Research Monograph

On

"International Refugee Law and the Rohingya Crisis"

Research Paper submitted in partial fulfillment of the requirements of the Master's of Laws with (LLM) under Sonargaon University.

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LETTER OF TRANSMITTAL

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To
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Subject : Letter regarding the Submission of Research Monograph on "International Refugee Law and the Rohingya Crisis"

Dear Madam,
I an hereby pleased to submit the project on **"International Refugee Law and the Rohingya Crisis"**. It was a great pleasure to work on such an important topic. This project was assigned to me in partial fulfillment of the requirements for the award of the degree Bachelor of Laws from Sonargaon University.

I believe that this project will certainly help you in evaluating my work. I would be very happy to provide any assistance in interpreting any part of the paper whenever necessary.

Sincerely yours,

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I do here by certify that the project work has been carried out under my direct supervision and guidance.

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Sharmin Jahan Runa
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ABSTRACT

The Rohingya crisis, one of the most severe humanitarian challenges in recent decades, has brought significant attention to the effectiveness and limitations of international refugee law. Originating from Myanmar's Rakhine State, the Rohingya—an ethnic and religious minority—have faced decades of systematic discrimination, statelessness, and violent persecution, culminating in mass exoduses, particularly the 2017 influx into Bangladesh. This abstract examines how international refugee law, including the 1951 Refugee Convention and its 1967 Protocol, applies to the plight of the Rohingya, despite Myanmar not being a signatory. It highlights the principle of *non-refoulement* as a core component of refugee protection, emphasizing that states cannot return individuals to a country where they face serious threats to life or freedom. Bangladesh, though not a party to the Convention, has upheld this principle by offering refuge to over a million Rohingya. The abstract also explores the gaps in legal protection, the absence of binding enforcement mechanisms, and the inadequacy of international burden-sharing. Furthermore, it underscores the need for stronger regional cooperation, durable solutions such as repatriation with safety and dignity, and greater accountability for crimes against humanity. The Rohingya crisis exemplifies the urgent need for reinforcing the global refugee protection regime and adapting it to contemporary challenges.

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Chapter 1:

The Legal Framework of International Refugee Law

1.1 Introduction

International refugee law is a branch of international human rights and humanitarian law that governs the protection and legal status of individuals fleeing persecution, conflict, and serious human rights violations. Its primary goal is to safeguard the rights of displaced persons and ensure that they are not returned to situations where their life or freedom would be threatened. This chapter outlines the evolution, sources, and key principles of international refugee law, with particular attention to how these norms apply to stateless and persecuted populations, such as the Rohingya.

1.2 The 1951 Refugee Convention and the 1967 Protocol

The cornerstone of modern refugee protection is the **1951 Convention Relating to the Status of Refugees** (hereinafter "the Convention") and its **1967 Protocol**, which removed geographic and temporal limitations initially placed on the Convention. The Convention defines a "refugee" as a person who:

> "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or... unwilling to avail himself of the protection of that country."[1]

The Rohingya population—discriminated against based on ethnicity, religion, and political disenfranchisement—falls squarely within this definition.

1.2.1 Core Principles

- **Non-Refoulement** (Art. 33): States are prohibited from returning refugees to a territory where they face threats to life or freedom. This is considered **customary international law** and thus binding even on non-signatories.[2]

[1] Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137, Art. 1(A)(2).
[2] UNHCR, Advisory Opinion on the Extraterritorial Application of Non-Refoulement, 26 Jan. 2007.

- **Rights of Refugees**: The Convention outlines civil, political, social, and economic rights, including access to courts, work, education, and public relief.

1.3 Customary International Law and Regional Instruments

Even in the absence of treaty ratification, many refugee protections are considered **customary international law** due to widespread and consistent state practice. This includes the principle of non-refoulement and basic humane treatment.[3]

In addition, various **regional instruments** supplement refugee protection:

- **OAU Refugee Convention (1969)** – Broader definition of refugee status in Africa, including those fleeing generalized violence.[4]
- **Cartagena Declaration (1984)** – Latin America's soft law approach, expanding protection based on "massive human rights violations."
- **ASEAN** lacks a binding refugee framework, despite hosting large numbers of displaced persons, particularly in Southeast Asia.

1.4 The Role of UNHCR

The **United Nations High Commissioner for Refugees (UNHCR)** is the principal international agency mandated to provide international protection and seek durable solutions for refugees. It engages in status determination, provides humanitarian assistance, and lobbies states for compliance with international obligations.[5]

In the case of the Rohingya, UNHCR has:

- Documented systematic rights violations in Myanmar;
- Provided emergency aid in Cox's Bazar (Bangladesh);
- Advocated against repatriation without legal guarantees.

[3] Hathaway, J. C., The Rights of Refugees under International Law (Cambridge University Press, 2005), pp. 363–380.
[4] Organization of African Unity, Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969.
[5] UNHCR Statute, G.A. Res. 428(V), Dec. 14, 1950.

1.5 State Obligations and Limitations

Although the Convention outlines clear responsibilities, implementation is state-dependent. Many Rohingya-hosting countries (e.g., **Bangladesh**, **Malaysia**, **India**) are **not signatories** to the 1951 Convention, relying instead on **domestic discretion** and **bilateral arrangements**.

This has led to:

- **Inconsistent asylum standards**
- **Detention and deportation practices**
- **Lack of durable solutions (resettlement, repatriation, local integration)**

1.6 Gaps and Emerging Challenges

Contemporary refugee law faces several critical challenges:

- The Convention does **not address statelessness** in a comprehensive manner, though separate instruments exist (1954 and 1961 Statelessness Conventions).
- The Convention is **state-centric**, meaning that enforcement depends on national interpretation and political will.
- New phenomena—such as **climate refugees**, **non-state persecution**, and **protracted displacement**—remain inadequately addressed by the current legal regime.[6]

[6] McAdam, J., Climate Change, Forced Migration, and International Law (Oxford University Press, 2012).

Chapter 2:

The Rohingya Crisis – Historical and Political Background

2.1 Introduction

The plight of the Rohingya is among the most protracted and severe humanitarian crises of the 21st century. Often described as "the world's most persecuted minority," the Rohingya, a Muslim ethnic group from Rakhine State in western Myanmar, have suffered systematic discrimination, statelessness, and episodes of mass violence for decades. This chapter explores the historical roots of the crisis, the role of Myanmar's legal and political institutions, and the regional and international responses to successive waves of displacement.

2.2 Ethnic and Historical Roots

The Rohingya trace their presence in Arakan (now Rakhine State) back centuries. However, their ethnic identity has been contested by Myanmar's majority **Bamar Buddhist** population and successive governments, who claim the Rohingya are illegal Bengali migrants who arrived during British colonial rule. This narrative has served as the foundation for widespread exclusionary policies.[7]

During British administration (1824–1948), the migration of laborers from Bengal was encouraged, leading to demographic shifts. Following independence in 1948, the new Burmese government began tightening citizenship laws and restricting minority rights. The **1978 "Operation Nagamin" (Dragon King)** marked the first major military campaign to expel Rohingya, leading to over 200,000 fleeing to Bangladesh.[8]

2.3 Legal Exclusion and Statelessness

The **1982 Citizenship Law** of Myanmar institutionalized the Rohingya's statelessness by denying them recognition as one of the country's 135 "national races." Under this law, citizenship was restricted to those whose ancestry could be traced to before 1823.

[7] Leider, J., Rohingya: The History of a Muslim Identity in Myanmar, Oxford Asia Society Paper Series, 2018.
[8] Amnesty International, Myanmar: The Rohingya Minority: Fundamental Rights Denied, 2004.

The Rohingya, whose historical records were limited or ignored by authorities, were largely excluded.[9]

Statelessness had cascading consequences:

- Loss of voting rights and political representation.
- Denial of access to education, health care, and employment.
- Restriction of movement, particularly through "white cards" and later through "National Verification Cards" (NVCs), which many Rohingya refused to accept as they signified foreigner status.

By 2015, even those few Rohingya who had previously been allowed to vote were stripped of that right.

2.4 Waves of Persecution and Displacement

The crisis escalated into mass violence and displacement through multiple waves:

2.4.1 2012 Riots

Communal riots in Rakhine State between Rohingya Muslims and Rakhine Buddhists resulted in deaths, destruction of property, and the internal displacement of over 140,000 Rohingya, most of whom were forced into camps with limited access to humanitarian assistance.[10]

2.4.2 2016 Crackdown

Following attacks by the Arakan Rohingya Salvation Army (ARSA), the Myanmar military launched counter-insurgency operations characterized by **mass arrests, extrajudicial killings, sexual violence, and destruction of villages**.[11]

[9] Myanmar Citizenship Law (1982), Chapter II, Sections 3–6.
[10] Human Rights Watch, All You Can Do is Pray: Crimes Against Humanity and Ethnic Cleansing in Burma's Arakan State, 2013.
[11] UN Human Rights Council, Report of the Independent International Fact-Finding Mission on Myanmar, A/HRC/39/64, Sept. 2018.

2.4.3 2017 Mass Exodus

The most significant and internationally condemned phase began in August 2017. The military response to coordinated ARSA attacks led to what the UN described as a **"textbook example of ethnic cleansing."**[12]

Over **740,000 Rohingya** fled to Bangladesh within months. Satellite images confirmed widespread village burnings, and survivors testified to mass killings and rape.

2.5 Regional and International Response

2.5.1 Bangladesh

Bangladesh, although not a party to the 1951 Refugee Convention, has hosted nearly 1 million Rohingya in camps such as **Cox's Bazar**, now the world's largest refugee settlement. However, its policy has been framed as **temporary humanitarian hosting**, and the government has resisted formal integration or long-term solutions.[13]

2.5.2 ASEAN and Neighboring States

ASEAN has consistently invoked the principle of **non-interference**, limiting collective regional response. Countries like **Malaysia**, **Thailand**, and **Indonesia** have accepted Rohingya refugees in limited numbers but have also engaged in pushbacks, maritime deterrence, and detention.[14]

2.5.3 International Legal and Political Response

- The UNHCR has coordinated aid and documentation but lacks enforcement power.
- In 2019, **The Gambia** filed a case against Myanmar at the **International Court of Justice (ICJ)** under the Genocide Convention, a case still pending.[15]

[12] UN Secretary-General's Spokesperson, Press Briefing, Sept. 2017.
[13] International Crisis Group, Bangladesh: A Fraying Welcome to Rohingya Refugees, Asia Report No. 303, 2019.
[14] Fortify Rights, "They Tried to Kill Us All": Rohingya Survivors' Accounts, 2017.
[15] ICJ, The Gambia v. Myanmar, Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Order of 23 Jan. 2020.

- The **International Criminal Court (ICC)** has initiated an investigation into the deportation of Rohingya from Myanmar to Bangladesh — using a novel approach given Myanmar is not a party to the Rome Statute.[16]

2.6 Rohingya Identity and Agency

Despite persecution, the Rohingya community has continued to assert its identity through peaceful protest, international advocacy, and engagement with legal processes. Rohingya civil society organizations have emerged in exile, demanding **citizenship, accountability, and voluntary repatriation with dignity**.

However, the absence of recognition within Myanmar, the stateless condition of the diaspora, and the lack of durable legal solutions continue to present major legal and humanitarian challenges.

[16] CC, Situation in Bangladesh/Myanmar, Pre-Trial Chamber III, 14 Nov. 2019.

Chapter 3:

Application of Refugee Law to the Rohingya Situation

3.1 Introduction

Having explored the legal framework and the historical-political context of the Rohingya crisis, this chapter assesses how international refugee law applies to the Rohingya both in theory and in practice. It examines refugee status eligibility, state obligations toward Rohingya refugees, the operational role of the United Nations High Commissioner for Refugees (UNHCR), and how key host states have engaged—or failed to engage—with these obligations. The chapter also highlights the disjuncture between the law and its implementation, particularly in South and Southeast Asia.

3.2 Refugee Status of the Rohingya under International Law

Under Article 1(A)(2) of the 1951 Refugee Convention, a refugee is defined as someone with a "well-founded fear of persecution." As detailed in Chapter 2, the Rohingya are persecuted on multiple grounds recognized in the Convention: **race, religion, nationality, and membership in a particular social group.** Their treatment in Myanmar—including extrajudicial killings, restrictions on movement, denial of citizenship, and military-led displacement—constitutes clear grounds for refugee status.[17]

Despite this, most Rohingya have not been formally recognized as refugees in host countries due to:

- Lack of access to refugee status determination (RSD) procedures.
- Non-ratification of the 1951 Convention by regional states.
- Political sensitivities regarding Myanmar's sovereignty.

The result is a large population of **de facto refugees** without **de jure recognition**.

[17] UNHCR, Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Myanmar, 2017.

3.3 State Obligations: Bangladesh, Malaysia, India

3.3.1 Bangladesh

Although Bangladesh is not a signatory to the 1951 Convention or the 1967 Protocol, it is still bound by the **customary international law principle of non-refoulement**, which prohibits returning refugees to situations of persecution.[18]

Bangladesh has hosted over one million Rohingya, primarily in Cox's Bazar. However, the government:

- Has not granted formal refugee status.
- Restricts movement and employment.
- Blocks access to formal education for Rohingya children.[19]

Attempts at repatriation—under pressure from Myanmar and China—have occurred without clear legal guarantees for safety and dignity, potentially violating the principle of **voluntary return.**

3.3.2 Malaysia

Malaysia, like Bangladesh, is not a party to the Refugee Convention but has accepted tens of thousands of Rohingya, primarily as undocumented migrants. Although the government has expressed public sympathy and condemned Myanmar's actions, Rohingya in Malaysia are:

- Denied legal status.
- Subject to arrest and detention.
- Prevented from accessing health care and formal employment.[20]

Malaysia permits limited UNHCR activity but lacks a national legal framework for refugee protection.

[18] Goodwin-Gill, G., & McAdam, J., The Refugee in International Law (Oxford University Press, 2007), pp. 201–219.
[19] Human Rights Watch, Are We Not Human? Denial of Education for Rohingya Refugee Children in Bangladesh, 2019.
[20] Amnesty International, Living in Limbo: Refugees in Malaysia, 2010.

3.3.3 India

India has received smaller numbers of Rohingya, many of whom entered through Bangladesh. The Indian government has declared them as **illegal migrants** and has engaged in deportations, detentions, and surveillance.[21] This is despite India being bound by international human rights norms that prohibit arbitrary detention and protect against refoulement.

Notably, India's Supreme Court in Mohammad Salimullah v. Union of India declined to stay deportations, sparking concern over judicial acquiescence to executive anti-refugee measures.[22]

3.4 The Role of UNHCR

UNHCR has played a critical role in:

- Providing humanitarian aid in Bangladesh and elsewhere.
- Issuing refugee documentation.
- Advocating for rights and durable solutions.

However, its authority is often constrained by host state limitations. In Malaysia and India, for example, UNHCR's refugee cards do not confer legal status and are sometimes disregarded by law enforcement.

UNHCR has also facilitated **registration exercises** and **voluntary repatriation discussions**, although human rights organizations have criticized these efforts as premature and coercive in the absence of citizenship rights and safety guarantees in Myanmar.[23]

[21] United Nations, Special Rapporteur on Myanmar, Report to the General Assembly, A/75/287, 2020.
[22] Mohammad Salimullah v. Union of India, Supreme Court of India, Order dated 8 April 2021.
[23] Refugees International, UNHCR Must Ensure Voluntary Repatriation for Rohingya, Briefing Note, 2018.

3.5 Legal Gaps and Enforcement Failures

Despite clear applicability of international refugee law to the Rohingya, multiple systemic obstacles persist:

- **Non-ratification**: None of the major Rohingya-hosting countries are parties to the 1951 Convention, allowing them to limit refugee rights.
- **Lack of domestic law**: National legal systems do not recognize or process refugee claims, leading to ad hoc, often discriminatory treatment.
- **Lack of burden-sharing**: International support has not translated into meaningful resettlement or funding support. The Global Compact on Refugees remains non-binding.
- **Political manipulation**: Host countries use the Rohingya issue as a bargaining tool in regional diplomacy, undermining refugee protection norms.[24]

3.6 Summary

The Rohingya meet all international legal criteria for refugee protection. Nonetheless, they remain among the least protected refugee populations due to a failure of international legal enforcement and political will. The contrast between **legal norms** and **state practices** underscores the fragility of refugee protection in regions where the 1951 framework has little formal traction. Customary principles like non-refoulement offer limited protection when not backed by enforcement mechanisms or state cooperation.

[24] International Crisis Group, Rohingya Crisis: Time for a Regional Solution, Asia Report No. 307, 2020.

Chapter 4:

Failures and Gaps in International Law and Enforcement

4.1 Introduction

While the international refugee law framework provides a theoretical basis for the protection of displaced populations like the Rohingya, in practice it has proven woefully inadequate. This chapter analyzes the structural and political failures in international refugee law and enforcement, especially in the context of Southeast Asia. It explores the limitations of treaty-based obligations, the absence of enforcement mechanisms, the lack of state cooperation, and the broader implications of legal and policy fragmentation. The Rohingya crisis serves as a case study for how legal norms may be systematically undercut by state behavior and geopolitical interests.

4.2 Non-Ratification and Treaty Avoidance

A core challenge is that **Myanmar**, as well as most of the Rohingya-hosting states (e.g., **Bangladesh, Malaysia, India, Thailand**), are **not signatories to the 1951 Refugee Convention** or its 1967 Protocol.[25] This lack of formal treaty commitment enables states to:

- Deny legal recognition to refugees.
- Evade institutionalized obligations for protection, education, and resettlement.
- Implement policies of arbitrary detention, restricted mobility, and forced repatriation.

While certain obligations—such as **non-refoulement**—are considered **customary international law**, enforcement remains difficult in the absence of clear institutional frameworks or domestic legislation.

[25] UNHCR, States Parties to the 1951 Convention and the 1967 Protocol, www.unhcr.org.

4.3 Weak Enforcement and Accountability Structures

Unlike international human rights treaties that have quasi-judicial enforcement mechanisms (e.g., Human Rights Committee under ICCPR), the **1951 Refugee Convention lacks a supervisory body with enforcement powers.** UNHCR, the principal agency responsible for monitoring implementation, is constrained to advisory and humanitarian roles without binding authority over states.

This institutional weakness leads to:

- Lack of recourse when states forcibly deport or mistreat refugees.
- Absence of sanctions for non-compliance.
- Inability to compel burden-sharing or standardized procedures across regions.

The **Global Compact on Refugees** (2018) seeks to improve coordination and support, but it is **non-binding**, reflecting states' reluctance to surrender sovereignty over refugee policy.[26]

4.4 Regional Constraints: ASEAN and Non-Interference

In Southeast Asia, regional legal and diplomatic frameworks have offered little support. The **Association of Southeast Asian Nations (ASEAN)**, while including both Myanmar and Rohingya-hosting states, adheres strictly to the principle of **non-interference in internal affairs**, rendering it ineffective in refugee protection or conflict resolution.

Despite high-level meetings and humanitarian pledges, ASEAN has:

- Failed to condemn Myanmar's actions in binding language.
- Avoided collective refugee policy or protection standards.
- Prioritized repatriation without guarantees of rights or citizenship.

In effect, **regional diplomacy has reinforced impunity** by avoiding political accountability or pressure.[27]

[26] UN General Assembly, Global Compact on Refugees, A/73/12 (Part II), 2018.

4.5 Statelessness and the Failure of Legal Identity Frameworks

The 1951 Refugee Convention does not specifically address **statelessness**, even though the condition magnifies the vulnerability of displaced persons. The **Rohingya are both stateless and refugees**, falling into an underprotected legal category.

While two treaties exist on statelessness—the **1954 Convention Relating to the Status of Stateless Persons** and the **1961 Convention on the Reduction of Statelessness**—Myanmar is not a party to either, and neighboring states have failed to incorporate the protections into national law.[28]

The consequences include:

- Legal invisibility: No right to nationality, documentation, or legal identity.
- Inherited statelessness: Rohingya children born in host states are not granted citizenship, perpetuating intergenerational exclusion.
- Denial of durable solutions: Statelessness complicates resettlement and reintegration options.

4.6 Failures of Responsibility-Sharing

A key goal of international refugee law is **equitable burden-sharing**, as enshrined in the Preamble of the 1951 Convention. However, in the Rohingya context, **responsibility has been disproportionately borne by front-line states** like Bangladesh.

Contributing factors include:

- **Minimal third-country resettlement** of Rohingya by wealthier nations.
- **Inadequate international funding** to host states.
- Absence of enforceable mechanisms for distribution of protection duties.

The **Global Compact on Refugees**, adopted in 2018, encourages voluntary cooperation, but participation remains uneven and legally non-binding. [29]

[27] ASEAN, Chairman's Statement on the Humanitarian Situation in Rakhine State, 2017.
[28] Institute on Statelessness and Inclusion, The World's Stateless, 2020.
[29] Human Rights Watch, The International Community and the Rohingya Crisis, 2019.

Consequently, financial and logistical strain has exacerbated host-state resistance and led to deteriorating refugee conditions.

4.7 Political Interests and Selective Legalism

International response to the Rohingya crisis has been marked by **selective enforcement of legal norms** based on political alliances, trade interests, and geopolitical considerations.

- **China and Russia** have repeatedly blocked strong action at the UN Security Council, citing Myanmar's sovereignty.
- **India and ASEAN members** have downplayed the crisis due to strategic and economic partnerships.
- **Western countries**, though more vocal, have offered limited concrete assistance (e.g., refugee resettlement or sanctions enforcement).

This politicization of legal obligations weakens the universality of refugee protection and undermines international law's credibility.[30]

4.8 Conclusion

The Rohingya crisis exposes a critical paradox: the existence of a well-developed international legal framework for refugee protection, and the systemic failure to enforce it in a major humanitarian crisis. Legal instruments remain underutilized or ignored due to:

- Lack of ratification and domestic incorporation.
- Weak enforcement tools at the international and regional levels.
- Absence of political will and coordinated burden-sharing.
- Gaps in protection for stateless persons.

[30] UNHCR, Global Compact on Refugees: Indicator Report, 2022.

Ultimately, the plight of the Rohingya underscores that **the effectiveness of international refugee law depends not only on its normative clarity but on political enforcement and institutional capacity**—both of which remain gravely inadequate.

Chapter 5:

Prospects for Reform and International Justice

5.1 Introduction

The Rohingya crisis has exposed deep structural failings in international refugee protection and accountability. Yet it has also triggered unprecedented legal actions at international courts and raised global awareness of the limitations of current frameworks. This chapter examines potential legal and institutional reforms, analyzes international judicial mechanisms such as the **International Court of Justice (ICJ)** and the **International Criminal Court (ICC)**, and explores alternative strategies for enhancing refugee protection and state accountability.

5.2 International Judicial Responses

5.2.1 The International Court of Justice (ICJ) – Genocide Proceedings

In November 2019, **The Gambia** filed an application at the ICJ on behalf of the **Organization of Islamic Cooperation (OIC)**, alleging that Myanmar had violated its obligations under the **1948 Genocide Convention** through its treatment of the Rohingya population.[31]

Key features of the case:

- Seeks **provisional measures** to prevent further acts of genocide.
- Aims to establish Myanmar's **state responsibility**, as distinct from individual criminal liability.
- Relies on reports from UN Fact-Finding Missions and rights groups.

In January 2020, the ICJ ordered Myanmar to take all measures within its power to prevent genocidal acts against the Rohingya.[32] Though the case is ongoing, it is one of

[31] Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), ICJ, 2019.
[32] ICJ, Provisional Measures Order, Jan. 23, 2020.

the first direct uses of the Genocide Convention to seek accountability for state-led actions against a minority population in peacetime.

5.2.2 The International Criminal Court (ICC) – Crimes Against Humanity

In a parallel development, the **ICC** authorized an investigation into the **alleged deportation of Rohingya from Myanmar into Bangladesh**, treating it as a **crime against humanity** under the Rome Statute.[33] While Myanmar is **not a party** to the Statute, Bangladesh is — and the court ruled that **cross-border crimes** fall within its jurisdiction.

Limitations of the ICC approach:

- Focused narrowly on deportation, not on broader persecution or genocide.
- Dependent on Myanmar's cooperation (which has been denied).
- No current indictments against top military officials.

Despite these challenges, the ICC process represents a **historic expansion of jurisdiction** and could lead to future accountability for individuals responsible for mass atrocities.

5.3 Legal Reform: Strengthening Refugee Protection

The Rohingya crisis demonstrates that legal protection mechanisms must evolve to address emerging gaps. Key areas of reform include:

5.3.1 Regional Legal Frameworks

ASEAN and South Asian countries have long resisted binding refugee commitments. However, **regional instruments**, like the **OAU Convention** or the **Cartagena Declaration**, show that regional contexts can generate protective norms.

Reform possibilities:

- Adoption of an **ASEAN Declaration on Refugees and Stateless Persons**.

[33] ICC, Situation in Bangladesh/Myanmar, Pre-Trial Chamber III, Decision on Jurisdiction, 14 Nov. 2019.

- Creation of a **regional refugee commission** with monitoring and coordination functions.
- Use of **inter-state compacts** for shared responsibility in refugee hosting.

Such reforms would require political will but could enhance coherence, reduce reliance on ad hoc arrangements, and provide collective leverage.

5.3.2 Domestic Implementation and Statelessness Law

Host states must be encouraged—through technical assistance and conditional aid—to:

- Incorporate **non-refoulement** and **refugee recognition procedures** into domestic law.
- Accede to and implement the **1954 and 1961 Statelessness Conventions**.
- Guarantee **birth registration** and civil documentation for Rohingya children born in exile.

Legal identity is a gateway to education, healthcare, and future durable solutions. Without it, the cycle of exclusion continues.

5.3.3 Expanding the Definition of "Refugee"

The 1951 Convention is now seen as **too narrow**, particularly for populations fleeing **generalized violence, statelessness, or climate-related displacement**.

Options for reform include:

- Amending the Convention to explicitly include stateless persons.
- Global adoption of broader definitions, such as that used in the OAU Convention ("external aggression, occupation, foreign domination or events seriously disturbing public order").[34]
- Development of **international soft law instruments**, such as **Guiding Principles on Internal Displacement**, tailored to future displacement crises.

[34] OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969, Art. 1(2).

5.4 Reimagining Responsibility-Sharing

The burden of refugee protection remains concentrated in poorer frontline states. To address this, reforms should aim at:

- **Mandatory resettlement quotas** for wealthy states.
- Long-term **funding commitments** through a centralized Global Refugee Fund.
- **Legal obligation mechanisms** in multilateral treaties or compacts, such as enforceable pledges.

The **Global Compact on Refugees** laid the groundwork but must be followed by a binding framework to make burden-sharing operational and not merely aspirational.[35]

5.5 Political and Diplomatic Strategies

Legal accountability must be complemented by political leverage:

- **Targeted sanctions** against Myanmar's military and economic interests.
- **Diplomatic pressure** through UN and regional forums.
- **Civil society advocacy** that centers refugee voices and demands political reform in Myanmar.

More inclusive multilateral diplomacy can shift the cost-benefit calculus of continued persecution.

[35] UNHCR, Global Compact on Refugees: Indicator Report, 2022.

5.6 Conclusion

The Rohingya crisis is not merely a failure of humanitarian intervention — it is a profound test of the international legal system. While existing legal structures offer tools for accountability and protection, their success depends on **enforcement, cooperation, and political will**. International courts provide a glimmer of long-term justice, but immediate reforms in refugee protection, responsibility-sharing, and statelessness recognition are essential.

Ultimately, protecting the Rohingya requires moving beyond expressions of concern to **concrete legal commitments**, **binding mechanisms**, and a reassertion of the principle that **no human being is illegal, and no people are beyond protection**.

Conclusion

The Rohingya crisis has emerged as one of the most urgent and enduring challenges to international refugee law, exposing the fragility of legal protections in the face of entrenched state resistance, geopolitical calculations, and institutional limitations. Despite the existence of a well-established legal framework—anchored in the 1951 Refugee Convention, customary international law, and human rights treaties—Rohingya refugees remain largely unrecognized, unprotected, and denied durable solutions.

This monograph has shown that the Rohingya qualify for international refugee status on multiple grounds, including persecution based on race, religion, nationality, and membership in a persecuted social group. Their treatment by the Myanmar state—including denial of citizenship, forced displacement, and targeted violence—meets not only the refugee definition but also triggers protections under the Genocide Convention and international criminal law.

Yet, in practice, these protections have proved hollow in key regions of refuge. Countries such as Bangladesh, Malaysia, and India have refused to sign the Refugee Convention, lack domestic legal frameworks for asylum, and continue to treat Rohingya refugees as illegal migrants rather than rights-bearing individuals. Even international mechanisms such as UNHCR have been constrained by lack of cooperation from host states, inadequate enforcement power, and political pressures to prioritize repatriation over protection.

International judicial processes—at the ICJ and ICC—have opened unprecedented paths to accountability. However, these are slow-moving and dependent on political will and state cooperation, which remain limited. Meanwhile, the structural failings of international refugee law—including its silence on statelessness, lack of enforcement mechanisms, and weak responsibility-sharing—continue to hamper its relevance in real-world crises.

To ensure that the failures of the Rohingya crisis are not repeated, this paper has argued for several key reforms:

- Regional frameworks in South and Southeast Asia that embed refugee and statelessness protections;
- Legal expansion of refugee definitions to include stateless persons and those fleeing complex emergencies;
- Enforceable burden-sharing commitments among the international community;
- Stronger domestic legal incorporation of refugee rights, particularly in frontline host states;
- Enhanced international cooperation to support justice and accountability for atrocity crimes.

The future of the Rohingya people—and of international refugee law more broadly—depends not only on the articulation of rights but on the political courage to enforce them. The Rohingya crisis has become a symbol of the gap between principle and practice. Closing that gap is not only a legal imperative but a moral and humanitarian one.

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