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Statelessness, Treaty Law, Customary International Law and The Rohingya Crisis

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Abstract: The Rohingya crisis proves that international human rights law has not been implemented since World War II. The 1951 Refugee Convention plays an important role in protecting people, but it doesn't always work when a country revokes someone's citizenship and expels them. In such situations, customary international law exerts significant influence. The principle of non-refoulement, which initially was a proposal to refrain from returning individuals in dangerous situations, later evolved into a strong legal obligation. Countries should adhere to this principle, both in their domestic legal framework and in the context of international law. The prohibition of arbitrary revocation of citizenship will soon become an important element of international law. Current study examines the endeavors of humanitarian practitioners and displaced populations in Bangladesh as they strive to ascertain meaningful solutions to the Rohingya crisis, encompassing the reinstatement of citizenship, the guarantee of individual safety, and the promotion of self-determination. The enforcement of customary international law to resolve the Rohingya crisis through diplomatic means can help stop this ongoing cycle of human rights violations.

Keywords: Rohingya; statelessness; customary international law; jus cogens; genocide; human rights

1. Introduction

The expulsion of the Rohingya from Myanmar's Rakhine State is a complicated, and long-lasting humanitarian and human rights crisis of the 21st century (Khai, 2023). After the Myanmar's military "clearance operations" in August 2017, more than 750,000 Rohingya fled to Bangladesh. This was on top of earlier waves of refugees that had been happening since 1978, bringing the total number of refugees in Bangladesh to almost 1.3 million. The United Nations Fact-Finding Mission said that these operations had "genocidal intent" and that Myanmar's treatment of the Rohingya was "a textbook example of ethnic cleansing."

Labelling this a refugee crisis just misses the point of what is really going on with Rohingya. It is more accurately characterized as a crisis of constructed statelessness (van Waas, 2008). a deliberate, protracted policy by successive Myanmar governments to deny the Rohingya legal identity and personhood, thereby rendering them devoid of rights within their ancestral homeland and fostering conditions conducive to their mass expulsion. This process of persecution through denationalization creates what this article calls a "legal perfect storm". This is a combination of legal gaps and political failures that the current treaty-based refugee protection system, which is based on the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, is not built to handle.

The 1951 Convention is an important but mostly reactive tool that protects people who cross an international border because they are afraid of being persecuted (Hathaway, 2021). The framework was not designed to confront a scenario in which a state purposefully utilizes sovereignty through citizenship legislation, administrative tyranny, and propaganda to eliminate an entire population before committing mass atrocity crimes to force their displacement. This major flaw in the international protection system has let Myanmar to act with a lot of freedom, which has put a lot of stress on neighboring nations, especially Bangladesh (Goodwin-Gill & McAdam, 2021).

This study argues that the restrictions of the 1951 Convention have created a legal vacuum that has allowed the norms of Customary International Law (CIL) to grow and become broader and more obligatory. The CIL status of the principle of non-refoulement as a peremptory norm (jus cogens), along with the new CIL ban on arbitrary denationalization, creates legal duties that go beyond treaty-based limits and apply to both Myanmar and asylum states. Field consultations and strategic discussions in Bangladesh demonstrate that this legal framework is not only theoretical jurisprudence but is explicitly reflected in the lived experiences and expressed desires of the Roh-

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ingya people. The ongoing ineffectiveness of repatriation initiatives and the worsening humanitarian crisis in the camps are direct results of the international community's consistent inability to synchronize its political and diplomatic endeavors with both existing and evolving legal standards. A rights-based approach, required and delineated by CIL, is the only legitimate and enduring course of action.

2. Method

This paper follows a qualitative and interdisciplinary approach, combining legal-theoretical analysis (review of international treaties and customary law) and the experience of field-based consultations conducted in Bangladesh. This includes dialogue with Rohingya representatives, humanitarian actors and civil society, strategic discussions (such as the Dhaka Declaration) and assessments of policy documents, bilateral agreements and UN reports. This approach identifies the limitations of the international protection system and proposes pragmatic, rights-centered solutions from a legal perspective.

3. Legal Asymmetry, Statelessness and Repatriation

The limitations of the 1951 Convention in addressing the Rohingya crisis are not insignificant oversights; rather, they are fundamental weaknesses in the international protection system that are actively exploited by countries like Myanmar.

Because Myanmar is not a member to either the 1951 Convention or the 1967 Protocol, the international legal system is fundamentally imbalanced. Myanmar does not have any duties based on international law for the protection of refugees. Bangladesh being a signatory to the Convention on the Status of Refugees, is obligated to fulfill a significant number of legal, financial, and social commitments. Hence, it's difficult for diplomats to carry out their duties and for individuals to be held responsible. According to the Strategic Dialogue 2025, Bangladesh and Myanmar have made several attempts to reach bilateral repatriation agreements (Dhaka Declaration, 2025). They have often omitted the phrase "Rohingya" on purpose, which has resulted in the weakening of their legal, historical, and ethnic identity from the very beginning. As a result, they have been transformed into "illegal Bengali immigrants." Despite the fact that this diplomatic strategy is politically beneficial for Myanmar, it is a violation of the group's right to self-identification, which is a fundamental principle of international human rights law.

The 1951 Convention's protection framework is activated only after persecution has occurred and an international border has been crossed. It contains no mechanism to prevent, remedy, or provide accountability for the pre-emptive act of denationalization, which constitutes the root cause of the Rohingya's extreme vulnerability. The 1982 Citizenship Law in Myanmar was a great illustration of how bureaucratic and legal systems can keep people out. It slowly stripped the Rohingya of their citizenship by utilizing a sophisticated system of racial categorization and hard-to-prove evidence. This legislation turned people who had lived in Rakhine State for hundreds of years into stateless "foreigners." This gave the government a bogus legal basis to harass, disfranchise, and finally force them out. The Convention still can't do anything about these sovereign nations' acts of legal erasure. The devastating consequences of this statelessness are visible in the refugee camps of Cox's Bazar and Bhasan Char, where a lost generation devoid of hope, agency, or future prospects is growing (Islam, et al., 2022).

The principle of voluntary repatriation, while conceptually central to the international refugee regime, is frequently compromised in practice by political expediency and resource constraints. The Convention provides notably weak procedural safeguards and monitoring mechanisms, leaving the principle vulnerable to manipulation through political pressure and "donor fatigue." Drastic cuts in international aid, such as the World Food Programme's reduction of food vouchers from \$12 to \$8 per person per month act as structural coercion (UNHCR, 2023). When necessities for survival in the camps, such as sufficient food, healthcare, and education, become increasingly unattainable, the "voluntary" aspect of any decision to return is fundamentally undermined. Rohingya don't want to choose between the pain they feel in Bangladesh and the risk of persecution in Myanmar. The Convention framework, primarily concerned with legal status in the nation of shelter, is ineffective at preventing this kind of subtle constructive refolement because it does a poor job by itself.

4. Non-Refolement Principle, Jus Cogens and

The constraints imposed by the 1951 Convention created a significant legal gap. For protection, assertion of rights, and accountability, customary international law has established a framework that is increasingly universal, resilient, and legally binding over time. Within the realm of general international law, the concept of non-refoulement incorporated in Article 33 of the 1951 Convention, has acquired the respected recognition of a peremptory rule (*jus cogens*). This is the highest tier of international legal obligation, defined by the Vienna Convention on the Law of Treaties as a norm "*accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted.*"¹ This elevated status is overwhelming and derives from multiple sources of international law. As a peremptory norm, non-refoulement imposes an absolute, non-negotiable, and universal obligation on Bangladesh and all states not to return any Rohingya to Myanmar where they would face a threat to their life, freedom, or security.

The principle is incorporated into the domestic immigration and asylum law of a vast majority of states and is consistently invoked in diplomatic practice and UN resolutions as a binding legal obligation, not merely a discretionary policy choice. National supreme courts and regional human rights tribunals have repeatedly affirmed its fundamental character. The European Court of Human Rights, in its landmark *Soering v. United Kingdom* judgment, established that *non-refoulement* is an inherent component of the prohibition of torture (*Soering v. United Kingdom*, 1989). Similarly, the International Court of Justice (ICJ) in the *Barcelona Traction* case articulated the concept of obligations *erga omnes*- owed to the international community as a whole- which include the basic human rights from which the principle of *non-refoulement* (*Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, 1962). Leading international law scholars including Sir Elihu Lauterpacht and Daniel Bethlehem, have extensively

¹ United Nations, Article 53 of *Vienna Convention on the Law of Treaties* (1969) 331.

argued for its recognition as *jus cogens*, particularly in contexts where the risk involves torture, extrajudicial killing, or other fundamental threats to life and security (Lauterpacht & Bethlehem, 2003).

The abstract legal requirement for a "fundamental, durable, and verifiable change" in the conditions in Rakhine State is given concrete, practical, and legally significant meaning by the detailed preconditions articulated by Rohingya leaders, civil society representatives, and international experts in numerous consultations. The *jus cogens* rule, which prohibits putting individuals at risk again, makes these basic needs unquestionable because they form the basis of the true meaning of 'security':

'Citizenship' refers to practical rights and benefits, such as the ability to vote, participate in politics, and be represented in their future. Both physical security and freedom of movement. The plan cannot include detaining people in camps. Like all Myanmar citizens, Rohingya must have the same basic freedom of movement within Rakhine State and throughout Myanmar.

"*The Rohingya need security from armed groups like the Arakan Army, in addition to the state.*" Without that, nothing really changes. Arakan Army has been using military force to attack and persecute random Rohingya civilians, yet has not been met with an appropriate response. The return of confiscated homes, land, and other property, together with programs to assist individuals get back on their feet and start making a living.

Sending in foreign impartial monitors with a clear mandate and making it feasible for meaningful, open, and continuing interactions between Rohingya, Rakhine, and other ethnic groups to promote peace and understanding are two ways to build and maintain confidence in institutions. A repatriation procedure that does not provide these verifiable assurances would not be considered a valid "durable solution," but rather a widespread and systematic infringement of the peremptory principle of non-refoulement.

The prohibition of arbitrary deprivation of nationality, particularly when done on a large, systematic, and discriminatory scale, is becoming a binding rule of customary international law (CIL) and may be approaching *jus cogens* status when linked to systematic racial discrimination and crimes against humanity. The 1961 Convention on the Reduction of Statelessness represents a global consensus on the imperative to prevent and reduce statelessness, establishing clear legal standards that Myanmar's 1982 Citizenship Law flagrantly violates.² The Authoritative Work of the International Law Commission (ILC) Draft Articles on the Expulsion of Aliens authoritatively state that "arbitrary deprivation of nationality with the aim of compelling an individual to leave the territory of a State is prohibited under international law." This isn't just a technical checklist. This really cuts to the core of why so many people had to leave in the first place. When you lose your citizenship, losing your home often follows.

Not only have various states, the United Nations, and regional groups spoken out against Myanmar for stripping the Rohingya of their citizenship, they have also declared it a violation of international law. The message is clear: the international community has a legal responsibility to act (that is what 'opinio juris' means). This new view of the law finally aligns with what the Rohingya have been demanding.

This legal change supports the eternal aspirations of the Rohingya. A Rohingya student named Umme Jamila put it well: 'The right way to return home will depend on citizenship, equal rights, women's empowerment, leadership and reconciliation.' If their citizenship is not restored, any idea of repatriation will only send them back to the same horrors. This is a clear violation of the fundamental prohibition of forced repatriation (Jamila, 2025).

5. Law and Reality

Rohingya crisis is deepening as there is no political leadership, and international diplomacy is not taking responsibility. In the face of all these problems, it seems virtually impossible to apply international law in practice. UN reports reveal that international humanitarian help is becoming worse and worse. The 2023 Joint Response Plan for the Rohingya humanitarian crisis only obtained half of the money it required (Government of Bangladesh, 2023). Not having enough money is not only an issue with the budget or the administration. When food rations are slashed to the point where people can't survive, healthcare services are curtailed, schools are shuttered, and people suffer and lose hope. This deliberately erodes the "voluntariness" that is essential to both the 1951 Convention and the CIL standard for non-refoulement, so creating conditions in which returning to persecution is seen as the lesser of two evils.

A big theme during both the Chittagong and Dhaka sessions was how the voices of the Rohingya people are constantly left out of the choices that affect their lives now and in the future. Participation of Rohingya representatives in all negotiating procedures is, in legal terms, a plea for the achievement of their right to self-determination and meaningful agency for their basic rights. Strengthening community-based organizations (CBOs) and actively including women and children in leadership is an essential strategic requirement for building a sustainable future. Rohingya should have the ability to advocate for themselves, control their own affairs, and determine their own vision.

International community has not exerted enough political or economic pressure to force change, and that's why the atrocities continue. This is especially true for China and India, who are very powerful in their political and economic influence in the region (Kneebone, 2017). The Gambia's complaint against Myanmar at the International Court of Justice (ICJ) under the Genocide Convention doesn't have any political or enforcement support, even though it's a historic and important way to hold governments responsible (The Gambia v. Myanmar, 2019). The International Court of Justice (ICJ) has given Myanmar temporary orders that make it the law for the government to do all it can to halt genocide. Most of the time, those on the ground don't follow such commands. This illustrates how vast and maybe dangerous the split is when there is no political will or power to carry out the choices that have been made legally at the international level.

6. The Dhaka Declaration as a CIL-Compliant Agenda for Action

A strong and effective technique of connecting these notions is the "Dhaka Declaration," which was agreed upon at the Strategic Dialogue 2025 (Strategic Dialogue, 2025). This declaration was created with the intention of linking political ideas from all

² United Nations, "Convention on the Reduction of Statelessness" (1961).

around the world with laws that could be put into reality. The most important goal that these persons have set for themselves is to swiftly translate the principles of Customary International Law into norms that may be followed by anyone. The declaration places such a strong focus on a return that is safe, voluntary, and dignified, and that is built on proved promises of citizenship, security, and rights, makes it very obvious what the practical elements of the jus cogens norm are.

It is important to punish those individuals who violate international law and perpetrate crimes against humanity, including genocide, to ensure that these stringent regulations are effective. This occurs because it prevents more unfavorable events from happening. When help arrives on time and is uninterrupted, everything changes. People are relieved. They no longer have to choose between terrible options or just survive. They maintain their dignity while having real choices about when to return home and how to start anew. Frankly, sympathy is not enough. They deserve it. Recognizing the right of each individual to self-determination through sincere communication: Genuine Rohingya representatives must be included to build a lasting, just political system that truly protects human rights. They need to be included in all discussions and decisions that affect them. This way, you can ensure that their voices are heard.

7. Conclusions

The Rohingya are defending their fundamental rights to justice, nationality, and return to their homeland rather than pleading for charity. The Rohingya do not demand benevolence. They are only demanding their basic, irrefutable, and fundamental rights: a nationality, their right to return to their homeland from which they were uprooted, and the right to justice. The world needs to respond with strong, united, and determined legal action, not short-lived sympathy or empty talk. The 1951 Refugee Convention is under discussion because of Rohingya situation. Until the world intervenes and addresses the issues that need to be addressed, nothing will change. The principle of non-refoulement as a jus cogens and the prohibition of arbitrary revocation of citizenship as a developing customary international law creates a clear legal standard. Repatriation without verifiable guarantees of citizenship, security, and dignity is not only a policy failure but also an internationally wrongful act. The existing international legal frameworks, which presuppose a complete lack of political will within the international community, are worrisome, to say the least. The problem is, and probably always will be, political will on the part of the global community. There is not enough aid for refugees, money disappears, and diplomats talk without achieving anything. Myanmar's obligations under Customary International Law encompasses the principal integration and enhancement of specific economic sanctions. It includes sanctions of isolation, cases falling under universal jurisdiction, and the ongoing advocacy of universal and international justice mechanisms by permanent members of the UN Security Council, ASEAN, and countries especially China, India, and the USA.

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