
STUDIA IURIS

JOGTUDOMÁNYI TANULMÁNYOK / JOURNAL OF LEGAL STUDIES

2024. I. ÉVFOLYAM 4. SZÁM



Károli Gáspár Református Egyetem
Állam- és Jogtudományi Doktori Iskola

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Kiadó: Károli Gáspár Református Egyetem Állam- és Jogtudományi Doktori Iskola

Székhely: 1042 Budapest, Viola utca 2-4

Felelős Kiadó: TÓTH J. ZOLTÁN

A tipográfia és a nyomdai előkészítés CSERNÁK KRISZTINA (L'Harmattan) munkája

A nyomdai munkákat a Robinco Kft. végezte, felelős vezető GEMBELA ZSOLT

Honlap: <https://ajk.kre.hu/index.php/jdi-kezdolap.html>

E-mail: doktori.ajk@kre.hu

ISSN 3057-9058 (Print)

ISSN 3057-9392 (Online)

URL: KRE ÁJK - Studia Iuris

<https://ajk.kre.hu/index.php/kiadvanyok/studia-iuris.html>

VIOLATION OF THE RIGHT TO LIFE OF THE ROHINGYA REFUGEES

MD RAZIDUR RAHAMAN¹

ABSZTRAKT ■ Mianmar etnikailag sokszínű ország, ahol az 1982-es mianmari állampolgársági törvény alapján 140 csoport közül 135 elismert etnikai csoport található. Sajnos a muszlim többségű rohingya etnikai kisebbségi csoport (becslések szerint 2,5 millió ember, akik Mianmar Rakhine államában élnek) nem szerepelt az elismert csoportok között. Ennek eredményeként hontalanná váltak. Az ENSZ főtitkára, Antonio Guterres a rohingyákat „a világ egyik, ha nem a leginkább diszkriminált népcsoportjának” nevezte, akik nem részesülnek a legalapvetőbb jogok elismerésében, kezdve az állampolgársághoz való jog elismerésével saját országuk, Mianmar részéről. A főtitkár konfliktusok során fellépő szexuális erőszakkal foglalkozó különleges képviselője, Pramila Patten megjegyezte, hogy a rohingya nép a világ legüldözöttebb népe. Az ilyen üldöztetés következtében az élethez való elidegeníthetetlen joguk sérül, és különböző jelentések szerint rohingyák ezreit ölték meg a Mianmari Biztonsági Erők. Az élethez való jogot az Egyesült Nemzetek Szervezetének keretrendszerén belül különféle nemzetközi emberi jogi eszközök, valamint különböző regionális emberi jogi eszközök garantálják. Jelen tanulmány a rohingyák elleni rendszerszintű jogsértéseket tárgyalja, amelyek az élethez való jog megsértésére is kiterjednek..

ABSTRACT ■ Myanmar is an ethnically diverse country with 135 recognized ethnic groups among 140 groups under the 1982 Citizenship Law of Myanmar. Unfortunately, the Muslim majority Rohingya ethnic minority group, (estimated 2.5 million people, living in Rakhine State of Myanmar) was not among the recognized groups. As a result, they became stateless. The Secretary General of the United Nations Antonio Guterres described Rohingya as “one of, if not the, most discriminated people in the world, without any recognition of the most basic rights starting by the recognition of the right of citizenship by their own country Myanmar”. The Special Representative of the Secretary-General on sexual violence in conflict, Ms. Pramila Patten, commented that the Rohingya people are the most persecuted people in the world. As a result of such persecution their inalienable right to life is violated and thousands of Rohingya have been killed by the Myanmar Security Forces, different reports show. Right to life is guaranteed under various international human right instruments under the United

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Nations Framework as well as under different regional human rights instruments. This paper will discuss the systematic violations against Rohingya, which extend to the right to life.

KEYWORDS: Rohingya, Refugee, Right to Life, jus cogens, Bangladesh, Myanmar, International Law

1. INTRODUCTION

Myanmar, a Southeast Asian country, is bordered by Tibet, China, Laos, Thailand, the Andaman Sea, the Bay of Bengal, Bangladesh, and India.² There are 54.7 Million people in Myanmar as of 2023.³ Myanmar is predominantly Buddhist-dominant, with 89.8% of the population being Buddhists, with other religious groups including Christians, Muslims, Hindus, Animists, others, and people with no religion.⁴ Myanmar is grappling with numerous socio-economic and political issues, including numerous armed and ethno-religious conflicts. Myanmar's history reveals freedom myths, particularly for minorities, with debates on independence focusing on internal tensions like the Rohingya Muslims-Rakhine Buddhists conflict in western Rakhine.⁵ The Rohingya issue has become a global issue, not just a local one, due to the crimes committed against them. The Rohingya ethnic minority in Myanmar faces global issues, including transnational security, human rights violations and international claims, highlighting the need for global solutions.⁶ This paper analyzes the systematic violations against Rohingya in Myanmar, including torture, death, and house burning, extending it to their right to life.

2. RESEARCH METHODOLOGY

The doctrinal research method is used in this research as research methodology. The doctrinal research is based on the review of the literature of primary and

² Myanmar National Portal, <https://myanmar.gov.mm/geography>.

³ Myanmar Population 2023, <https://worldpopulationreview.com/countries/myanmar-population>.

⁴ The 2014 Myanmar Population and Housing Census, Census Report Volume 2-C, *The Union Report: Religion*. 2016/3, https://myanmar.unfpa.org/sites/default/files/pub-pdf/UNION_2C_Religion_EN.pdf.

⁵ MD JOB AIR ALAM: The Rohingya Minority of Myanmar. Surveying Their Status and Protection in International Law. *International Journal on Minority and Group Rights*, 25(2)/2018, 157-158.

⁶ *Ibid.* at 159.

secondary sources and it is largely used as research methodology in this research. Doctrinal research is used in explaining the present international law framework to protect the right to life.

3. BACKGROUND OF THE ROHINGYA REFUGEE CRISIS

Myanmar has 135 recognized ethnic groups under the 1982 Citizenship Law, including the Rohingya, who have a history dating back hundreds of years, as noted by DR. FRANCIS BUCHANAN-HAMILTON in 1799. Buchanan-Hamilton, a British physician and geographer, noted that the Mohammedans, who settled in Arakan, are known as 'Rooinga' while the Rakhine adhere to Buddha's teachings.⁷ Arakan Arakan was independent from 1430 to 1784 until the Burmese King Bodawpaya conquered and dominated it until 1824.⁸ Arakan Arakan, once independent, fell under British domination in 1826 after the Anglo-Burman War, resulting in a prolonged armed conflict along the Bengal-Arakan border.⁹ During British rule, Buddhists were less supportive, leading to Muslims gaining administrative positions. During WW2, Japan invaded Burma, leading to conflicts between the Burmese and the Rohingya, with the Burmese receiving support from Japan and the Rohingya receiving support from Britain.¹⁰ Burma gained independence in 1948, leading to increased political violence among ethnic minorities. The British Government failed to establish an independent Muslim state, but created a Mujahid movement demanding autonomy. In 1961, the U Nu government signed ceasefire agreements with Mujahid groups and established the Mayu Frontier Administration Area, covering Maungdaw, Buthidaung, and Western Rathedaung districts.¹¹ Under General Ne Win, the oppression of Rohingya intensified, with human rights abuses and forced labor becoming

⁷ RUBIAT SAIMUM: No Place to Call Home: Historical Context, Statelessness and Contemporary Security Challenges of Rohingya Refugee Crisis. *BIMRAD Journal*, 3(1)/2022, 4.

⁸ NASIR UDDIN: *The Rohingya: An Ethnography of 'Subhuman' Life*. November 2020, Oxford University Press.

⁹ Crimes against Humanity in Western Burma: The Situation of the Rohingyas, *Irish Centre for Human Rights*, 24/2010, https://burmacampaign.org.uk/images/uploads/ICHR_Rohingya_Report_2010.pdf.

¹⁰ History of the Rohingya, Rohingya Cultural Center Chicago, <https://rccchicago.org/history-of-the-rohingya/>.

¹¹ MD RAZIDUR RAHAMAN: Rohingya. The Community of No Human Rights. *The Daily Observer*, 2017, <https://observerbd.com/details.php?id=68541>.

routine in ethnic minority regions, particularly under the “Four Cuts” military operation.¹²

4. PERSECUTION AGAINST ROHINGYA, WHICH EXTENDS TO VIOLATION OF THE RIGHT TO LIFE

The Rohingya people faced violence in 1977 under General Ne Win’s “Operation Nagamin” before returning after a treaty arrangement between Bangladesh and Myanmar. The Rohingya people, who were denied citizenship in Myanmar through the 1982 Citizenship Law, have been declared ‘Stateless’. Section 2 of the 1982 Citizenship Law outlines three types of citizenship: Burma Citizens, Associate Citizens, and Naturalized Citizens. Burma citizens include nationals and ethnic groups settled in territories from 1185 B.E. to 1823 A.D¹³ or, every national and every person born of parents, both of whom are nationals, are citizens by birth.¹⁴ The Council of State can grant or revoke citizenship, associate or naturalized citizenship to any person, except those citizens by birth, in the State’s interest.¹⁵ The Central Body can determine associate citizens for applicants under the Union Citizenship Act of 1948, based on their qualifications and stipulations.¹⁶ Individuals and their offspring(s) born before January 4th, 1948, who haven’t yet applied under the Union Citizenship Act, 1948, can apply for naturalized citizenship through conclusive evidence.¹⁷ To gain Myanmar citizenship, Rohingya people must prove they lived in Myanmar before the Anglo-Burmese War in 1823. Since the first Anglo-Myanmar War, Rohingya have been illegal immigrants. Between 1991-1992, around 270,000 Rohingya entered Bangladesh, many returning to Myanmar in 1996. In 2012, violence against Rohingya escalated, with Burmese President Thein Sein admitting the persecution.¹⁸ The former Foreign Minister of Myanmar, U Ohn Gyaw stated in 1992 that there has never been a “Rohingya” race in Myanmar, as Muslim immigrants from neighboring countries illegally entered Naing-Ngan since 1824, without immigration papers.¹⁹ Human Rights Watch satellite images

¹² Ibid.

¹³ Section 3 of the 1982 Citizenship Law.

¹⁴ Section 5 of the 1982 Citizenship Law.

¹⁵ Section 8 of the 1982 Citizenship Law.

¹⁶ Section 23 of the 1982 Citizenship Law.

¹⁷ Section 42 of the 1982 Citizenship Law.

¹⁸ Burma’s junta admits deadly attacks on Muslims, *The Guardian*, 2012, <https://www.theguardian.com/world/2012/oct/28/burma-leader-admits-attacks-muslims>.

¹⁹ Ibid.

reveal the devastating destruction of Kyaukpyu, a town on the west coast of the Philippines, resulting in the loss of 811 buildings and houseboats. Their Sein's spokesperson reported incidents of villages and towns being burned down, with the death toll initially set at 112, but later revised to 67.²⁰ Human Rights Watch reports 633 buildings and 178 houseboats destroyed in the Rohingya-occupied area. Nobel laureate Aung San Suu Kyi's committee of MPs has called for swift legal action against those responsible for the recent killings and destruction.²¹ In 2016, Myanmar's army crackdown on Rohingya Muslims may have resulted in over 1,000 deaths, according to senior UN officials, indicating a higher death toll than previously reported.²² Myanmar's presidential spokesman, Zaw Htay, reported that less than 100 people were killed in a counterinsurgency operation against Rohingya militants who attacked police border posts in October 2016.²³ After this latest persecution, around one million Rohingya people left Rakhaine state of Myanmar and have taken shelter in different Camps in Cox's Bazar district of the neighbouring country Bangladesh.

5. THE REFUGEE STATUS OF ROHINGYA UNDER INTERNATIONAL REFUGEE LAW

The 1951 convention "is both a status and rights-based instrument and is underpinned by a number of fundamental principles, most notably non-discrimination, non-penalization and *non-refoulement*." The 1951 Convention on the Status of the Refugees defined the term Refugee as a person who flees to a foreign country or power to escape danger or persecution "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, owing to such fear, is unwilling to avail himself of the protection of that country; or who not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it." Another important procedure is the 'Subjective test' and 'Objective test'. The Rohingya must refer to the 'fear of persecution', which is called the subjective test and suggest the fear is well-founded, which called the objective test. Now the question will come

²⁰ Supra Note. 17.

²¹ Ibid.

²² More than 1,000 Rohingya is feared to have been killed in Myanmar crackdown, say UN officials, *The Guardian*, 2017, <https://www.theguardian.com/world/2017/feb/09/more-than-1000-rohingya-feared-killed-in-myanmar-crackdown-say-un-officials>.

²³ Ibid.

to mind whether the Rohingya are fulfilling any element of the 1951 Refugee Convention and whether they can justify the subjective and objective tests. If we analyse the reasons, why Rohingya fled from Myanmar to various countries, particularly to Bangladesh we can easily find out that the main reason is religion. The Rohingya are Muslims in majority by religion and they were tortured by Buddhist people and also persecuted by the security forces of Myanmar. The Myanmar Border Guard Police (BGP) is involved in torturing, killing Rohingya and looting their property. It's clear that the "well-founded fear" is present in the situation of Rohingya in Myanmar. From the historical analysis it is clear that the only reason for such torture is the religion of the Rohingya in Arakan State in Myanmar. There is no doubt that the Rohingya have lost their national status by the government because of their religious belief, which satisfies the elements of the definition of refugee under article 1 of the 1951 Convention on the Status of the Refugees. The Rohingya are living in Bangladesh under temporary protection.

6. IMPORTANCE OF THE RIGHT TO LIFE UNDER INTERNATIONAL LAW

The right to life is a very broad term. It is defined under the international legal system, including the Universal Declaration of Human Rights (UDHR) 1948, The American Declaration of the Rights and Duties of Man 1948 and the European Convention of Human Rights (ECHR) 1953. These three international law instruments defined the term *right to life* at the very beginning of the end of the Second World War. The right to life, as described by the French League of Rights of Man before World War II, includes the right of mothers, children, women, old men, sick men and invalids to consider and care and supplies necessary for their social roles, physical and moral development and protection from exploitation.²⁴ The right to live includes limited work opportunities, fair compensation, access to scientific and technological progress, intellectual, artistic and technical development and care for those unable to work, ensuring equitable distribution and distribution of well-being.²⁵ Contemporary sources suggest that the right to life, as a legally enforced right, has modest dimensions. Article 6 of the International Covenant on Civil and Political Rights (ICCPR) states that every human has an inherent right to life and the death penalty is not imposed on minors or pregnant women. Article 2(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, asserts the

²⁴ HUGO BEDAU: The Right to Life. *The Monist*, 52(4)/1968, 551.

²⁵ Georges Gurvitch: *The Bill of Social Rights*. New York, International Universities Press, 1946. 17-18.

same interpretation of the right to life as ICCPR stated in article 6. It stated that everyone's right to life is protected by law, except in court sentences for crimes provided by Article 6 of the International Covenant on Civil and Political Rights. During the Great Depression, historians cautiously noted that the right to life could be seen as an individual's emergency claim on society for sustenance.²⁶

The Human Rights Committee on article 6 of ICCPR describes the right to life in its General Comment as the deprivation of life involves intentional harm or injury, including physical or mental harm.²⁷ Article 6 of the International Covenant on Civil and Political Rights protects the right to life for all human beings, even in armed conflict or emergencies. This fundamental right is crucial for individuals and the society, and its effective protection is necessary for the enjoyment of other human rights. It ensures individuals are free from unnatural or premature death and enjoy a life with dignity. The Inter-American Court of Human Rights ruled in *Villagran Morales V. Guatemala* that human rights encompass not only the right to life without arbitrary deprivation but also access to dignified living conditions.²⁸ The right to life is a distinct right involving liberty, self-development and self-perfecting. It is a fundamental aspect of other rights, as a deprivation of life results in loss of liberty, self-improvement and other rights, thus distinguishing it from other rights.²⁹ The right to life is often argued as an absolute, inviolable right, particularly by Roman Catholic moralists.³⁰ It is never lawful to terminate human life, and only in the hope of preserving or prolonging it can it be justified. The individual's life is sacred, and no human power can licitly kill an innocent person for any purpose. The State cannot put an unoffending man to death for its own existence.³¹ The death-with-dignity movement aims to overturn the state's monopoly on lethal force and undermine the fundamental liberty idea of securing and protecting the right to life for everyone, regardless of their mental and physical capacity, by allowing assisted suicide and euthanasia.³² Article 31 of the 1951 Convention on the Status of the Refugee protects the right to life of the refugees. The member States shall not

²⁶ CRANE BRINTON: Natural Rights. *Encyclopedia of Social Science*, 11/1933, 301.

²⁷ General comment No. 36, Human Rights Committee, September 2019, This general comment replaces general comments No. 6, adopted by the Committee at its sixteenth session (1982), and No. 14, adopted by the Committee at its twenty-third session (1984). Available at: CCPR/C/GC/36.

²⁸ ELIZABETH WICKS: The Meaning of 'Life'. Dignity and the Right to Life in International Human Rights Treaties. *Human Rights Law Review*, 12(2)/2012, 202.

²⁹ H.J. McCLOSKEY: The Right to Life. *Mind*, 84(335)/1975, 404.

³⁰ *Ibid.* at 422.

³¹ McCLOSKEY 1975, 422.

³² LEON R. KASS: The Right to Life and Human Dignity. *The New Atlantis*, 16/2007, 24.

impose penalties on refugees from threatened territories who enter or remain in their territory without authorization, provided they present themselves and show good cause. Restrictions on refugees' movements are necessary until their status is regularized or they obtain admission into another country, with reasonable periods and necessary facilities.

7. THE RIGHT TO LIFE AND TORTURE AS *JUS COGENS* NORM IN INTERNATIONAL LAW

The right to life is a fundamental aspect of international law, enshrined in treaties, customs and *jus cogens*. Despite its importance, life remains cheap in many parts of the world, often due to excessive force or failure to investigate homicides.³³ Article 53 of the VCLT is enough to understand the importance of the *juscogens* norm. It stated that a peremptory norm is a norm of general international law that the international community of states of the United Nations has accepted and recognized as such. Approaching the right to life as a norm of *jus cogens*, the content of which is to be found in customary international law, reflecting the conscience of mankind, the great codified rights strengthen this most fundamental human right. For example, Article 3 of the Universal Declaration of Human Rights stated that “Everyone has the right to life, liberty and security of person”. article 6(1) of the International Covenant on Civil and Political Rights provides that, “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”, article 2(1) of the European Convention of Human Rights and Fundamental Freedoms stated that, “Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law”, and article 4(1) of the American Convention of Human Rights stated that, “Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life”. A particularly significant illustration of the application of *jus cogens* can be seen in the Report on Human Rights in Chile, wherein the right to life was held to be a fundamental right in any society, irrespective of its degree of development or the type of culture’. Accordingly, the report concludes: The international community therefore considers the right to life in the context of *jus cogens* in international human rights law. It follows that its preservation is an essential function of the State, and numerous provisions of national legislation,

³³ CHRISTOF HEYNS – THOMAS PROBERT: Securing the Right to Life. A cornerstone of the human rights system. *EJIL Talk*, <https://www.ejiltalk.org/securing-the-right-to-life-a-cornerstone-of-the-human-rights-system/>.

including Chilean legislation, establish guarantees to ensure the protection of this right. The position defended by the contributors is that the right to life is an imperative norm, a peremptory right, that is, *jus cogens*. The ILC Draft Conclusion 4 of the Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (*jus cogens*) stated that, a peremptory norm of general international law (*jus cogens*) is a norm accepted by the international community of States, allowing no derogation and only modifiable by a subsequent norm of the same character. The Conclusion 5 stated that, The International Law Commission (ILC) identifies customary international law as the most common basis for peremptory norms of general international law, with treaty provisions and general principles also potentially serving as bases. Precisely, the “right to life” is a norm of customary international law or a general principle of international law that transcends particular positions, as this right is codified in specific international conventions. Human rights lawyers are not restricted by specific conventions or declarations but must utilize all available evidence and practice within the international community. The further innovation becomes the scope, or the outer limits of the right to life. Nevertheless, two aspects of this right to life must be considered, as the contributors so aptly demonstrate. The physical existence of mankind must be guaranteed as a norm of *jus cogens*, which states cannot derogate, even during emergencies and warfare. Simultaneously, the “right to living” mandates maintaining a minimum quality of life. Governments have a legal duty to provide minimum subsistence levels. Obviously, the problem of setting such levels must, necessarily, be determined in each case, yet the significant consideration is that governments are required “to pursue policies which are designed to ensure access to the means of survival for every individual within its country.” Related subject matter areas, such as the right to peace, the right to survival, and the right to a safe environment are applicable. Environmental hazards must not be minimized because the interrelationship between the right to live and the right to a pure and clean environment are inseparable. Not only is a strict duty imposed on states, but a legal obligation – a right *erga omnes* – is imposed on the international community. As a result, measures must be taken by international and regional organizations to prevent those environmental defaults that endanger the lives of human beings. Here, then, one of the newer human rights becomes an essential phase of the larger safeguard of human life. All too obviously, uncontrolled pollution has the potential not only of destroying flora and fauna but also mankind: it is humans who have become the endangered species.

The International Court of Justice ruled that any state’s sovereignty-based reservation to the Genocide Convention is illegal, stating that genocide goes against moral law and UN aims. The International Court of Justice ruled that

the principles of the Convention are recognized by civilized nations as binding on States and that the contracting States have a common interest in achieving the high purposes of the Convention.³⁴ The International Court of Justice ruled in the Barcelona Traction case that states have obligations to the international community, including the prohibition of acts of aggression and genocide, as well as protection from slavery and racial discrimination. In 1973, Judge Fitzmaurice outlined “sundry current manifestations of naturalist-universalist thought and the principle of cooperation,” including non-resort to force, non-recognition of situations involving force, and interdiction of crimes against peace and humanity.³⁵ Hersch Lauterpacht, Judge on the International Court of Justice, then Special Rapporteur to the International Law Commission, included in his 1953 Report on the Law of Treaties a draft article 15 reading: “A treaty, or any of its provisions, is void if its performance involves an act which is illegal under international law and if it is declared so to be by the International Court of Justice.” The object’s illegality and nullity are not due to a mere violation of customary international law but to inconsistencies with overriding principles of international public policy. Article 3 of the Universal Declaration of Human Rights (UDHR) aims to safeguard for everyone’s inalienable right to life. However, the world has witnessed horrific human rights violations for a long time, including in 2013 and the latest persecution in the late 2016 and the first half of 2017 during the persecution against Rohingya in Myanmar. In 2013, The Myanmar Police fired and killed pregnant Rohingya Women.³⁶ Thousands of Rohingya have been killed, including women and children; people have been beaten and tortured; girls and women raped; houses and other properties burned.³⁷ Four Rohingya children, two of them were eight and two were ten years of age, were killed in a landmine explosion in Myanmar’s western Rakhine state.³⁸ A Rohingya woman Noor Ayesha said that her five children were burnt to kill by the Myanmar Security Forces and they killed her two daughters after being raped in 2016 during persecution.³⁹ The UNICEF

³⁴ MARJORIE M. WHITEMAN: *Jus cogens* in International Law, with a Projected List. *Georgia Journal of International and Comparative Law*, 7(2)/1977, 609.

³⁵ *Ibid.* at 611.

³⁶ Three Rohingya women killed in Burma shooting, 5 June 2013, *BBC News*, <https://www.bbc.com/news/world-asia-22780085>.

³⁷ S. K. BEHERA – G. S. NAG (eds.): *The Rohingya crisis mapping the conundrum and challenges of peace building: Selective South Asian perspectives*. Lulu Publication, 2021. 85-106.

³⁸ KYAW YE LYNN: Landmine kills 4 Rohingya children in Myanmar, 2020, <https://www.aa.com.tr/en/asia-pacific/landmine-kills-4-rohingya-children-in-myanmar/1694946#>.

³⁹ Burmese military killed seven of my children, says Rohingya refugee, *The Guardian*, 2016, <https://www.theguardian.com/world/2016/dec/10/burmese-military-killed-seven-of-my-children-says-rohingya-refugee>.

stated that 143 children were killed or wounded in numerous civil wars being fought along Myanmar's porous borders.⁴⁰ A survey conducted by Médecins Sans Frontières (MSF) in refugee settlement camps in Bangladesh estimated that at least 9,000 Rohingya were killed in the Rakhine state of Myanmar between 25 August and 24 September 2016 during the persecution by Myanmar Security Forces.⁴¹ 71.7% of reported deaths were violence-related, resulting in at least 6,700 deaths, including 730 children under five.⁴²

Therefore, article 6 of the Convention on the Rights of the Child (CRC) states that the state parties recognize that every child has the inherent right to life and they will ensure the survival and development of the child to the maximum extent possible. Myanmar ratified the CRC. As a member state of the CRC, Myanmar has responsibility to protect children's inherent right to life. But instead of protecting, they have killed thousands of children. Article 10 of the Convention on the Rights of Persons with Disabilities affirms the inherent right to life, emphasizing equal enjoyment for all individuals with disabilities. Article 4 of the African Charter on Human and Peoples' Rights asserts that all individuals are inviolable and entitled to respect for their life and integrity. Article 2 of the European Convention on Human Rights states that everyone's right to life shall be protected by law. Article 2 of the European Charter of Fundamental Rights states that everyone has right to life, even restricting the death penalty. The Human Rights Committee under ICCPR in its General Comment No. 36 states that, States have a duty to protect life by addressing social conditions, ensuring access to essential goods and services, raising awareness of gender-based violence, and improving access to medical examinations and treatments designed to reduce maternal and infant mortality. The right to life is a fundamental human right recognized worldwide as a necessary prerequisite for the enjoyment of all other human rights.⁴³ The Inter-American Court of Human Rights (IACHR) emphasized the human right to life, stating that every individual has an inalienable right to be respected and not arbitrarily deprived of it.⁴⁴ The right to a healthy environment and peace are seen

⁴⁰ SHOON NAING: Four Rohingya children killed in blast in Myanmar's Rakhine state. *Reuters*, 2020, <https://www.reuters.com/article/us-myanmar-rohingya-explosion-idUSKBN1Z61K1>.

⁴¹ MSF surveys estimate that at least 6,700 Rohingya were killed during the attacks in Myanmar, MSF, 2017, <https://www.msf.org/myanmarbangladesh-msf-surveys-estimate-least-6700-rohingya-were-killed-during-attacks-myanmar>.

⁴² Ibid.

⁴³ F. PRZETACZNIK: The Right to Life as a Basic Human Right. *Revue des droits de l'homme/Human Rights Journal*, 9/1976, 589, 603.

⁴⁴ IACHR, Advisory Opinion OC-3/83,, A/3. 1983. 53, 59.

as extensions or corollaries of the right to life.⁴⁵ The right to life, in its modern sense, protects against arbitrary life deprivation and mandates states to ensure survival through policies⁴⁶ for all individuals and all people. States are obligated to prevent severe environmental hazards or life-threatening risks by implementing monitoring and early-warning systems and urgent-action systems to detect and address such threats.⁴⁷ The First European Conference on the Environment and Human Rights (1979) emphasized the need for humankind to protect itself from environmental threats that negatively impact life, health, and future generations.⁴⁸ The right to life, in its broadest sense, necessitated the recognition of the right to a healthy environment.⁴⁹ The right to a healthy environment protects human life through its physical existence, health, dignity, and quality of life, making it worth living.⁵⁰ The right to life and a healthy environment is broadened by the characterization of threats against these rights, necessitating a higher level of protection.⁵¹ The maintenance of peace is imperative for the preservation of human life which has been expressed in the UN Charter (preamble and Articles 1 and 2) and the UNESCO Constitution (preamble and Article I).

8. THE ACCOUNTABILITY OF MYANMAR UNDER INTERNATIONAL LAW

The UN was established after the mass destruction of human civilization after the Second World War. The object and purpose of establishing the UN is to promote and protect international peace and security in accordance with the Charter of the United Nations. Member states are committed to respecting international principles enunciated in the charter of the United Nations. Myanmar, as a member state of the UN, is bound to respect the principle of the UN Charter. But it is very unfortunate that Myanmar has not shown respect to protect human rights and peace within its territory for a long time. Continuously, the country is violating

⁴⁵ B. G. RAMACHARAN: The Right to Life. *Netherlands International Law Review*, 30(3)/1983, 303, 308-310.

⁴⁶ Ibid. at 302.

⁴⁷ Supra Note. 31, at 304, 329.

⁴⁸ P. KROMAREK: Le droit à un environnement équilibré et sain, considéré comme un droit de l'homme: sa mise-en-oeuvre rationnelle, européenne et internationale. Conférence européenne sur l'environnement et les droits de l'homme, 1979. 2-3, 31.

⁴⁹ Ibid. at 13.

⁵⁰ Ibid. at 12.

⁵¹ J.T.B. TRIPP: The UNEP Montreal Protocol: Industrialized and Developing Countries Sharing the Responsibility for Protecting the Stratospheric Ozone Layer. *New York University Journal of International Law and Politics*, 20/1988, 734.

the human rights of Rohingya and the security forces and the Buddhist extremist groups are persecuting the Rohingya people. In the persecution of 2017, around one and a half million Rohingya crossed the border and took shelter in the neighboring country Bangladesh. Women were raped and tortured, men were also tortured. Bangladesh opened its border for the Rohingya to protect their human rights and to respect international law. The principle of *non-refoulement* has been recognized as a peremptory norm of international law and is therefore binding on the destination states despite the fact that they are not a member of the 1951 Convention relating to the Status of Refugees. The principle of “*Non-refoulement*” is a very protective principle for the refugees. It is considered as the most fundamental principle of international refugee law. *Non-refoulement* shall be considered as a peremptory norm when there is possibility of non-discrimination, genocide, use of force, crime against humanity or slavery. In the Rohingya issue, Bangladesh forcefully refouled the Rohingya to Myanmar and there is a high possibility of persecution or crime against humanity when this happened to the Rohingya by the Myanmar security forces or its citizens. The peremptory norm is an overriding principle, where no derogation is permitted. According to ELIHU LAUTERPACHT and DANIEL BETHLEHEM, “*Non-refoulement* is a concept which prohibits States from returning a refugee or asylum seeker to territories where there is a risk that his/her life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group, or political opinion.”⁵² Article 33(1) of the 1951 UN Refugee Convention states that, “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” *Non-refoulement* is a non-derogable right of the refugees. It’s ensured by the 1951 refugee Convention. Article 42(1) of the 1951 refugee convention specifically provides that the states cannot make reservation on article 33, which deals with the principle of *Non-refoulement*. Article III(5) of the Cartagena Declaration 1984 provided that the principle of *non-refoulement* as a “cornerstone of the international protection of refugees” and stated that “*this principle is imperative in regard to refugees and in the present state of international law should be acknowledged as jus cogens.*” The General Conclusion (Conclusion No-25(xxxiii)-1982) of the Executive Committee on the International Protection

⁵² ELIHU LAUTERPACHT – DANIEL BETHLEHEM: The Scope and Content of the Principle of Non-Refoulement. Opinion. In: ERIKA FELLER – VOLKER TÜRK – FRANCES NICHOLSON (eds.): *Refugee Protection in International Law. UNHCR’s Global Consultations on International Protection*. Cambridge University Press, 2003. 87-177. 89, <http://www.refworld.org/docid/470a33af0.html>.

of Refugees, 1982, “reaffirmed the importance of the basic principles of international protection and in particular the principle of non-refoulement which was progressively acquiring the character of a peremptory rule of international law”.

Myanmar ratified the VCLT, 1969 in 1992. So, Myanmar has the obligation to respect articles 53 and 64 of this Convention. Myanmar is torturing and killing the Rohingya population inhumanely. Myanmar Security Forces set their houses on fire and forcefully deported them to the neighboring country, particularly to Bangladesh, which is the violation of the Rome Statute. According to the Rome Statute “Attack directed against any civilian population means a course of conduct involving the multiple commissions of acts against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack”. The contextual element is that the ‘acts’ provided under article 1 of the Rome Statute will be considered as Crimes Against Humanity if the ‘act’ is committed as ‘Widespread or Systematically’, with the knowledge of the consequences of such attack (mental element), against any civilian population. The victim of ‘Crimes Against Humanity’ can be any resident regardless of their association or identity. In the situation of Rohingya in Myanmar, the Myanmar Military Ruler ‘Systematically’ denied citizenship from Rohingya in 1982 by adopting the “1982 Citizenship Act”; though they were citizens, even if they had been members of parliament as well, but since then they are “Stateless”. The Citizenship Act excluded Rohingya as Nationals.⁵³ They have been forced to de-Islamize themselves, physical extermination through genocide and ethnic cleansing took place against the Rohingya.⁵⁴ The main intention of the military junta is to establish a Burmese Buddhist Arakan by destroying Rohingya Muslims in Arakan. The Security force, especially Nay-Sat-Kut-Kwey (NASAKA), of Myanmar is committing genocide against the Rohingya. NASAKA is formed by the Police, Military Intelligence, Lon Htein (internal security or Riot Police), Customs Officials, the Immigration and Manpower Department. The attack against Rohingya civilians was “systematic” and “widespread”, which satisfied the requirement of crime against humanity under international criminal law.⁵⁵ In 1915, the allied governments of France, Great Britain and Russia used ‘Crimes Against Humanity’ to condemn Armenian mass killings in the Ottoman Empire. Following World War 2, it was prosecuted at the International Military Tribunal in Nuremberg. Since then, it has evolved under Customary International Law. The prohibition of crimes against humanity is a ‘Peremptory Norm’ of international

⁵³ Supra Note. at 10.

⁵⁴ Ibid.

⁵⁵ Crimes Against Humanity in Western Burma: The Situation of the Rohingyas, , *Burma Campaign UK*, <http://burmacampaign.org.uk>.

law, allowing no derogation and applicable to all states. Article 53 of the Vienna Convention on the Law of the Treaties, 1969, states that a treaty is void if it conflicts with a peremptory norm of general international law. For the purposes of this, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character. Myanmar, which ratified the Convention in 1992, is violating these rules by torturing and killing the Rohingya population, setting their houses on fire and forcefully deporting them to neighboring countries, particularly Bangladesh. Arbitrary arrests, torture, custodial killings, rape, forced marriage, dishonouring of women, restriction on the socio-cultural and religious activities of the Rohingya are very common in Myanmar and as a consequence of this, millions of Rohingya left Arakan and have taken shelter in the neighboring country Bangladesh.

In March 2017, Yanghee Lee, the United Nations' Special Rapporteur for Human Rights in Myanmar, told the BBC that the government of Myanmar has to bear the responsibility for the "Systematic attack" against the Rohingya in Myanmar. She said, "I would say crimes against humanity. Definite Crimes Against Humanity by the Burmese, Myanmar military, the border guards or the police or security forces."⁵⁶ The United Nations conducted an interview with more than two hundred Rohingya who had fled from persecution in Myanmar, and prepared a report from the interviews. In this report the UN found that the security forces of Myanmar operated counter-military actions against Rohingya civilians and killed people, have brutally beaten them, raped women, and forcefully relocated them. On February 03, 2017, Former UN Human Rights Commissioner Zeid Ra'ad Al Hussein condemned the horrific cruelty done to Rohingya children, describing the mother's witnessing the murder of her child and the rape by security forces.⁵⁷ The OHCHR reported that the Security Force committed widespread human rights violations against Rohingya, which satisfied that the security force had committed crime against humanity.⁵⁸ On 6th February 2017, the former UN Special Adviser on the Prevention of Genocide, Adama Dieng, also said that the persecution of Rohingya could satisfy the elements of crime against humanity and that the scale of violence against Rohingya documented in the UN

⁵⁶ AMAN ULLAH: UN Commission of Inquiry for Myanmar, *The Stateless.com*, 2017, <https://www.thestateless.com/2017/03/un-commission-of-inquiry-for-myanmar.html>.

⁵⁷ "Devastating cruelty against Rohingya children, women and men detailed in UN human rights report", *OHCHR*, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21142>.

⁵⁸ *Ibid.*

report represents a level of dehumanization and cruelty that is “revolting and unacceptable”. It is expected from the United Nations to do justice to the Rohingya population and to take necessary actions to protect them.⁵⁹ UN Secretary-General Antonio Guterres mentioned the Rohingya as one of the world’s most discriminated individuals, lacking basic rights, including citizenship recognition by Myanmar.⁶⁰ The Special Representative of the Secretary-General on sexual violence in conflict, Ms. Pramila Patten, commented that the Rohingya people are the most persecuted people in the world.⁶¹ As a result of such persecution, their inalienable right to life is violated and thousand of Rohingya have been killed by the Myanmar Security Forces, different reports show. At least 34 of their houses got destroyed between January to March 2018 and 392 of their houses were burnt down and destroyed by the security forces between August 2017 and March 2018. Myanmar seized and bulldozed villages where Rohingya people lived and destroyed the proof of crimes they had committed and began to establish new bases for the security forces there.⁶² Under the Contentious Jurisdiction, the ICJ discussed the case brought by Gambia on 11th November 2019 against Myanmar for violating its obligations under the Genocide Convention through acts against the Rohingya population.

The ICJ has jurisdiction to hear the case under article IX of the Genocide Convention as the States that are parties to Genocide Convention have no reservations to article IX. Article IX of this Convention stated that, the International Court of Justice will be consulted for disputes involving the interpretation, application, or fulfillment of the Convention, including state responsibility for genocide. Gambia basically urged the ICJ to take provisional measures against Myanmar and declare that it has committed Genocide against the Rohingya under article II of the Genocide Convention. It defines Genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: Killing members

⁵⁹ Violence in Myanmar’s Rakhine state could amount to crimes against humanity, *The United Nations*, 2017, <https://news.un.org/en/story/2017/02/550942-violence-myanmars-rakhine-state-could-amount-crimes-against-humanity-un-special>.

⁶⁰ Transcript of Secretary-General’s remarks at press encounter with President of the World Bank, Jim Yong Kim, 2018, <https://www.un.org/sg/en/content/sg/press-encounter/2018-07-02/transcript-secretary-general%E2%80%99s-remarks-press-encounter>.

⁶¹ Human Rights Council opens a special session on the situation of human rights of the Rohingya and other minorities in Rakhine State in Myanmar, 2017, <https://www.ohchr.org/en/press-releases/2017/12/human-rights-council-opens-special-session-situation-human-rights-rohingya>.

⁶² ROTH KENNETH: Myanmar: Events of 2018, *Human Rights Watch*, 2019, <https://www.hrw.org/world-report/2019/country-chapters/burma>.

of the group; Causing serious bodily or mental harm to members of the group; Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; Imposing measures intended to prevent births within the group; Forcibly transferring children of the group to another group. In 2020, the Court found *prima facie* that a dispute existed between the Parties relating to the interpretation, application, or fulfillment of the Genocide Convention. Myanmar applied for time extension to submit a counter-memorial and the Court granted its extension to 24th August 2023. The trial should have been faster. Myanmar claimed that on August 25, 2017, ARSA militants attacked at least two dozen police posts and checkpoints and killed 11 members of the government Security Forces though the Rohingya community is denying such attacks. If we accept the claim of the Myanmar government that Rohingya 'terrorists' attacked the Security Forces of Myanmar, then how could Myanmar continue the brutal murders of Rohingya Muslims and set their houses on fire? If ARSA did such murders, Myanmar should have brought them under judicial trial and if they had been proven guilty, they would have been punished by the court of law. But what does Myanmar do instead of respecting and maintaining its National Legislation and respecting the International Human Rights Law as well as the principles of the charter of the UN is to protect international peace and security? The persecution of Rohingya by Myanmar Security Forces is not a new issue. It has been carried out since 1962 and until today it is going on. No one knows when, how or by whose leadership this persecution will be ended. Myanmar ratified the International Covenant on Economic, Social and Cultural Rights. The Rohingya populations do not get the basic right to education, which is a violation of article 13 and article 14 of this Covenant. Myanmar, as a member state of the prevention of discrimination on the basis of race, religion or belief; and protection of minorities, also has an obligation to ensure rights under this convention. Myanmar acceded to the convention on the elimination of all forms of discrimination against women. Myanmar also violated the principles contained in this convention by raping and torturing the women of the Rohingya community. The international community, especially the United States, China, Russia and the UK are silent about the genocide and crimes against humanity, which are going on against the Rohingya.

9. CONCLUSION

International law is developing, allowing states to admit refugees without fear of persecution, especially at their country's borders. However, admitting states may expel refugees, subject to treaty obligations, to another country.⁶³ The right to life is ensured under international human rights instruments. As human beings, the Rohingya people have their right to life, but in practice, Myanmar has deprived Rohingya people of the right to life for a long time. There are thousands of Rohingya who have been killed by Myanmar for a long time, but unfortunately, nothing happened to hold them accountable. It is time consuming to hold Myanmar accountable under international law, because the process of trying under international law is lengthy in nature. The issues may concern the International Court of Justice, which has the jurisdiction to deal with legal disputes submitted by states and provide advisory opinions on legal questions at the request of UN organs, specialized agencies, or related organizations, following international law. The ICJ provides advisory opinions on legal matters at the request of United Nations organs, specialized agencies, or related organizations authorized to make such requests. For this instance, the International Court of Justice has already taken the initiative in the Rohingya Genocide Case filed by Gambia. Bangladesh has taken some initiatives to return Rohingya refugees to Myanmar with the help of the UNHCR, but no positive progress has been seen. Without ensuring the safe place it is prohibited to return refugees to another country. Article 14 of the Convention Concerning Migration for Employment (Revised 1949) and the Model Agreement on Temporary and Permanent Migration for Employment prohibit the compulsory return of refugees to their country of origin. The United Nations General Assembly's Resolution (Resolution 8(I) of February 12, 1946, states that no refugees or displaced persons should be forced to return to their country of origin if their life or freedom is threatened for political, religious, or racial reasons. Myanmar also committed crimes against humanity to Rohingyas as it is very clear and satisfies the elements of crimes against humanity under article 7 of the Rome Statute. It stated that, Crime against humanity refers to acts committed in a systematic attack on civilian populations, including murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution, enforced disappearance, apartheid, and other inhumane acts. The term 'attack directed against any civilian population' refers to a course of conduct involving multiple acts against civilians, aimed at committing such attacks, and

⁶³ PAUL WEISS: The International Protection of Refugees. *The American Journal of International Law*, 48(2)/1954, 199.

is a violation of international law. Therefore, Rohingya refugees are living in different refugee camps in Cox's Bazar in Bangladesh. The living conditions are not good. There are shortages of food and medical care, which must be ensured for the lives of every person. Unfortunately, the donations are insufficient to accommodate this large number of vulnerable people and to provide their basic necessities. They don't have educational rights in Bangladesh, but they can access primary education in the Rohingya dialect within the camps with the help of different NGOs and with the support of the UNHCR. In exceptional cases, some Rohingya students get access to higher education in Bangladesh under the direct supervision of the UNHCR. They are engaging in smuggling and different crimes within the territory of Bangladesh. It creates security problems for Bangladesh. When they are engaged in crimes, they become more vulnerable. Moreover, there is no hope for a permanent solution in the near future. Their basic human rights are under shadow. No one cares about their right to life.

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