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Received on 06.09.2018

Accepted on 17.09.2018

## Harmonizing National Interest with Global Norms: The Plight of Stateless Rohingyas in Myanmar

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### Abstract

Rohingyas are a Muslim minority community, consisting of 1.1 million members, living as stateless persons in the south-western Rakhine province of Buddhist majority Myanmar. Faced with long term discrimination, exclusion and state repression, a section of Rohingya youth adopted extremist path, which gave further justification to Myanmar establishment to launch military offensive in August-September, 2017 for the summary execution of entire ethnic group. The United Nations has termed this incident as 'ethnic cleansing'. Myanmar authorities justified their armed aggression on the basis of maintaining 'stability and order' in society. Thousands of Rohingyas have been killed and nearly 4 lakh have fled to Bangladesh and other neighbouring countries to save their lives. The plight of Rohingyas is ironical as Buddha (the founder of Buddhism, the majority religion in Myanmar) preached peace, non-violence and compassion to all living creatures and the present civilian leader of Myanmar, Aung Sn Suu Kyi was awarded Noble Peace Prize by global community. Rohingya refugee crisis raises three fundamental issues of common concern: 1. How to harmonize the national interests of states with global norms and human concerns? 2. How to address a 'populism' masquerading as national interest as majority Buddhist community also demands stern action against Rohingyas? The present civilian leader of Myanmar, Aung Sn Suu Kyi seems to have succumbed to this populist pressure. 3. How adequate are the mechanisms of international community to address these challenges? The present paper is an exercise to explain and analyze above issues with the specific and unique case of discrimination and forced migration of Rohingyas. The plight of Rohingyas is unique in comparison to other cases of refugees (Middle East) as well as racial discrimination under apartheid in South Africa as Rohingyas are 'stateless' people. No country, including Myanmar, is willing to grant them citizenship. The Middle East refugees are citizens of their parent countries and Blacks under Apartheid were at least second rate citizens of South Africa. The study is analytical and comparative with the study of facts and information collected from various sources like journal and news papers as well as national and international agencies.

**Keywords:** Statelessness; Ethnic Cleansing; Global Norms of Refugees; Populist Nationalism.

### Introduction

The plight of more than 4.5 million Rohingya refugees, who were forced to flee from Myanmar to Bangladesh and other countries, raises many theoretical issues and practical concerns relevant to contemporary international relations. Rohingyas, a Muslim minority community, consisting of 1.2 million members, have been living as stateless persons in the south-western Rakhine province of Buddhist majority Myanmar. Rohingyas have

been facing long term discrimination, exclusion as stateless persons, state repression, and violation of fundamental rights in various forms. Following the 2012 Rakhine State riots between Buddhist monks, indirectly supported by armed forces and Rohingyas, a section of Rohingya youth adopted extremist path in 2013 as they organized themselves under the banner of *Harakah al-Yaqin* (translated as *Faith Movement* in English). The group adopted a more secular name *Arakan Rohingya Salvation Army (ARSA)* in March 2017. The ARSA, with its 500

armed cadres, have been launching raids against security forces for last few years. In a statement released in March 2017, it claimed that it was obligated to 'defend, salvage and protect Rohingya community'. The group said it would do so 'with our best capacities as we have the legitimate right under international law to defend ourselves in line with the principle of self defence'. However, the group has been declared as a 'terrorist' organization by the Myanmar government in August 2017.

The present Rohingya crisis originated on 25 August, 2017 when ARSA attacked Myanmar army camps and destroyed more than 30 police posts in Rakhine province. In retaliation, Myanmar Army launched a massive attack against Rohingyas burning their houses and even entire villages. The government claims that its military operation against the militants was launched to restore peace and stability in the area. The operation ended on 5 September, 2017. According to Human Rights Watch, at least 288 villages were partially or totally destroyed by fire in northern Rakhine. The Doctors without Borders, an international humanitarian human right group, revealed that at least 6,700 members of Myanmar's Rohingya Muslim minority, including 730 children below age 5, had met violent deaths in the August, 2017 after the military crackdown on their villages. It said that nearly 70 percent of the victims died of gunshot and that 9 percent were burned to death in their homes (Beech: 2017a). Amnesty International says the Myanmar military has killed hundreds of Rohingya and raped and abused Rohingya women and girls. Rohingyas, arriving in Bangladesh say that they fled after troops, backed by local Buddhist mobs, responded by burning their villages and attacking and killing civilians.

It was under these conditions that nearly 4.5 lac Rohingyas were forced to flee Myanmar to save their life and have taken refuge mainly in Cox Bazar area of Bangladesh. According to the UN High Commissioner for Refugees (UNHCR) before the present crisis, around 307500 Rohingya refugees were already living in camps and makeshift settlements in Bangladesh, which migrated over the years since 2012 with intensification of discrimination and violence against them in Myanmar. Most Rohingya refugees reaching Bangladesh - men, women and children with barely any belongings - have sought shelter in these areas, setting up camp wherever possible in the difficult terrain and with little access to aid, safe drinking water, food, shelter or healthcare. Of the 537,000 refugees who have arrived since August 25, 2017,

nearly 58 percent are children, while 60 percent of the adults are women (The Guardian: 2017).

The government of Bangladesh is hard pressed to provide basic amenities to refugees and has called for international support. Bangladesh has given refugee status to Rohingyas, but it says they are Myanmar citizens and will be sent back to Myanmar. Most recently, Bangladesh's foreign minister labeled the violence against the Rohingya in Myanmar as 'genocide'. National Commission for Human Rights of Bangladesh also said it was considering "pressing for a trial against Myanmar and its army at an international tribunal" on charges of genocide. This crisis has generated new tensions in the relations between the two countries.

The refugees in small number have also fled to other neighboring countries like India, Malaysia and others. India considers Rohingyas as illegal immigrants and some of them have close links with terrorists groups based in Bangladesh and elsewhere. India has imposed strict ban on the illegal entry of Rohingyas. However, some 40000 Rohingyas have already illegally crossed into Indian border, which are to be identified and repatriated back to Myanmar.

#### *Reactions of International Community*

The UN says the Rohingya's situation is the world's fastest growing refugee crisis. It has termed this indiscriminate military offensive as '*ethnic cleansing*'. Zeid Ra'ad al-Husein, the United Nations High Commissioner for Human Rights, said the military's brutal security campaign was "a textbook example of ethnic cleansing" against Rohingya Muslims (New York Times: 2017). Even before the present grave crisis originated, a report issued on February 3, 2017, by the Office of the UN High Commissioner for Human Rights (OHCHR) remarked that the widespread human rights violations against the Rohingya population by Myanmar's security forces in the country's northern Rakhine state indicate the very likely commission of crimes against humanity. The flash report documents mass gang-rape, killings, including of babies and young children, brutal beatings, disappearances and other serious human rights violations by the country's security forces (UN: 2017). Another report on the August 2017 crisis, released by Human Rights Watch that Myanmar security forces had 'raped and sexually assaulted women and girls both during major attacks on villages but also in the weeks prior to these major attacks sometimes after repeated harassment' (Gladstone: 2017).

The international community has labeled the Rohingya the 'most persecuted minority in the world'. UN Secretary-General Antonio Guterres warned of the risk of ethnic cleansing, calling upon Aung San Suu Kyi and the country's security forces to end the violence. He also warned of a looming "humanitarian catastrophe" if the violence does not end. In a report, released in October, 2017, the UN human rights office said that 'clearance operations' had begun before insurgent attacks on police posts on 25 August and included killings, torture and rape of children. (The Guardian: 2017). The Report said that Myanmar's security forces had worked to 'effectively erase all signs of memorable landmarks in the geography of the Rohingya landscape and memory in such a way that a return to their lands would yield nothing but a desolate and unrecognizable terrain.' (Beech: 2017).

#### *Myanmar's Complicity*

The Rohingya crisis has been brewing for some time due to lack of will on the part of Myanmar government to address the real grievances of Rohingyas. In September 2016, Aung San Suu Kyi appointed former UN chief Kofi Annan to recommend measures to address Rohingya grievances and ways to ethnic reconciliation in Myanmar. The Commission submitted its findings in August, 2017 and urged the government to end the highly militarized crackdown on neighborhoods where Rohingya live, as well as scrap restrictions on their movement and citizenship. The commission observed that the economy of Rakhine is marked by stagnation and is underdeveloped. The state's poverty rate is 78 percent, almost double the national rate of 37.54 percent. (Advisory Commission: 2017). The government promised to give full consideration to the recommendations, but nothing has happened on the ground. Later the government argued that it had the "the right to defend the country by lawful means" against "increasing terrorist activities", adding that a domestic investigation was enough (Aummi: 2017).

Meanwhile, in January, 2017, the country resurrected a plan to relocate tens of thousands of Rohingya refugees from Myanmar to a remote island that is prone to flooding and has also been called 'uninhabitable' by human rights groups. Under the plan, which was originally introduced in 2015, authorities would move undocumented Myanmar nationals to Thengar Char in the Bay of Bengal. Rights groups have decried the proposal, saying the island completely floods during monsoon season. The UN also called the forced relocation

very complex and controversial (The Wire: 2017). Thus, government neither implemented Kofi Annan Commission recommendations nor proposed any alternative viable plan of relocation.

#### *Rohingya Crisis: Evolution and Intensification*

The plight of Rohingya is unique in comparison to other cases of refugees (Middle East) as well as racial discrimination under apartheid in South Africa as Rohingyas are 'stateless' people. No country, including Myanmar, is willing to grant them citizenship. The Middle East refugees are citizens of their parent countries and Blacks under Apartheid were at least second rate citizens of South Africa. The Rohingya crisis represents a historical process in which an ethnic minority was gradually deprived of her nationality; was subjected to manifold discriminations and deprivations; and finally made to be target of ethnic cleansing by the state and majority community amidst well entrenched international humanitarian regime and global human rights norms.

The Rohingyas live mainly in the Rakhine province (Earlier known as Arakan region) of Myanmar. They have their own language and culture and claim that they are descendants of Arab traders and other groups who have been living in the region for generations. The Rohingyas speak Rohingya or Ruaingga, a dialect that is distinct from the others dialects of Myanmar. The modern term Rohingya emerged from pre-colonial terms *Rooinga* and *Rwangya*. The term 'Rohingya' may come from the word *Rakhanga* or *Roshanga*, used in the state of Arakan, which literally means 'inhabitant of Rohang'. It was the early Muslim name for Arakan. It comes from the Arabic word *Rahan* meaning God's blessing. The Arakan Rohingya National Organization (ARNO: 2018) claims, 'Rohingyas have been living in Arakan from time immemorial'. Arakan is now known as Rakhine province of Myanmar.

Myanmar was a part of British Indian Empire from 1885 to 1935. However, the Arakan region came under British Control in 1826 itself following the first Indo-Burmese war. During British rule, large number of labourers migrated to Arakan area from India and Bangladesh. The British government encouraged South Asian rice farmers, merchants and civil servants to migrate to Burma. Some of these new arrivals mixed with the Rohingyas, then known as Arakanese Indians or Arakanese Muslims. By the 1930s, South Asians, both Muslims and Hindus, comprised the largest population in Yangon. The demographic shift left some

Buddhists feeling besieged. Islam and Buddhism collided most violently in Rakhine, especially after World War II, during which the Rakhine supported the Axis and Rohingya the Allies. Later attempts by a Rohingya insurgent group to exit Burma and attach northern Rakhine to East Pakistan, further strained relations (Beech: 2017). Since the British administered Myanmar as a province of India, such migration was considered internal.

Myanmar became independent from the British rule in 1948. After independence, the government viewed the migration that took place during British rule as 'illegal', and it is on this basis that the government refused citizenship to Rohingyas. In comparison to other ethnic Shan and Karen tribes, Arakan remain peaceful. Despite this, Rohingyas were not given full nationality rights under the 1947 Constitution. The Constitution formally acknowledged that all ethnic groups in Burma are immigrants and the special hardship of Rohingyas would be addressed later. It was provided that those Rohingyas who are living in the Burma for eight years out of last ten years would be granted Rohingya National Registration Certificates with full legal and voting rights. Thus, during 1948-61 some Rohingyas not only obtained this certificate but also served in under the government in the field of education, Parliament and other vocations. A military report of 1961 as well as Census of 1961 recognized Rohingyas as a Muslim community, settled in western frontier areas. Thus, during this period Rohingyas and the government did not have much problem with each other (Ibrahim: 2016, 49). However, during the xenophobic five decade military regime of Gen. Ne Win hundreds of thousands of South Asians fled Burma for neighboring countries.

The systematic discrimination against Rohingyas gradually originated in 1970s with worsening of economy. The military regime applied the idea of Buddhist identity as the basis of citizenship. The discrimination further intensified as some acts of 1990s imposed restrictions like having not more than two children, forced birth control and regulation of marriages (Ibrahim: 2016, 51). A new Constitution promulgated in 1974 made the change in citizenship of Rohingys and their National Registration Certificates were replaced with Foreign Registration Cards, treating them foreigners on the plea that since they were not citizens under 1947 Constitution, they cannot be citizens under 1974 Constitution also. A further change was brought by the Burmese Citizenship Law, 1982, which categorized four types of citizens- *Full citizen, Associate Citizen, Naturalized Citizen*

*and Foreigner*. Rohingyas were placed in the last category of Foreigners. This law provided that all those inhabitants will be given Burmese citizenship, which lived in Burma before 1823, immediately before the annexation of Arakan by British in 1826 (Azeem: 2016, 47-50). This is how Rohingyas were turned as 'stateless persons' on the basis of their ethnic origin.

As a result of the law of 1982, Rohingyas' rights to study, work, travel, marry, practice their religion and access to health services have been and continue to be restricted. The Rohingya cannot vote and are barred from entering certain professions like medicine, law or public office. Rohingyas are not allowed to leave Rakhine area without government permission. It is one the poorest states in the country with ghetto-like camps and a lack of basic services and opportunities. Buddhists and the government both consider Rohingyas to be Bengali, rejecting the term Rohingya as a recent invention, created for political reasons. There are 135 official ethnic communities, but Rohingya are not recognized as such by the Government of Myanmar. They have been excluded from the 2014 census, as government refused to recognize them as a people. The government considers them as illegal immigrants from Bangladesh.

Since the early 2010s, hard-line Buddhist monks have played a central role in fomenting anti-Rohingya sentiment, which has spiraled into a nationwide campaign of Islam phobia and anti-Muslim attacks. Monks have further destabilized an already precarious political situation, and revealed to the world that Myanmar's democratic success story is unfulfilled and leading to illiberal majoritarian rule.

The organized violence in Rakhine State first began in 2012. The alleged rape of Buddhist women by a group of Rohingya led to fierce attacks on Rohingya communities. Groups of Buddhist often equipped and driven by local police, security forces, and political agitators attacked Rohingya towns, burning many to the ground. There were fresh violence and agitation against Rohingyas in October, 2012 and the demand of Rakhine people was to force Rohingyas to Bangladesh and sever all economic and social ties with them. The rumor was spread that Rohingyas were storing arms in mosques and trying to subvert rule of law in Rakhine (Ibrahim 2016: 81-82).

Over the past five years, many Rohingya have been evicted from their old communities and confined to ghettos or camps located inside Rakhine State that human rights organizations have called

'open-air' concentration camps (Wade: 2017). Thus, discriminatory policies of Myanmar's government since the late 1970s have compelled hundreds of thousands of Muslim Rohingya to flee their homes in the predominantly Buddhist country. Most have crossed by land into Bangladesh, while others have taken to the sea to reach Indonesia, Malaysia, and Thailand (Albert: 2018).

### *Three Fundamental Questions*

Rohingya refugee crisis is a humanitarian crisis of great magnitude, with many actors and dimensions. Bangladesh, a Least Developed Country (LDC) is looking for international support and resources to deal with unexpected influx of refugees and their early repatriation to Myanmar. Some countries are also disinclined to take in Rohingya refugees due to fear of extremists and terrorists infiltrating their territory under the guise of refugees. International agencies and human rights groups are stretching their meager resources to provide support to refugees. And last, the refugees, suffering under the trauma of migration are worried about their survival and future. The priority for Myanmar regimes is 'order and stability' not people and their rights. The plight of Rohingya in a Buddhist majority nation is ironical as Buddha (the founder of Buddhism, the majority religion in Myanmar) preached peace, non-violence and compassion to all living creatures and the present civilian leader of Myanmar, Aung San Suu Kyi was awarded Noble Peace Prize by global community. The crisis raises some fundamental issues of common concern:

*1. How to address the issue of 'populism' masquerading as national interest, which collides with the global norms or the enlightened long term national interests?*

An element of populism is visible in Myanmar as the majority Buddhist groups and individuals have supported the military offensive against Rohingya. This is similar to the populism visible in European countries in the wake of Middle East Refugee crisis in 2015. Even the tide of popular support for Brexit, in spite of contrary reasoned view for remaining in European Union also falls under this category. Since her independence in 1948, Myanmar has exercised three political choices so far - Military rule since 1962 to 1990s; Transition to Democracy since 1990s to early 2011 and onset of democracy since 2011. Myanmar has passed through all these choices in that sequence and all of them proved detrimental to Rohingyas and finally resulted in their cleansing and exodus. The military rule deprived Rohingyas of their citizenship in 1982 and

institutionalized multiple discriminations against them. The democratic transition raised concerns among different communities about their position in the future set up and encouraged Buddhist nationalism, which has become synonymous with both-democracy and Burmese national identity. A partial transition to democracy intensified anxieties about the power balance among ethnic groups and unleashed a Buddhist fundamentalist movement that sees Islam as a threat to the very survival of the Bamar and a danger to Buddhism throughout Southeast Asia (Nathan : 2017).

Elsewhere in the world the democratization process brings forth the spirit of peaceful coexistence among different communities and protects the rights of minorities, but Myanmar has contrary experience. However, the onset of democracy has disastrous consequence for minority Rohingyas as majoritarianism rising on the high tide of the Buddhist nationalism has generated a social consensus in favour of discriminating and persecuting Rohingyas. The majority Buddhist community demands and initiates stern actions against Rohingyas to save Burmese identity and its core values from aliens. The present civilian leader of Myanmar, Aung San Suu Kyi seems to have succumbed to this populist pressure. Noted journalist, Francis Wade (2017, 167) with long experience of ethnic dynamics of Myanmar explains Suu Key's predicament, 'Were she to condemn movements that pitched themselves as defenders of the country's Buddhists, then she would be depicted as pro-Muslim and lose support; continued silence, and her international reputation as a stalwart of democracy would suffer. Both scenarios could work against the standing of the National League for Democracy (NLD)'. Wade argues that the NLD's decision to refrain from criticizing the monks and from calling for greater protections for Muslims may have been a politically astute calculation, but it lacked a moral perspective (Wade: 2017, 177).

The basic issue is that *Buddhist Nationalism, Democracy and Populism have become Synonymous* in Myanmar. History of Myanmar reveals that Buddhist nationalism has always defined and continues to define the social and ideological landscape of Myanmar. During British colonial regime, Monks stood as savior of nation and resisted the foreign rule in late 19<sup>th</sup> century. Again, the Buddhist monks provided vanguard during pro-democracy movement in late 1980s. It is this Buddhist nationalism, which provides ideological bedrock to army, political institutions, democracy, and takes the form of populism in Myanmar.

At present, the leading Buddhist organization known by its acronym as '*Ma Ba Tha*' has emerged as the most vocal representative of Buddhist nationalism. Formed in June 2013, the organization stands for the *Protection of Race, Religion, and Sāsana* (Buddhist Order). These are the three pivots around which the discourse on belonging is taking place. Ba Tha La had undertaken a number of campaigns furthering the religious divide and planting the seeds of ethnic conflict. It disseminates anti-Muslim propaganda through Face book and other social media tools. It has grown to become country's most expansive social movement, with offices in the majority of townships. Most notably, it has provided a precedent for other groups to emerge with even more exclusionary stance towards Muslims. (Wade: 2017, 165-168).

The *Ba Tha La* and other similar Buddhist movements have tied the fate of Myanmar to the fate of Buddhism. All those elements, which fail to support Buddhism, whether Muslims or dissenting Buddhists, are projected as threat to Myanmar. Those who opposed the movement have been derided as enemies of Buddhism. In Myanmar, the symbiosis between religious identity and national identity meant that a threat to one became a threat to the other, thereby greatly exaggerating the survival imperative and seemingly justifying more radical ways to defend it. There are persistent attempts to reinstate Buddhism to its core place in Myanmar society to realize the Buddhist idea of harmony. That was the message of *Ma Ba Tha* (Wade: 2017, 175-196).

The *Ma Ba Tha* also redefines democracy as antithetical to sovereignty and stability because it promotes minority rights. This ideology has percolated down to the political regime also. The Protection of Race and Religion Laws, enacted in 2014, criminalized polygamy and required those who wished to convert to another religion to seek official permission beforehand. Local governments were also given the power to limit reproductive rates of women if they considered their particular region to be suffering as a result of overpopulation. Given the popular narrative of Rohingya as rapacious breeders bent on overwhelming the Rakhine Buddhist population, it appeared this law might have a particular community in mind. Finally, marriages between Buddhists and non-Buddhists were to be subjected to public opinion, with the couple required to publicize their union and await whatever objections might come from community (Wade: 2017, 171-175).

Buddhist religious leadership gained influence in

Myanmar in the wake of 1988-90 and 2007 agitation for democracy. Military needs them for legitimacy and NLD needs them for their political support and votes. Thus, attacking to Rohingyas has become, to some, a public way to emphasize one's commitment to Buddhism. The Theravada Buddhism, which is common in Sri Lanka, Thailand and Myanmar, has the tradition of intolerance against minorities. Any state tolerance of non-Buddhist minorities is thought to threaten the existence of both state and religion. The defence of *sasana* or rule of Buddhist kings was an excuse used for the invasion of Arakan in 1784 by Burma. Buddhism and nationalism have become inseparably intertwined in Myanmar. The assumption about the progress of democracy in Myanmar is dangerous as the rights of all minorities are not respected (Ibrahim: 2017, 58-59).

The democratic dynamics of Myanmar involves three actors- military and their political wing, Aung San Suu Kyi led NLD and influential Buddhist monks and the combination of three make its hard to ease the repression of Rohingyas. The overall defensive and suspicious mindset of the military to the outside world has been a regular part of their response to criticism of persecution of Rohingyas. They use nationalism infused with Buddhism to reject external influences and to further solidify military rule. In a multi-ethnic state, as we saw earlier, the army sees itself as the only body that captures the true spirit of nation (Ibrahim: 2016, 50). The slow advent of democracy since 1988 did not improve the condition of Rohingyas in comparison to what it was during Military rule. The revolts of 1988 and saffron uprising of 2007 against military regime were suppressed. The monks' revolt in 2007, though suppressed, cemented ties between NLD and monks and enhanced the political status of monks. But when National League for Democracy gained partial power in 2015 it aligned with military regime and joined discrimination against Rohingyas. Arch rivals joined hands against Rohingyas. (Ibrahim: 2016, 51).

2. *How to harmonize the national interests of states with global norms and human concerns?*

The political regime in Myanmar has justified their military offensive as essential step for maintaining '*stability and order*' in society. Is the systematic denial of entire range of human rights of Rohingyas and their persecution and cleansing is justified in the name of '*stability and order*'? In the given case, the moot question is- how to reconcile the requirement of *stability and order* of political regime in Myanmar with the *Plight of Rohingyas*,

who are suffering with the worst form of human rights violation?

There are basically two mechanisms available to ensure the adherence to global norms by a regime, which is reluctant to follow them- First, persuasion and sanctions by international community and Second coercive methods under the mandate of Security Council. In the present case, both military and democratic regimes of Myanmar have violated the global norms of human rights of Rohingyas and denial of citizenship to them. Though the Rohingyas were accepted as indigenous ethnic groups, but they were denied full nationality rights by successive regimes. This is against global norms as successive UN reports have emphasized that ethnicity and race cannot be determining factor in granting citizenship (Ibrahim: 2016, 48). Yet, Myanmar escaped the heat of international pressures. In fact, the international pressure on Myanmar regime has been slack over the years.

As the formal process of democracy gained momentum in 2010s, the global powers relaxed sanctions on the Myanmar's military regime. But the essence of the democratic transition remained the same as far as the question of minorities and Rohingyas was concerned. Again, Myanmar's military junta did not shy away in playing one power against another to create favorable conditions for regime. In 1990s, India supported the cause of democracy in Myanmar, much to the disliking of military rulers, which as a counter measure developed strategic ties with China. This caused concerns in India, which reversed her earlier policy and opted for constructive engagement with Myanmar. It seems most powerful countries are not going to punish Burma or Suu Kye. The US was 'deeply troubled' by the violence in Rakhine in 2017 but has done little else. India stood alongside Suu Kyi in condemning Rohingya terrorist groups and has threatened to deport Rohingya seeking shelter in India. Beijing has also blamed the Rohingya militants for the violence. Myanmar is hopeful that China would block any resolution at the U.N. Security Council criticizing Burma. (Kurlantzick: 2017a).

There are international practices and provisions for humanitarian intervention or trial of genocide cases in the Geneva based International Criminal Court (ICC). Given the political equations of major powers like the US, Britain, China, India and Japan and possible Chinese tilt towards Myanmar, the possibility of military international intervention is ruled out. However, the legal trial may be initiated in the ICC against those found responsible for genocide.

Another option available is to invoke the *Responsibility to Protect* (R2P) mechanism against Myanmar regime. The R2P is a global political commitment, endorsed by member states of the United Nations at the 2005 World Summit to prevent genocide, war crimes, ethnic cleansing and crimes against humanity. The norm of the R2P originated as a response to the failure of the international community to respond to tragedies such as the Rwandan Genocide in 1994 and the Srebrenica massacre in 1995. Kofi Annan, the then UN Secretary-General, wrote a report in 2000 "*We the Peoples*" on the role of the United Nations in the 21st Century, where he posed the question: 'if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica - to gross and systematic violations of human rights that offend every precept of our common humanity'. To respond to this question, the Canadian government established the International Commission on Intervention and State Sovereignty (ICISS) which released a report in 2001 titled '*The Responsibility to Protect*'. The ICISS proposed that the intervention under R2P should meet certain criteria: just cause, right intention, last resort, proportional means, reasonable prospects and appropriate authority. The idea was endorsed by the World Summit 2005. On 12 January 2009, UN Secretary-General Ban Ki-Moon issued a report entitled *Implementing the Responsibility to Protect*, which identifies following three pillars of R2P (UN: 2017) :

1. *Pillar one* stresses that states have the primary responsibility to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.

2. *Pillar Two* addresses the international community's commitment to help states build capacity to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity, and to help those under stress before crises and conflicts break out.

3. *Pillar Three* focuses on the responsibility of international community to act in a timely and decisive way to prevent and halt genocide, ethnic cleansing, war crimes, and crimes against humanity when a state manifestly fails to protect its populations.

The UN has termed the plight of Rohingyas as an example of *ethnic cleansing*. Ethnic cleansing is not a crime defined under international law, but has been defined by the UN as '*a purposeful policy designed by one ethnic or religious group to remove*

by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas' (UN: 2017a). In case of Rohingyas, the pillars one and two of R2P are ruled out as the Myanmar regime is herself a party to the crime. The pillar three-military intervention under UNSC mandate may be considered. But given China's tacit support to Myanmar, this pillar has latest possibility to succeed. Thus, in the short term, none of the international instruments available are likely to have desired impact against the recalcitrant political regime of Myanmar.

3. *How adequate are the mechanisms of international community to address these challenges? How we are equipped to deal with the human beings suffering from double jeopardy- systematic persecution as well as statelessness?*

International humanitarian law provides that victims of armed conflict, whether displaced or not, should be respected, protected against the effects of war, and provided with impartial assistance. Because many refugees find themselves in the midst of international or internal armed conflict, refugee law is often closely linked to humanitarian law. International refugee law is part of a larger mosaic of international human rights law and international humanitarian law. Refugees are entitled to two partially overlapping sets of rights: those rights accorded to them as individuals and guaranteed under international human rights standards and national law, and specific rights related to their status as refugees.

The asylum is considered as human right under the Universal Declaration of Human Rights, Art. 14(1), which says, 'Everyone has the right to seek and to enjoy in other countries asylum from persecution.' The 1951 Convention relating to the Status of Refugees is the cornerstone document of refugee protection. Together, the Refugee Convention and Protocol cover three main subjects:

1. The basic refugee definition, along with terms for cessation of, and exclusion from, refugee status. According to 1951 Convention, a refugee is someone who: 1. Has a well-founded fear of persecution because of his/her - Race, - Religion, - Nationality, - Membership in a particular social group, or - Political opinion; 2. Is outside his/her country of origin; and 3. Is unable or unwilling to avail him/herself of the protection of that country, or to return there, for fear of persecution.

2. The legal status of refugees in their country of asylum, their rights and obligations, including

the right to be protected against forcible return, or refoulement, to a territory where their lives or freedom would be threatened.

3. States' obligations, including cooperating with UNHCR in the exercise of its functions and facilitating its duty of supervising the application of the Convention. As of September 2001, 141 States had acceded to the 1951 Convention and/or its Protocol (UNHCR: 2001, 6-9).

#### *Rohingyas Suffer from Double Jeopardy*

Rohingyas plight is distinct from other international refugees as they suffer from double jeopardy-as Refugees and as Stateless person. Their statelessness gives them no recourse to legal action because they exist outside of the law, and all that it entitles. But that culture of forced submission bleeds into everyday interaction with figures of authority, whether legal or not, creating a culture that denies them any voice to challenge decisions that affect them (Wade: 2017, 202).

A stateless person is someone who is not considered to be a national by any State under the operation of its law. He/she may be, but is not necessarily, a refugee. There are millions of stateless persons around the world. In 1996, the UN General Assembly called on UNHCR to promote accession to the two international conventions on statelessness and to provide governments with technical and legal advice on their nationality legislation. UNHCR thus works with governments drafting nationality legislation, helps coordinate emerging legal systems, assists and advises on individual and group cases of statelessness, and helps negotiate treaties related to statelessness. UNHCR's involvement with stateless persons is based on the strong links between statelessness and displacement. (UNHCR: 2001, 25).

Like refugees, stateless persons may be compelled to move because they cannot receive adequate protection. The two primary international Conventions on statelessness are the 1954 and 1961 Conventions. The 1954 Convention relating to the Status of Stateless Persons helps regulate and improve the status of stateless persons and helps ensure that stateless persons enjoy fundamental rights and freedoms without discrimination. The 1961 Convention on the Reduction of Statelessness defines ways in which persons who would otherwise be stateless can acquire or retain nationality through an established link with a State through birth or descent. The Convention covers such issues as the granting of nationality,



the loss or renunciation of nationality, deprivation of nationality and transfer of territory. Retention of nationality, once acquired, is also emphasized. Accession to the 1954 Convention provides stateless persons with many of the rights necessary to live a stable life. Accession to the 1961 Convention helps resolve many problems which result in statelessness. It also serves as a reference point for national legislation. Nationality is a status from which other rights derive. The 1961 Convention on the Reduction of Statelessness states that a person may not be deprived of her nationality on racial, ethnic, religious or political grounds; sketches out measures to prevent statelessness resulting from the transfer of territory; and establishes rules for the granting of nationality to persons born in a country who would otherwise be stateless. It stipulates that a UN body would supervise claims under the Convention. That body was never established as such, but UNHCR has been entrusted with its functions by the UN General Assembly (UNHCR: 2001, 25).

The international obligation not to return refugees to danger is absolute, and applies to all countries regardless of their level of economic development. The financial cost required for protecting refugees is met by receiving States, as well as by the international community in a spirit of international solidarity. International assistance to refugees is channeled through UNHCR, NGOs, and bilaterally. UNHCR is one of the few UN agencies that depend almost entirely on voluntary contributions to finance its operations. Less than two per cent of UNHCR's annual budget comes from the United Nations; the rest is contributed by States, individuals and the private sector (UNHCR: 2001, 112-113).

#### *Inadequate Resources and Response*

The nations find it increasingly difficult to reconcile their humanitarian impulses and obligations with their domestic needs and political realities. Countries are tempted to decline refugee for fear of assuming open-ended responsibilities, of abetting uncontrolled migration and people-smuggling, or of jeopardizing national security. The economic and social costs of asylum also act as hurdles. Some donor governments are struggling with the costs of their own domestic systems for receiving refugees. Developing countries argue that the burdens of asylum are not shared equally: while they host thousands, and sometimes millions, of refugees, wealthier countries are restricting access to their own territories and reducing support to the

countries of first asylum. UNHCR itself is facing budgetary shortfalls and has been forced to cut back on staff and programs UNHCR: 20012, 5-7). Denis McDonough (2018) remarks that low- and middle-income countries host 88 percent of the world's 22.5 million refugees. Just 10 countries, accounting for a mere 2.5 percent of global GDP, host half of the world's refugees. However, the developed countries including the US step back from their commitment. Major refugee-hosting nations are increasingly asking why they should continue hosting large refugee populations when the United States will not take even a modest number.

Under international politics, the refugee problem is a *Collective Good Problem*, which is also known as 'collective actions,' 'free riding,' 'burden sharing,' 'prisoners dilemma,' 'mixed interest game' or 'tragedy of the commons'. It is the problem of how to provide something that benefits all members of a group regardless of what each member contributes to it. International norms obligate the countries to accept refugees, who arrive at their door steps. The acceptance of refugees- and the question of which country bears the cost- is a collective goods problem (Goldstien: 2007, 4-9). The poor response of major nations to refugee crisis may be explained with the help of collective goods problem.

In nutshell, the global rules for addressing the issues of stateless persons and refugees are robust, but there are inadequate financial resources and mechanism to enforce them. The interests of nations and their apathy to the underlying issues also create challenges for the protection of rights of the refugees and stateless persons.

#### **Conclusion**

The issues underlying the Rohingya crisis are complex and multidimensional involving domestic and international concerns. Rohingyas have been facing multiple deprivations including statelessness for decades in Myanmar. The onset of democracy, ironically, proved more disastrous for them as Buddhist nationalism turned into populism endorsing their extermination and cleansing. The three major actors of socio-political dynamics of Myanmar-Army, Buddhist nationalists and political leadership, in spite of their internal differences, joined hands in this project due to their vested interests. The international actors including UN agencies, human right groups, and major nations are yet to take decisive action to address the issue of their statelessness and violation of human rights as individuals and refugees both. The international

legal regime including relevant conventions and instruments like R2P is adequate to deal with this challenge but faces uncertain enforcement. The efforts of humanitarian assistance to Rohingyas are hampered due to less than required funds and collective goods mentality of nations. The situation demands proactive role of major nations and searching ways for the effective enforcement of international legal instruments.

Kurlantzick (2017) argues that there is no one 'solution,' to a crisis that stems from factors like decades of discrimination against the Rohingya, the end of authoritarian rule in Myanmar, the military's brutality, land grabbing, entrenched prejudices, the rise of both Buddhist and Islamic militancy in Myanmar, Suu Kyi's tenuous hold on power in relation to the security forces, and many other factors. However, he suggests some measures to resolve this crisis: major governments refraining from expanding military relations with the Myanmar armed forces; persuading Myanmar government to allow journalists and aid organizations in Rakhine state; building pressure on the military leadership of Myanmar; assuring Myanmar to identify terrorists among refugee; and holding international conference to mobilize resources to support the refugee camps in Bangladesh.

Also, the international community needs to reconsider the mechanisms of enforcing international legal regime with respect to serious crimes against humanity like war crimes, genocide and ethnic cleansing. The condition of veto in UNSC may be waived in case of such serious crimes against humanity. The International Criminal Court also needs to be made active and effective to deal with individual responsibility of rulers involved in such crimes. The paucity of funds and problem of public goods management should be overcome by provision of assured resources to redress such crimes. Human rights, peace and development are closely interrelated as there cannot be peace in case of gross violation of human rights and also development would suffer in the absence of peace. Hence, the protection of basic human rights should be made the integral part of the sustainable development goals (SDG) declared by the global community. These long term measures should be supplemented by short term measures to build up pressures against government of Myanmar to adhere to relevant global norms.

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