

The International Humanitarian Law Principles and Its Applicability to Rohingya Situations?

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I. Prelude

Law of war determines the rights and duties of belligerent parties in operations and limits the choice of means in doing harm. This law proclaims rules relating to the means and methods of warfare and examines the issue of military object. In peacetime, human rights principles are applied to the citizens, in war time, however, the citizens are regulated by humanitarian laws. Humanitarian law aims to limit the suffering caused by war by regulating the way in which military operations are conducted. International Humanitarian Law (IHL) often referred to as the law of war, the laws and customs of war or the law of armed conflict. The law originated and comprised with the Geneva Conventions and the Hague Conventions as well as subsequent treaties, case law and customary international law. Every State has some responsibility to investigate and, if appropriate, prosecute all war crimes allegedly committed by its nationals or armed forces, or on its territory, as well as other war crimes over which it has jurisdiction. In Myanmar context, for example, it can be said that, Myanmar owes a duty to see that its military commanders do not commit grave breaches of IHL and other war crimes and to take action against those under their control who commit ethnic cleansing or violence against the *Rohingya* community.

II. Humanitarian Law and its Fundamentals

The fundamental principles of humanitarian law are to limit the suffering caused by war by forcing parties engaged in a conflict to engage in limited methods and means of warfare. Its aim is to differentiate between civilian population and combatants and work to protect civilian population and property. Humanitarian law also prevents harming or killing an adversary who surrenders or who can no longer take part in the fighting. According to IHL, the hostile groups must not torture physically or mentally or inflict cruel punishments on adversaries. International humanitarian law defines the conduct and responsibilities of belligerents i.e. an individual,

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group, country or other entity which acts in a hostile nature. Sometimes nations, neutral nations and individuals engaged in warfare, in relation to each other and to protected persons, usually meaning civilians.²

II.I. Objectives of IHL

Primarily armed conflicts are classified as falling into two categories as international and non-international armed conflicts.³ Meron describes this categories as "... a crazy quilt of norms that would be applicable in the same conflict, depending on whether it is characterized as international and non-international..."⁴

The fundamental aim of IHL is to maintain a compromise between two conflicting interests namely between military necessity and humanity. Again, Rousseau wrote in his 'The Social Contract':

... war was not a relationship of man with man but a relationship between states in which individuals are only enemies by accident, not as men but as soldiers, once they lay down their arms, they once again become mere men, and their lives must be spared.⁵

Humanitarian law is the branch of public international law that comprises the rules, which, in times of armed conflict and should not include unnecessary destruction to civilian people. IHL principles are mainly contained in international treaties and legally binding customs on international community.⁶ It has two main branches and it draw their names

² Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Vol.1 (Cambridge: Cambridge University Press, 2005), p.49-59.

³ International humanitarian law applies different rules depending on whether an armed conflict is international or non-international in nature. Lotta Harbom and Peter Wallensteen, 'Armed Conflict and Its Fundamental Humanitarian Dimensions' in *Journal of Peace Research*, Vol 42, No 5 (Sep., 2005) pp. 623-635.

⁴ Theodore Meron, 'The Humanization of Humanitarian Law' in *American Journal of International Law*, p 242.

⁵ Jean-Jacques Rousseau, 'Ideal Empires and Republics' in *The Social Contract* accessed from <http://oll.libertyfund.org/titles/2039> on 12 December 2017.

⁶ The ICRC Study on Customary IHL applicable in Armed Conflicts has codified widely dispersed legally binding customary rule which regulate international and non-international armed conflict situations. The study contains the customary rules of IHL with a short commentary, as well as indications of trends in practice where no clear rule of customary international law has yet emerged.

from the cities where each was initially codified: namely Geneva law and Hague law. The two Additional Protocols of 1977 combine both branches of law to a great extent. The fundamental objectives of IHL is:

- seek to protect persons who are not or are no longer taking part in the hostilities and the prohibition to attack those *hors de combat*,
- restrict the methods and means of warfare employed, and resolve matters of humanitarian concern resulting from war.
- Wars should be brought to an end as quickly as possible;
- People and property that do not contribute to the war effort should be protected against unnecessary destruction and hardship;
- The law of war is binding not only upon States as such but also upon individuals and, in particular, the members of their armed forces.
- Parties are bound by the laws of war to the extent that such compliance does not interfere with achieving legitimate military goals.

III. IHL Principles from Ancient Teaching

The humanitarian ideas and concepts formalized in humanitarian law treaties are shared by many different schools of thought, religious teaching and cultural traditions. These international dimensions of IHL should never be underestimated or forgotten: very often respect for and implementation of the rules will in fact depend on the establishment of a clear correlation between the applicable treaties and local traditions or customs. This leads to an awareness that humanitarian principles are common to all human communities wherever they may be. When different customs, ethics and philosophies are gathered for comparison, and when they are melted down, their particularities eliminated and only what is general extracted, one is left with a pure substance which is the heritage of all mankind.⁷

Hinduism

The Laws of Manu depicts a beautiful Hindu mind on the ways to behave during war. It says show honour and mercy and must not attack the elderly,

⁷ PICTET Jean, "Humanitarian Ideas Shared by Different Schools of Thought and Cultural Traditions", in *International Dimensions of Humanitarian Law*, Geneva, Dordrecht, Henry Dunant Institute, M. Nijhoff, 1988, pp. 3-4

women or children.⁸ Manu illustrate who are asleep or who have surrendered should not attack them. Some Hindus believe the *Mahabharata* teaching itself from the Lord *Krishna*. He expresses the Hindu attitude to war and peace through the story of the terrible dilemma faced by *Arjuna*. *Krishna* gave him the advice that this war is not against his cousins it is fight for a just war to overcome evil forces. *Krishna* reminds *Arjuna* that to fight for peace, justice and truth is to fulfill the law of God.⁹ Hinduism is the essence of all that wisdom handed down to generations after generations. These ideas have shaped and guided the Hindu socio-religious life for centuries. The essence of dharma is the distinction between good, supporting the cosmic order, and evil, which poses a threat to this order. Accordingly, the preservation of good at the cost of a war was justified in ancient Vedic society.¹⁰ Vedic and *Upanishadic* literature abounds in ideas that proclaim universal oneness and universal well-being. 'No one is superior or inferior; all are brothers; all should strive for the interest of all and progress collectively'.¹¹

Buddhist teachings

The principle of non-violence is central to Buddhist teachings. Buddhism was established in about 500 BC. Buddhism began with a prince called *Siddhartha Gautama*. *Siddhartha* belonged to an aristocratic family. As a prince he had lot of wealth. He never left his palace. At some point *Siddhartha* began to leave his palace and behold for the first time poverty, sickness and misery. After seeing this *Siddhartha* lost interest in his spoiled life and left his palace forever and gave his rich personal belongings to the needy. He joined a group of ascetics who were searching for enlightenment. People who do not accomplish their desirable passions in their lives will be born again to this life circle which is full of suffering and so will far-away themselves from the world of no suffering - Nirvana. To get Nirvana, one has to follow the eight-fold path which are to believe right, desire right, think right, live right, do the right efforts, think the right thoughts, behave

⁸Surya P. Subedi, The Concept in Hinduism of 'Just War' in *Journal of Conflict and Security Law*, Volume 8, Issue 2, (Oxford: Oxford University Press, 2003) 1 Pages 339-361.

⁹ BBC News, Hinduism: attitudes towards fighting and warfare, <http://www.bbc.co.uk/schools/gcsebitesize/rs/war/hinduismrev2.shtml>

¹⁰SubediSurya P., "The Concept in Hinduism of 'Just War'", in *Journal of Conflict and Security Law*, Vol. 8/2, October 2003, pp. 339-361.

¹¹*RigVeda, Mandala-5, Sukta-60, Mantra-5*

right and to do the right meditation. Professor *Gananath Obeyesekere* at Princeton University said that “in the Buddhist doctrinal tradition... there is little evidence of intolerance, no justification for violence, no conception even of 'just wars' or 'holy wars.' ... one can make an assertion that Buddhist doctrine is impossible to reconcile logically with an ideology of violence and intolerance”.¹²

The Dalai Lama said “Buddha always teaches us about forgiveness, tolerance, compassion. If from one corner of your mind, some emotion makes you want to hit, or want to kill, then please remember Buddha's faith. We are followers of Buddha”. He said that “All problems must be solved through dialogue, through talk. The use of violence is outdated, and never solves problems.”¹³

Christianity

The Bible says that man is created in the image of God (Genesis 1:27). Because of this, man has a certain dignity and was given dominion over the rest of creation (Genesis 1:26). The image of God in man also means that murder is a most heinous crime. “Whoever sheds the blood of man, / by man shall his blood be shed; / for in the image of God / has God made man” (Genesis 9:6). A Christians should work to combat human rights abuses and to promote the welfare of all people. As they preach the Gospel around the world, they are digging wells, planting crops, giving clothes, dispensing medicine, and providing education for the destitute. This is as it should be. There is a sense in which the Christian has no “rights” of his own, because he has surrendered his life to Christ. Christ “owns” the believer. “You are not your own; you were bought at a price”

Islamic Teaching

The companions of the Prophet Mohammad (570-632AD) and succeeding generations of jurists take hold of the logic guiding the prohibition against targeting five categories of people, and provided non-combatant immunity for other categories of people as well, such as the sick, the blind, the

¹² Just War in Religion and Politics, Neusner, Chilton & Tully, UPA Publishers 2013, p. 181.

¹³ 14th Dalai Lama (10 December 2012). "Buddhist Leaders Respond To Violence Against Muslims In Myanmar". *huffingtonpost.com. The Huffington Post*. Retrieved 19 June 2015.

incapacitated, the insane, farmers, traders, and craftsmen.¹⁴ According to the Qur’ān 2: 190: “And fight in the way of God those who fight against you and do not transgress, indeed God does not like transgressors.”¹⁵ According to the Qur’ān 5:32: “For that We have decreed upon the children of Israel that whosoever kills a human soul except in retribution of committing fasād (destruction, damage) in the land, it shall be as if he killed all of humanity, and whosoever saves it [a human soul] it shall be as if he saved all of humanity.”¹⁶ The first caliph Abu Bakr (d. 634) instructed his army commander thus: “do not cut down fruit-bearing trees; do not destroy buildings; do not slaughter a sheep or a camel except for food; do not burn or drown palm trees.” The eighth-century jurist Al-Awzā’ī (d. 774) declared: “it is prohibited for Muslims to commit any sort of takhrīb, wanton destruction, [during the course of hostilities] in enemy territories”.

IV. Genocide in World History

In the past 150 years, tens of millions of men, women and children have lost their lives in genocide or mass atrocities. Millions have been tortured, raped or forced from their homes. Every peaceful minded people must remember and take action to end genocide. In between 1915 to 1923 more than 1.5 million ethnic Armenians have killed by the government of the Ottoman Empire.¹⁷ In 1933 the Holocaust was planned by the Nazi Party in Germany which killed six million Jews and others aimed at ethnically "purifying" Germany by *Edlof Hitler*.¹⁸ In Cambodia Khmer Rouge took power in 1975 and started a "re-education" campaign targeting political dissidents. In between 1975 to 1979 citizens including doctors, teachers, students more than 1.7 and 2 million Cambodians died by the notorious Khmer Rouge.¹⁹ Civil war broke out in Rwanda in 1990, exacerbating tensions between the

¹⁴ SultanHamed, “The Islamic Concept” in International Dimensions of Humanitarian Law, Geneva, Henry Dunant Institute, UNESCO, 1988, p. 32.

¹⁵ *Al Qur’ān*, Surah Bakara verse 190.

¹⁶ *Al Qur’ān*, Surah Meyeda Verse 32.

¹⁷ Don Melvin, CNN News, April 27, 2015, things to know about the mass killings of Armenians 100 years ago

Accessed from <http://edition.cnn.com/2015/04/23/world/armenian-mass-killings/index.html> visited on 5 October 2017.

¹⁸ Vladimir Solonari, *Purifying the Nation: Population Exchange and Ethnic Cleansing in Nazi-Allied Romania* (Washington: Johns Hopkins University Press, 2010) p. 12.

¹⁹ Patrick Heuveline, ‘Between One and Three Million’: Towards the Demographic Reconstruction of a Decade of Cambodian History (1970–79)’ in *A Journal of Demography*, Volume 52, 1998 - Issue 1

Tutsi minority and Hutu majority. The republic of Bosnia and Herzegovina (Bosnia) declared independence in 1992. In between 1992 to 1995, the Serbs targeted Bosniak and Croatian civilians in areas under their control in a campaign of ethnic cleansing. The war in Bosnia claimed the lives of an estimated 100,000 people.²⁰ The world also has witnessed the Government of Sudan carried out genocide against Darfuri civilians, murdering 300,000 and displacing over 2 million people.

IV.I. Differences among Ethnic Cleansing, Genocide, and Crime Against Humanity

We should remember Article II of the Genocide Convention²¹ and there are differences between ethnic cleansing and genocide. Ethnic cleansing may be mere dissolution of a group from their houses without physical destruction. The expulsion of a group or part of a group does not in itself suffice for genocide. The basic differences between crimes against humanity²² and genocide is as like Crimes against humanity focuses on the

²⁰ Gearóid Ó Tuathail & John O'Loughlin, 'After Ethnic Cleansing: Return Outcomes in Bosnia-Herzegovina a Decade Beyond War' in *Annals of the Association of American Geographers*, Volume 99, 2009 - Issue 5, 10 Nov 2009.

²¹ Convention on the Prevention and Punishment of the Crime of Genocide, 1948. Article II: In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.

²² Article 7 of Rome Statute of the International Criminal Court, 1998 says, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in

killing of large numbers of individuals. The systematic, mass killing of a very large number of individuals will constitute a crime against humanity. Genocide has a different focus. Genocide focuses not on the killing of individuals, but on the destruction of groups. In other words, a large number of individuals who form part of a single group. And the two concepts in this way have different objectives. One aims at protecting the individual; the other aims at protecting the group. *Rohingya* people who reside in Myanmar are targeted as a group destruction as because of a part of ethnic community also are collectively denied citizenship. As like anyone identifying or identified as *Rohingya* – pursue claims to be national races or *taingyintha* so as to rejoin the community and denied by the Government.²³

V. Historical Background of IHL

V.I. *The Law of The Hague*

The Hague Conventions were two international treaties negotiated at international peace conferences at The Hague in the Netherlands: The First Hague Conference in 1899 and the Second Hague Conference in 1907. Along with the Geneva Conventions, the Hague Conventions were among the first formal statements of the laws of war and war crimes in the nascent body of secular international law. A third conference was planned for 1914 and later rescheduled for 1915, but never took place due to the start of World War I. The German international law scholar and neo-Kantian pacifist *Walther Schücking* called the assemblies the international union of Hague conferences.²⁴ A major effort in both the conferences was to create a binding international court for compulsory arbitration to settle international disputes, which was considered necessary to replace the institution of war. Most of the great powers, including the United States, Britain, Russia, France, China, and Persia, favored a binding international arbitration, but the condition was that the vote should be unanimous, and a few countries,

paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

²³Nick Cheesman, 'How in Myanmar "National Races" Came to Surpass Citizenship and Exclude Rohingya' in *Journal of Contemporary Asia*, Vol 47, 2017, p. 461-483.

²⁴Barcroft, Stephen. "The Hague Peace Conference of 1899," *Irish Studies in International Affairs 1989*, Vol. 3 Issue 1, pp 55-68.

led by Germany, vetoed the idea. The main effect of the Convention was to ban the use of certain types of modern technology in war: bombing from the air, chemical warfare, and hollow point bullets. The Convention also set up the Permanent Court of Arbitration.²⁵

A body of law concerning acceptable justifications to engage in war is called *jus ad bellum*. *Jus ad bellum* refers to the conditions under which States may resort to war or to the use of armed force in general. The prohibition against the use of force amongst States and the exceptions²⁶ to it, set out in the United Nations Charter of 1945, are the core ingredients of *jus ad bellum*. Whereas the limits to acceptable wartime conduct is *jus in bello*. It regulates the conduct of parties engaged in an armed conflict. IHL is synonymous with *jus in bello*; it seeks to minimize suffering in armed conflicts by protecting and assisting all victims of armed conflict to the greatest extent if possible. Now modern laws of war address declarations of war, acceptance of surrender and the treatment of prisoners of war, military necessity along with *distinction* and *proportionality*, and the prohibition of certain weapons that may cause unnecessary suffering.²⁷

V.II. *The Geneva Conventions*

The Geneva Conventions comprise rules that apply in times of armed conflict and seek to protect people who are not or are no longer taking part in hostilities, for example:

- wounded or sick fighters

²⁵ Though not negotiated in The Hague, the Geneva Protocol to the Hague Convention is considered an addition to the Convention. Signed on June 17, 1925 and entering into force on February 8, 1928, it permanently bans the use of all forms of chemical and biological warfare in its single section, entitled Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare. The protocol grew out of the increasing public outcry against chemical warfare following the use of mustard gas and similar agents in World War I, and fears that chemical and biological warfare could lead to horrific consequences in any future war. The protocol has since been augmented by the Biological Weapons Convention (1972) and the Chemical Weapons Convention (1993) (Wikipedia, 2017).

²⁶ The exception is on right to self-defence and UN authorization for the use of force.

²⁷ International Committee of the Red Cross, Introduction to the Law of Armed Conflict, accessed from

https://www.icrc.org/eng/assets/files/other/law1_final.pdf dated on 15 December 2017.

- prisoners of war
- civilians
- medical and religious personnel

Furthermore, laws of war are intended to mitigate the evils of war by protecting both combatants and noncombatants from unnecessary suffering. Safeguarding certain fundamental human rights of persons who fall into the hands of the enemy, particularly prisoners of war, the wounded and sick, and civilians. Laws of war are the result of a process that developed in a number of stages between 1864 and 1949 which focused on the protection of civilians and those who can no longer fight in an armed conflict. As a result of World War II, all four conventions were revised based on previous revisions and partly on some of the 1907 Hague Conventions and readopted by the international community in 1949. Later conferences have added provisions prohibiting certain methods of warfare and addressing issues of civil wars. Geneva Convention comprise four treaties and three additional protocols that set the standards in international law for humanitarian treatment of the victims of war.

- *First Geneva Convention "for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field" (first adopted in 1864, last revision in 1949)*
- *Second Geneva Convention "for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea" (first adopted in 1949, successor of the 1907 Hague Convention X)*
- *Third Geneva Convention "relative to the Treatment of Prisoners of War" (first adopted in 1929, last revision in 1949)*
- *Fourth Geneva Convention "relative to the Protection of Civilian Persons in Time of War" (first adopted in 1949, based on parts of the 1907 Hague Convention IV)*
- *Protocol I (1977): Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts. As of 12 January 2007 it had been ratified by 167 countries.*
- *Protocol II (1977): Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-*

International Armed Conflicts. As of 12 January 2007 it had been ratified by 163 countries.

- *Protocol III (2005): Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem. As of June 2007 it had been ratified by 17 countries and signed but not yet ratified by an additional 68 countries.*

VI. Rohingya Situations and IHL

In the 8th Century the *Rohingya*, a people of South Asian origin, dwelled in an independent kingdom in *Arakan*, now known as *Rakhine* state in modern-day Myanmar. The *Rohingya* describe themselves as descendants of Arab traders who settled in the region many generations ago. In the 9th to 14th Century they came into contact with Islam through Arab traders. Now the *Rohingya* are a Muslim minority population living in Myanmar. The kingdom of *Arakan* which was a very important place inside the Bay of Bengal commercial network, especially during the 16th and 17th centuries. Arakanese kings modeled themselves after the Mughal emperors, even using Muslim titles for their military and court officials.²⁸ During the 17th century in *Mrauk U*, the capital of the Arakanese kingdom, two poets testify the emergence of a literature using Bengali language as a means of expression. These two poets are *DaulatKaji* who lived under the reign of *Sirisudhammaraja* (1622-1638), and *Alaol* (1607-1680) whose literary activity extended from the reign of *Satui: dhammaraja* (1645-1652) to 1670-1671. Both *Alaol* and *DaulatKaji*, worked for individuals belonging to the Muslim nobility at the Arakanese royal court.²⁹

During the second world war Japan invaded Burma, pushing out the British. In 1945 Britain liberated Burma from Japanese occupation with help of Burmese nationalists led by Aung San and *Rohingya* fighters. When World

²⁸Who Are the Rohingya? Retrieve from <https://www.thoughtco.com/who-are-the-rohingya-195006>

²⁹ Thibautd'Hubert, Alaol's poetry as a source for Arakanese history S. Subrahmanyam, "And a River Runs through it: The Mrauk U Kingdom and its Bay of Bengal Context", in J.Gommans and J.Leidered., *The Maritime Frontier of Burma – Exploring Political Culture and Commercial Interaction in the Indian Ocean World, 1200-1800*, KoninklijkeNederlandseAkademie van Wetenschappen, KITLV Press, Leiden, Amsterdam, 2002, pp. 107-126.

War II broke out, Britain abandoned *Arakan* in the face of Japanese expansion into Southeast Asia. In the disarray of Britain's pulling out, both Muslim and Buddhist forces took the opportunity to inflict massacres on one another on a hideous program of torture, rape and murder. Thousands of *Rohingya* fled into Bangladesh. *Rohingyas* felt betrayed as the British didn't fulfill a promise of autonomy for *Arakan*.³⁰ So it was saying that British sowing the seeds of ethnic tension that remain to this day. After that many of whom wanted *Arakan* to join Muslim-majority Pakistan and they were denied including removing *Rohingya* civil servants.

In 1962 General Ne Win's coup, after that they are campaigning for a separate *Rohingya* nation in *Arakan*. As a result the military junta took power and *Rohingya* are threaten separatists and non-political people and denied Burmese citizenship becoming stateless Bengalis. The People without a state, whom face harsh persecution in Myanmar and the Burmese government does not recognize them as citizens. *Rohingya* is a centuries old minority Muslim population of Myanmar. But "stateless" for the last several decades as Myanmar's 1982 Citizenship Act undid the status of legally granted citizenship in 1948.³¹ Under this Citizenship Law of Myanmar, the government created three classes of citizens: full, associate and naturalized, and subsequently provided color-coded "scrutiny cards." Pink cards were provided to full citizens, blue for associate citizens and green for naturalized. Most of *Rohingya*'s were not provided a card at all. They are rather considered "Myanmar residents," which means neither citizen nor foreigner.

In 1962 General Ne Win and his Burma Socialist Programme Party seized power and took a hard line against the *Rohingya* and were aimed at screening the population for foreigners. More than 200,000 *Rohingya* fled to Bangladesh, amid allegations of army abuses. The army denied any wrongdoing. In 1978 Bangladesh struck a UNbrokered deal with Burma for the repatriation of refugees, under which most *Rohingya* returned. In the year of 1991, 2012, 2016 and 2017 *Rohingya* refugees fled what they said was forced labor, rape and religious persecution at the hands of the

³⁰Timeline: A Short History of Myanmar's *Rohingya* Minority, *The Daily Star*, retrieved from <http://www.thedailystar.net/news-detail-245363> dated on 24 September, 2017.

³¹Julfikar Ali Manik, The *Rohingya* issue, *The Daily Star*, retrieved from <http://www.thedailystar.net/news-detail-245363> dated on 24 September, 2017.

Myanmar army. However, the Nobel peace laureate *Aung San Suu Kyi* and her government denied the atrocities. *Aung San Suu Kyi* has been criticized in particular for her silence and lack of action.³² When several people asked for her to revoke her Nobel Prize she responded: "show me a country without human rights issues."³³

In August 2017, *Aung San Suu Kyi* defended the government's actions saying "...had already started defending all the people in *Rakhine* in the best way possible and expressed that there should be no misinformation to create trouble between the two countries."³⁴ She denied that the security services were systematically abusing the *Rohingya*, claiming instead that they are simply trying to hunt down organized and violent *Rohingya* militants.³⁵ Nobel Peace Prize laureate *Malala Yousafzai* and *Desmond Tutu* brought a plea for action and criticized *Suu Kyi*'s stance.

In recent years, they have faced increasing persecution and attacks brutally by Military and Buddhist monks. Thousands of men, women and children from Myanmar's who escape out to sea, as thousands have drowned, victimized by human traffickers and face an uncertain fate. The Bangladeshi Government and the United Nations High Commission on Refugees (UNHCR), temporarily shelter refugees and provide for their basic needs. The *Rakhine* state of Myanmar, which borders Cox's Bazar, is a poverty-prone area of Myanmar. Oppression on *Rohingyas* has a longstanding issue which needed humanitarian response from the world leaders where as Bangladesh is an overpopulated country so it was not possible to take over the burden of such refugees *Rohingya*.³⁶ In 17 March 2016 *Atrocities Prevention Report*, the U.S. Department of State summarized:

³²Michael Safi in Delhi. "*Aung San Suu Kyi says 'terrorists' are misinforming world about Myanmar violence | World news*", *The Guardian*, Retrieved 2017-09-12.

³³Naaman Zhou and Michael Safi. "*Desmond Tutu condemns Aung San Suu Kyi: 'Silence is too high a price' | World news*", *The Guardian*, Retrieved 2017-09-12.

³⁴Michael Safi in Delhi. "*Aung San Suu Kyi says 'terrorists' are misinforming world about Myanmar violence | World news*", *The Guardian*, Retrieved on 12 August 2017.

³⁵"Aung San Suu Kyi and her foreign admirers must help the *Rohingyas*", *The Economist*, 8 September 2017. Retrieved 8 September 2017.

³⁶Julfikar Ali Manik, The *Rohingya* issue, *The Daily Star* retrieved from <http://www.thedailystar.net/news-detail-245363> dated on 24 September, 2017

The situation in *Rakhine* State is grim, in part due to a mix of long-term historical tensions between the *Rakhine* and *Rohingya* communities, socio-political conflict, socio-economic underdevelopment, and a long-standing marginalization of both *Rakhine* and *Rohingya* by the Government of Burma. The World Bank estimates *Rakhine* State has the highest poverty rate in Burma (78 percent) and is the poorest state in the country. The lack of investment by the central government has resulted in poor infrastructure and inferior social services, while lack of rule of law has led to inadequate security conditions.³⁷

Myanmar president's alarming remarks that Myanmar does not consider these 7,35,000 Muslims in northern *Rakhine* State to be its citizens. But under International law one may not be left or rendered stateless. In September 2017 more over 500,000 *Rohingya* have fled to Bangladesh from violence, ethnic cleaning and clearly genocide occurred by Myanmar Army.³⁸ Myanmar's de facto leader, Aung San SuuKyi, as well as Myanmar's military, have faced international condemnation over its treatment of the *Rohingya*. The mostly Muslim minority, who live primarily in *Rakhine* State, is not as an ethnic group in Myanmar, despite having lived there for generations after generation.³⁹ *Rohingya* have been denied citizenship and are stateless. Most *Rohingya*, who spent more than a week trekking cross-country from *Rakhine* to reach the Bangladesh border, have found existing camps overflowing and have instead settled on muddy roadsides. Many families do not have a shelter over their heads and refugees have been fighting for food and water deliveries.

Bangladesh Prime Minister draw attention to the international community and the UN to put pressure on Myanmar for the repatriation of all the *Rohingya* refugees to their homeland in Myanmar. Bangladesh also

³⁷ *Atrocities Prevention Report*, March 17, 2016, Bureau of Democracy, Human Rights, and Labor, Office of the Under Secretary for Civilian Security, Democracy, and Human Rights, United States Department of State, retrieved February 12, 2017 (NOTE: This document alternates, repeatedly, between sections on the Middle East, and sections on "Burma.")

³⁸ Al Jazeera, 17 September, 2017, Bangladesh restricts movement of Rohingya refugees.

³⁹ Akm Ahsan Ullah, 'Rohingya Refugees to Bangladesh: Historical Exclusions and Contemporary Marginalization' in *Journal of Immigrant & Refugee Studies*, Vol. 9, 2011 - Issue 2, p.139-159.

protested that Myanmar was planting landmines near their border, which have killed several *Rohingya*, and clearly violation of IHL.⁴⁰ Human Rights Watch in a new report said Myanmar forces have laid landmines during attacks on villages and along the Bangladesh border.⁴¹ Thousands of *Rohingyas* fleeing atrocities in Myanmar are deadly enough without adding landmines to the mix. So humanitarian organization calling upon Myanmar to immediately stop the use of antipersonnel landmines treaty Under the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (1997). The use of a specific weapon in armed conflict can be completely prohibited and the weapon itself considered unlawful. States must not under any circumstances use, develop, produce, stockpile or transfer anti-personnel mines, or help anyone else to do so. They must also destroy all existing stockpiles of anti-personnel mines and within a fixed time period, clear land where these devices have been laid.

VI.I. Genocide towards *Rohingya*

Women had been gang raped, men killed, houses torched, and young children thrown into burning houses.⁴² The boats carrying *Rohingya* refugees on Naf River were often gunned down by the Myanmar army.⁴³ They have burned "homes, schools, markets, shops, and mosques" belonging to or used by the *Rohingya* people.⁴⁴ On September 07, 2017, The Guardian reported a mass killing of *Rohingyas* at the Tula Toli village, referred as Tula Toli Massacre.⁴⁵ Malaysia's prime minister Najib Razak criticized the Myanmar authority for military

⁴⁰ Myanmar-Bangladesh relations, Aljazeera retrieved from <http://www.aljazeera.com/news/2017/09/bangladesh-restricts-movement-rohingya-refugees-170917004640300.html> dated on 10 December 2017.

⁴¹ *Rohingya* villages still burning, mines laid, *The Daily Star*, retrieved from <http://www.thedailystar.net/frontpage/mayanmar-refugee-crisis-rohingya-villages-still-burning-mines-laid-1466716> dated on 24 September, 2017.

⁴² "UN condemns 'devastating' *Rohingya* abuse in Myanmar", *BBC News*, 3 February 2017. Retrieved 4 February 2017.

⁴³ "They raped us one by one', says *Rohingya* woman who fled Myanmar", *The News International*, 25 November 2016, retrieved on 9 December 2017.

⁴⁴ "UN calls on Suu Kyi to visit crisis-hit Rakhine", *The Daily Star*, 9 December 2016, retrieved on 10 December 2016.

⁴⁵ "Myanmar: satellite imagery confirms *Rohingya* village of Tula Toli razed". *The Guardian*. 19 September 2017. Retrieved 23 September 2017.

crackdown on *Rohingya* Muslims, and described the ongoing persecution as "genocide".⁴⁶

In August 2016, former UN Secretary General Kofi Annan was invited to head a nine-member commission in addressing human rights violations in *Rakhine*.⁴⁷ After a week-long visit in the *Rakhine* state, expressed deep concern about reports of human rights violations in the area.⁴⁸ In November 2016, a senior United Nations official, *John McKissick*, accused Myanmar of conducting ethnic cleansing in the *Rakhine* state to free it from the Muslim minority.⁴⁹ The UN High Commissioner for Human Rights and Jordanian prince Zeid Ra'ad al-Husseini declared, "The cruelty to which these *Rohingya* children have been subjected is unbearable – what kind of hatred could make a man stab a baby crying out for his mother's milk?"⁵⁰ With the renewed genocide and exodus in August 2017, al-Husseini further announced that what *Rohingya* were experiencing in Myanmar seems a textbook example of ethnic cleansing.⁵¹

VII. Conclusion

Humanity or humanitarian considerations are very catchy words in any context. In *Rohingya* situations which law will protect them? Is international armed conflict or law of war or human rights law? Where the atrocities and policies of discrimination has devastated by the State and its effects shouted humanity is utmost significance. In these situations, human rights law complements and reinforces the protection afforded by International Humanitarian Law. The goal of international humanitarian law is to limit the effects of war on people and property and to protect particularly vulnerable people in the world. Thus, human rights of *Rohingya* in this situations was highlighted by the ICJ in 2004. The Court stated that there are three situations pertaining to the relationship between two bodies

⁴⁶"Malaysia PM urges world to act against 'genocide' of Myanmar's *Rohingya*". *The Guardian*. Associated Press. 4 December 2016. Retrieved 12 December 2017.

⁴⁷"Advisory Commission on *Rakhine* State: Final Report". *Kofi Annan Foundation*. 24 August 2017.

⁴⁸"Rex Tillerson says violence against Myanmar's *Rohingya* must stop; supports Aung San Suu Kyi," September 14, 2017, *CBS News*, retrieved September 14, 2017

⁴⁹"*Myanmar's Rakhine a human rights crisis: Kofi Annan*". *Channel NewsAsia*. *ChannelNewsAsia*. Retrieved 8 September 2017.

⁵⁰"Hundreds of *Rohingyas*' killed in Myanmar crackdown". *Al Jazeera*. 3 February 2017. Retrieved 4 February 2017.

⁵¹Associated Press, "UN Rights Chief *Rohingya* Face Ethnic Cleansing in Myanmar", September 11, 2017, *Time*, retrieved on 12 September, 2017.

of law: “some rights may be exclusively matters of International Humanitarian Law; others may be exclusively matters of Human Rights Law; yet others may be matters of both these branches of International Law.”⁵² States have always been limited in the ways in which they conduct armed conflicts, from the adherence to national laws and bilateral treaties, to the observance of time-honored customary rules. However, throughout history these limitations on warfare varied greatly among conflicts and were ultimately dependant on time, place, and the countries involved. In the Case *Democratic Republic of Congo v. Uganda* the ICJ reemphasized the interrelationship between HRL and IHL and observed “to take all measures necessary to comply with all of their obligations under international law and also to ensure full respect for fundamental human rights and for the applicable provisions of humanitarian law.”⁵³ The differences between the application of IHL and HRL principles in war situations have become very much amalgamated, and thus some rights violations in armed conflict can be considered as matters under both legal regimes. Again, with the end of hostilities the obligations of the responsible authority to rebuild the societies should be coupled with an undeniable obligation on the preservation and upholding of humanity in war torn societies. These certain norms are inviolable under any circumstances which are undisputed and has long been accepted by international community as a whole. The entire world has an obligation to protect and promote some norms that are binding on all States and cannot be modified by even an international treaty and are not subjected to any derogation. Therefore, based on this argument we can build due regard to humanity in post war programs of any nature that is of utmost importance, since it the *ergaonmes* of the States.⁵⁴

⁵² ICJ, Advisory Opinion, para,106. It was decided by the ICJ in this Case that Israel’s action is illegally constructing this wall has legal consequences not only for Israel itself, but also for other States and for the United Nations and determined that Israel has a legal obligation to bring the illegal situation to an end by ceasing forthwith the construction of the wall in the Occupied Palestinian Territory.

⁵³ *Democratic Republic of Congo v. Uganda*, judgment of 19 December 2005, ICJ reports 2005, para. 216-219.

⁵⁴ *Jus cogens* norms coupled with *ergaonmes* include piracy, genocide, slavery and racial discrimination. The ICj recognized the right to self-determination as an inviolable norm in the Case concerning East Timor. The ICTY has also recognized the concept of *ergaonmes* , noting that the prohibition on torture has that character, in *Prosecuto v. Anton Furundzija* decision in 1998.