www.refworld.org/docid/3c4e94552a.html> [last accessed 4 December 2024]. Read further, Alice Farmer, 'Non-Refoulement and Jus Cogens: Limiting Anti-terror Measures that Threaten Refugee Protection' (2008) Vol. 23(1) *Geo. Immigr. LJ* 23

by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists.<sup>52</sup> So on this point how Bangladesh will ensure and be obliged under this resolution?

While national security is not limited to traditional security, there are several other factors and non-traditional security threats due to the large influx of Rohingya refugees. Initially, many of them failed to find shelter within the camps. As a result, many of them have spread out to the nearby hills.<sup>53</sup> They have resorted to widespread deforestation, causing severe land degradation in the locality.<sup>54</sup> Bangladesh is already vulnerable to a new threat from human-induced degradation of the environment that can have a long-term impact on its environmental security. The Rohingya situation is urgent and complex. The mass exodus of Rohingya is already putting enormous stress on the limited resources of Bangladesh.<sup>55</sup>

As more Rohingya arrive on a daily basis, there are a number of states and non-state actors that might try to exploit the security situation in this country. So Bangladesh must find a comprehensive solution to the refugee crisis and must work out a cohesive security strategy to deal with all the potential threats. Otherwise, the security of the state will be in serious jeopardy.<sup>56</sup>

The Rohingya refugees are vulnerable to human trafficking, food insecurity, and health insecurity. It has been reported that international human trafficking gangs are actively looking at this situation to exploit the vulnerability of the Rohingya. Many Rohingya families have arrived in Bangladesh without any male family members. Therefore,

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<sup>52</sup> UNSC Res. 1373 ,para 3 (g)

<sup>53</sup> Mohammad Mehedy Hassan, et al. 'Rohingya Refugee Crisis and Forest Cover Change in Teknaf, Bangladesh' (2018) Vol. 10 (5) *Remote Sensing* 689.

<sup>54</sup> Sharif A. Mukul, et al. 'Rohingya Refugees and the Environment' (2019) 364.6436 , *Science* pp.138-138.

<sup>55</sup> Abul Hasnat Milton, et al. 'Trapped in Statelessness: Rohingya Refugees in Bangladesh' (2017) Vol. 14 (8) *International Journal of Environmental Research and Public Health* 942.

<sup>56</sup> ANM Muniruzzaman, 'Rohingya Refugee Crisis in Bangladesh: Its Multi-Dimensional Implications', *RSIS Commentary*, <https://www.rsis.edu.sg/wp-content/uploads/2017/09/CO17176.pdf>, last accessed on 2 December 2024

many young women and children will fall victim to the trafficking gangs and end up in international markets for prostitution and slave labor.

There is gross food insecurity within the displaced Rohingya refugee population arriving in Bangladesh. This has resulted in malnutrition and allied problems of food insecurity within the refugee population. The undetermined number of people arriving in Bangladesh would contribute to price hikes in the local markets.<sup>57</sup> The health security of the Rohingya refugees is also a cause for concern.<sup>58</sup> Any contagious diseases that rely on the human host have the potential to become an epidemic as refugees are living in densely packed camps.<sup>59</sup> Many of the arriving refugees are already carrying a number of diseases, including tuberculosis, skin diseases HIV/AIDS, etc. The severe lack of safe drinking water may contribute to diarrhea and cholera that could spread to the local population. The examples from Haiti and Yemen are instructive.<sup>60</sup>

The massive exodus of Rohingya refugees might alter the internal security scenario of Bangladesh. These are vulnerable people in dire need of a living and are likely to be involved in petty crimes for their survival. Criminal groups may also exploit the situation.<sup>61</sup> Public sentiments and emotions are running high on the Rohingya issue in Bangladesh. The continuous atrocities on the Rohingya population in Rakhine State by the radical militant Buddhists have given rise to strong resentment of the local population in Bangladesh.

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<sup>57</sup> Ibid.

<sup>58</sup> Parveen K. Parmar, et al. 'Mortality in Rohingya Refugee Camps in Bangladesh: Historical, Social, and Political Context' *Sexual and Reproductive Health Matters*, (2019) Vol. 27 (2) pp. 39-49.; Mohammad Mainul Islam, and Tasmiah Nuzhath, 'Health Risks of Rohingya Refugee Population in Bangladesh: a call for Global Attention' (2018) Vol. 8(2) *Journal of global Health*.

<sup>59</sup> Francesco Castelli, and Giorgia Sulis, 'Migration and Infectious Diseases' (2017) Vol. 23 (5) *Clinical Microbiology and Infection* 23.5 (2017), pp. 283-289; Mohammad Mainul Islam, and MD Yeasir Yunus, 'Rohingya Refugees at High Risk of COVID-19 in Bangladesh' (2020) Vol.8(8) *The Lancet Global Health*, pp. 993-e994.

<sup>60</sup> Ibid.

<sup>61</sup> ANM Muniruzzaman, 'Rohingya Refugee Crisis in Bangladesh: Its Multi-Dimensional Implications', *RSIS Commentary*, <https://www.rsis.edu.sg/wp-content/uploads/2017/09/CO17176.pdf>, last accessed 4 December 2024.

This may trigger a backlash against the minority Buddhist population in Bangladesh. This could pose a major challenge to communal peace and harmony in the country. The geographical proximity of the Golden Triangle and the Golden Crescent makes Bangladesh an attractive route for drug smuggling. The international gangs will exploit Rohingya as couriers for the drugs and small arms smuggling. The easy availability of small arms and drugs can greatly jeopardize the security situation in Bangladesh, as more drug cartels and criminal gangs would mushroom near the border areas.

While the principle of non-refoulement is basic, as no reservation is permitted but is recognized that there may be certain cases in which an exception to the principle can legitimately be made. Thus Article 33(2) of the 1951 Refugee Convention provides that: "The benefit of the present provision Article 33(1) referred to above may not however be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country."<sup>62</sup>

Such an exception based on factors relating to the person concerned does not figure in the other instruments - either universal or regional - mentioned above. Provision is, however, made for certain other general exceptions, overriding considerations of national security or in order to safeguard the national security or protect the population, in order to safeguard national security or protect the community from danger.

Given the serious consequences to a refugee of being returned to a country where he is in danger of persecution, the exception provided for in Article 33(2) should be applied with the greatest caution. However, it is necessary to take fully into account all the circumstances of the case and, where the refugee has been convicted of a serious

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<sup>62</sup> UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, Article 33(2)

criminal offense, any mitigating factors, and the possibilities of rehabilitation and reintegration within society.<sup>63</sup>

The principle of human rights protection may be set aside taking into consideration the public interest and national security of the State concerned as stipulated in Article 33 (2) of the Refugee Convention of 1951.<sup>64</sup> However, such measures must be strictly interpreted and implemented only as a last resort, and where such measures are taken with appropriate considerations of rescuing the affected parties. So we can say the principle of non-refoulement can be derogated in the case of public order and national security.<sup>65</sup>

## VIII. INITIATIVES FOR THE REPATRIATION OF ROHINGYA REFUGEES

On November 17, 2017, Bangladesh and Myanmar signed an agreement for send back which is not yet clear and under processing. Thereafter two Memorandum of Understanding (documents are in the public domain) were signed which created tension among refugees. During that according to BBC News "Bangladesh foreign ministry said displaced people could begin to return within two months and two sides say they are working on the details The Arrangement stipulates that the return shall commence within two months," a press release from the Bangladeshi government said few other details were released following the signing of the memorandum in Myanmar's capital Nay Pyi Taw. Bangladesh Foreign Minister Mahmood Ali said it was

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<sup>63</sup> Jennifer Bond, 'Excluding Justice: The Dangerous Intersection Between Refugee Claims, Criminal Law, and 'DUILTY' Asylum Seekers' (2012) Vol. 24 (1) International Journal of Refugee Law, pp 37-59; Steve Kirkwood, and Fergus McNeill, 'Integration and Reintegration: Comparing Pathways to Citizenship through Asylum and Criminal Justice' (2015) Vol. 15 (5) Criminology & Criminal Justice, pp. 511-526.

<sup>64</sup> Seyla Benhabib, 'The end of the 1951 Refugee Convention? Dilemmas of Sovereignty, Territoriality, and Human Rights' (2020) Vol. 2 (1) *Jus Cogens*, pp75-100.

<sup>65</sup> Arif Ahmed, 'Individual Protection versus National Security: A Balancing Test Concerning the Principle of Non-refoulement' (2016) Vol. 21 (5) IOSR Journal of Humanities and Social Science (IOSR-JHSS) pp. 30-40.



the first step. Senior Myanmar official Myint Kyaing said it was ready to receive the Rohingya as soon as possible”.<sup>66</sup>

However, even after about five years, no progress has been made in repatriation. The process of returning a person to their place of origin or citizenship called repatriation includes the process of returning refugees or military personnel to their place of origin following the war and also applies to diplomatic envoys and international officials in times of international crisis as well as expatriates and migrants.

Repatriation is defined as a personal right under specific conditions described in various international instruments, such as the Geneva Conventions and Protocols, as well as customary international law. Repatriation may be voluntary or involuntary in the absence of strict rules, but it should be Voluntary repatriation is the return of eligible persons to the country of origin or citizenship by freely expressed willingness to such return.<sup>67</sup> Involuntary repatriation is the return of refugees, prisoners of war, and civil detainees to their country of origin under circumstances that do not leave any other alternative.<sup>68</sup>

According to contemporary international law, prisoners of war, civil detainees, or refugees refusing repatriation, particularly if motivated by fears of political persecution in their own country, should be protected from refoulement and given, if possible, temporary or permanent shelter.

The third Geneva Convention came in 1929 it does not specifically mention voluntary or non-voluntary repatriation,<sup>69</sup> but the Fourth Geneva Convention specifically provides that, no protected person may be transferred to a country “where he or she may have reason to fear persecution for his or her political opinions or religious

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<sup>66</sup> Asia Migrant Crisis, ‘Myanmar Rohingya Crisis: Deal to Allow Return of Muslim Refugees’ (BBC News, 23 November 2017)

<sup>67</sup> John McCallin, ‘Voluntary Repatriation’ (1989) Vol. 12 Center for Migration Studies of New York, Inc. In *Defense of the Alien*, pp. 104-115.

<sup>68</sup> Robert Gorman, ‘Refugee Repatriation in Africa’, (1984) Vol. 40 (10) *The World Today*, pp. 436-443.

<sup>69</sup> The Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention), 1949

beliefs".<sup>70</sup> So, the International practice has been modified, and the customary law says no forced repatriation. So tensions rise if a deal between Myanmar and Bangladesh. "Myanmar's conditions of return remain unclear, and many Rohingya are terrified of being sent back. Refugees at Kutupalong Camp in Bangladesh said they want guarantees of citizenship and their land returned."<sup>71</sup>

So, Bangladesh is in a dilemmatic situation regarding the treatment of Rohingya. It has a human rights obligation with respect to Rohingya on the other hand large number of the human population have rights to food and health. General people of Bangladesh are fear of their crisis in balancing Rohingya rights. Bangladesh has an obligation under Security Council resolution 1373 to ensure refugees are not planned or engaged but how the state will ensure it, here difficulty arises.

Bangladesh has already given shelter to refugees there is no question raised, but in the question of how long this principle will exist, the answer is still fear of persecution. According to the customary practice of repatriation forced to send back is not justified. Human Rights are above all and being a part of the CAT convention Bangladesh cannot repatriate them due to the fear of persecution.

## **IX. CONCLUSION**

Principle non-refulment emerges as a customary international law but not as jus cogens. So even any state is not a party to the Refugee Convention 1951 and its protocol has an obligation under this principle. This principle of non-refulgent is provided under Refugee Convention Article 33, CAT Convention 3, and some other regional, and national legislation under human rights obligation.

The principle of non-refulgent under the refugee convention provided national security. Bangladesh is the party of CAT convention under this treaty obligation lies to

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<sup>70</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 1949, Article 45 (4).

<sup>71</sup> Asia Migrant Crisis, Myanmar Rohingya Crisis: Deal to Allow Return of Muslim Refugees, (BBC News, 23 November 2017) last accessed on 04 December 2024.

Bangladesh, but the national security issue of Bangladesh is the most concern point So Bangladesh should solve this issue diplomatically. Bangladesh is bound to give shelter till there is fear of persecution no reparation is possible forcefully.