

Politics of Migration The Global Compacts and Rohingya Asylum Seekers

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Abstract

In the din and bustle of international efforts for addressing the large movements of refugees and migrants through two Global Compacts, some critical issues within the overall migration governance may get neglected: the human rights of irregular migrants and asylum seekers with refused refugee status. Against the backdrop, this article builds a case for a deeper investigation and analysis of the problems, mainly in the contexts of Bangladesh. It shows that how the politics of migration minimizes the human rights of Rohingyas in Bangladesh by not granting them refugee status. It argues that irregular migrants and asylum seekers with refused refugee status are not a threat to national security; rather, their personal security is always at risk. It further argues that a country faces security challenges when human rights concerns of these people are not addressed properly. It recommends that the Compacts acknowledge this reality and depoliticize migration governance.

Research Methodology

I have used both primary and secondary data in this article. Primary data was collected through my participation to the UN led the Global Forum on Migration and Development (GFMD), and the global civil society led to the corresponding Peoples' Global Action on Migration, Development and Human Rights (PGA) conferences in 2016 and 2017, respectively held in Dhaka and Berlin. It is worth to mention that the main discussion of these conferences was centered around the proposed Global Compacts on refugees and migrants. I have used the participant observation method for collecting the primary data. Secondary data was collected by reviewing the relevant literature. Collected data was then analyzed in the light of the present global context and changing perspectives of the world's reality. The principles of neutrality and impartiality are maintained throughout the article.

Background

Migration is a political phenomenon but politicization of migration does not bring good results for the States. However, still in many cases some States do politicize migration. The politics of migration involves but not limited to the issues of diasporas, regular and irregular migrants, survivors of human trafficking and smuggling, internal and external forcibly displaced persons, stateless people, documented and undocumented refugees, environmental refugees, asylum seekers, returnees, asylum seekers with refused refugee status and any new categorization of people who need international protection of human rights, and so on. In order to refraining certain States and protect the vulnerable groups of people from the politics of migration, international community adopted a number of international instruments and policy initiatives.

The 1951 *Convention Relating to the Status of Refugees* was adopted to manage the large-scale refugee movements in the aftermath of the World War II; later, a Protocol was added to it in 1967, for further protecting refugees. Many UN Member States have ratified the Refugee Convention and the corresponding Protocol. For the protection of the migrants and governing the migratory movements in a safe and orderly way, the United Nations (UN) embraced the *Convention on Migrants' Rights* in 1990 although a few UN Member

States have signed this treaty. This context along with the recent political climate on migration that encompasses issues like religious fundamentalism, xenophobia, security, conflicts, natural disaster, climate change, poverty, and human trafficking have clearly made the previous global initiatives semi-obsolete. How those have failed to govern the migration gets clear to one when one notices that how rapidly the number of missing migrants or, refugees is growing globally each year. For example, across the globe the total number of dead and missing migrants was 5,281 in 2014 and 6,259 in 2015 and 7,927 in 2016 and 3,514 as of August 2017, and many more are uncounted for.¹

Europe is the world's most dangerous destination for irregular migrants. Report stipulates that in 2015, the case of irregular migration by sea or human trafficking or smuggling has increased many folds in the Bay of Bengal and the Andaman Sea to the direction of Thailand, Indonesia, Malaysia and Australia. However, it was not a sole phenomenon in Asia and the Pacific regions. It was also frequent in the Mediterranean, Caribbean, Red Sea and other parts of the world. In many cases migration through sea is very dangerous and tends to use an overloaded craft with a mixed group of people: asylum seekers, refugees, internally displaced persons, stateless people, migrants, and other people of similar categories.

These people are popularly known as the 'boat people' whose sufferings during the journey are mountainous, which has been explored in different media reports. For example, such media reports were common in 2015 that thousands of 'boat people', who were a mixed group of Myanmar's Rohingya and Bangladeshi migrants, were feared adrift on boats in the Andaman Sea as traffickers abandoned them. Although, underlying these perilous journeys is a search for better life, in many cases these movements have tragically perished. The consequence of this phenomenon not only affected the survivors but also impacted on the remittance-based economy of

¹ "Latest Global Figures," Missing Migrants, Last modified: August 28, 2017.

<http://www.missingmigrants.iom.int/latest-global-figures>

Bangladesh. For an example, on 18th of June 2015, the Libyan government has banned Bangladeshi workers from entering the country because many of them were trying to travel to Europe by boat illegally. While putting embargo, Libyan government stated that, Bangladeshi workers using Libya as a transit for entering Europe via Mediterranean Sea and this ban is part of the Libyan government's action against irregular migration using their territory. This has been reported that the migrants travelled to Libya from Bangladesh via Dubai or Turkey. The latest information shows that Bangladesh is now the single biggest country of origin for irregular migrants on boats to Europe.²

Further to that the refugee and migratory movements have changing multidimensional characteristics. Although, traditionally they are viewed as movements of people from one place to another, temporarily or permanently, in search of better life, livelihood, or, to avoid threat to life and livelihood; now-a-days they are being viewed on one hand, as one of the non-traditional security threats, and on the other hand, as human rights issues.

These situations have underscored the need for separate international instruments or policy initiatives in order to better protect refugees and migrants, and better govern the refugee and migratory movements. In this context, the UN called on a summit on refugees and migrants on 19 September 2016 in New York. This UN summit was the first-ever leaders' summit on the topic that initiated to address one of the great challenges of the 21st century through the *2016 New York Declaration for Refugees and Migrants*. The Annex I and Annex II of the Declaration respectively sets out steps towards the achievement of a 'Comprehensive Refugee Response Framework (CRRF)' and a 'Global Compact for Safe, Orderly and Regular

² Lizzie Dearden, "Bangladesh is now the single biggest country of origin for refugees on boats as new route to Europe emerges." *The Independent*, May 5, 2017, accessed October 5, 2017, <http://www.independent.co.uk/news/world/europe/refugee-crisis-migrants-bangladesh-libya-italy-numbers-smuggling-dhaka-dubai-turkey-detained-a7713911.html>

Migration (GCM)' by 2018.³ The world leaders have assigned two UN agencies for facilitating the drafts of the CFFR and the GCM. The Office of the United Nations High Commissioner for Refugees (UNHCR) is responsible for the CRRF, and the International Organization for Migration (IOM) is responsible for the GCM. Later, on the basis of this work, the High Commissioner for Refugees has been requested by UN to propose a 'Global Compact on Refugees' in his annual report to the General Assembly in 2018, to be considered by the Assembly at its seventy-third session.⁴ Therefore, the development of two separate Global Compacts is a states-led but multi-stakeholder process, which has made the international community currently busy with the preparation and framing of the Compacts.

Potential Features of the Proposed Global Compacts

Asylum seekers with refused refugee status and irregular migrants are already formed a group of marginalized people in the contemporary international instruments and policy initiatives. Therefore, there are chances that they would become further marginalized in the proposed Global Compacts if the policy initiatives do not pay any special attention to them.⁵ Are the proposed Compacts going to do so?

The Global Compact on Refugees

It will try to address the specific assistance needs and protection arrangements and concurrent refugee challenges which are not fully covered by the previous policy initiatives or instruments. On the basis of the Annex I to the New York Declaration, the Global

³ A/RES/71/1, *New York Declaration for Refugees and Migrants*, 71st session, United Nations General Assembly Resolution (19 September 2016).

⁴ "Global Compact on Refugees," *Refugees and Migrants*, Last modified: September 2017.

<http://refugeesmigrants.un.org/refugees-compact>

⁵ This part has been informed by my other write up.

Md. Mahbubur Rahman, "Global Compact for Migration: Taking the Civil Society on Board," *The Financial Express*, October 7, 2017, 12.

Compact on Refugees (GCR) will draw a set of guidelines and a program of action for refugee protection. The guidelines and action areas are likely to cover the issues on reception and admission, support for immediate and ongoing needs, support for host countries and communities, and durable solutions as indicated in the New York Declaration.

In this context it is worth to present some reflections of Annex I to the New York Declaration. Firstly, it has provided nine guidelines for States and other parties on reception and admission; and six guidelines for all States, and five guidelines specifically for host States on support for immediate and ongoing needs of the refugees. Secondly, it has made three commitments to support for host countries and communities. Finally, it has outlined several steps including steps for the third countries for durable solution of refugee problems. Among different Articles of the Declaration, the following three Articles have particularly seemed more critical with regards to refugee protection where further attention needs to be given.

Article 5(b) of Annex I advises States to take account of ‘the rights, specific needs, contributions, and voices of women and girl refugees’, and Article 5(e) urges to identify protection needs of different groups of refugees including ‘women at risk, children, especially unaccompanied children and children separated from their families, child-headed and single-parent households, victims of trafficking, victims of trauma and survivors of sexual violence, as well as refugees with disabilities and other persons’.⁶ This indicates that the GCR is going to be a gender responsive framework. However, a gender responsive framework may not take into account the best interests of the child as a primary consideration.

Article 5(g) talks about on one hand to ‘uphold refugees’ human rights’ and on the other hand to take ‘measures to respond to host countries’ legitimate security concerns.⁷ Here the term ‘legitimate’

⁶ A/RES/71/1, *New York Declaration for Refugees and Migrants*, 71st session, United Nations General Assembly Resolution (19 September 2016).

⁷ Ibid.

needs to define and make clear further. For an example, a particular government or State may think that giving the refugee status to a particular displaced group of people will make the State insecure. Should that be treated as a legitimate security concern?

Overall, the GCR is going to incorporate not only the concerns of the Member States but also the concerns of the other stakeholders including the refugees. UNHCR has already started the stocktaking through different informal thematic discussions to identify the actions that are essential to the type of refugee response envisaged in the New York Declaration and thus inform the application of the Comprehensive Refugee Response Framework and the development of the Global Compact on Refugees. A final stocktaking will take place in late 2017.⁸

The Global Compact for Safe, Orderly and Regular Migration

The GCM is going to include several contents and issues of concern to the global migrant community. Part III of Annex II of the New York Declaration has already suggested twenty-four such elements or contents for the proposed Compact. Three of them have particularly dawn my attention in relevance to both Bangladesh and contemporary global contexts. Let's see the cases.

Article 8(j) of Annex II of the New York Declaration urges for 'international cooperation for border control, with full respect for the human rights of migrants.'⁹ It means that the provision is trying to create a balance between human rights and security issues in migration governance. Both the article 8(m) and 8(p) of Annex II of the New York Declaration talk about irregular migration. The first one urges for the 'reduction of the incidence and impact of irregular migration', and the second one advises for the 'consideration of

⁸ "Global Compact on Refugees," Refugees and Migrants, Last modified: September 2017.

<http://refugeesmigrants.un.org/refugees-compact>

⁹ A/RES/71/1, *New York Declaration for Refugees and Migrants*, 71st session, United Nations General Assembly Resolution (19 September 2016).

policies to regularize the status of migrants.¹⁰ As these provisions talk about regularization, these are inherently focused on the documented or regular migrants.

The UN also advised to cluster the elements or the issues of concern into six thematic areas around which the Compact is likely to be structured. One, human rights of all migrants, social inclusion, cohesion and all forms of discrimination, including racism, xenophobia and intolerance. Two, addressing drivers of migration, including adverse effects of climate change, natural disasters and human-made crises, through protection and assistance, sustainable development, poverty eradication, conflict prevention and resolution. Three, international cooperation and governance of migration in all its dimensions, including at borders, on transit, entry, return, readmission, integration and reintegration. Four, contributions of migrants and diasporas to all dimensions of sustainable development, including remittances and portability of earned benefits. Five, smuggling of migrants, trafficking in persons and contemporary forms of slavery, including appropriate identification, protection and assistance to migrants and trafficking victims. And six, irregular migration and regular pathways, including decent work, labor mobility, recognition of skills and qualifications and other relevant measures.

It is worth to be noted that the idea of developing a Compact for migration was led and negotiated by Bangladesh. At the outset the world leaders were willing just to go for a single Compact or Framework on refugees. However, finally they agreed to go for a separate Compact for migration too, and this was possible due to a successful diplomacy of Bangladesh. Therefore, the GCM can be considered as a brain child of Bangladesh.

The Role of the Civil Society in Framing the Compacts

When this article is being written, a consensus is yet to be achieved among the academicians, experts, activists, and UN and Government officials on the possible outlook and contents of the two Compacts.

¹⁰ Ibid.

To say in brief, there is still no concrete idea about the formats of the proposed Global Compacts among the experts and UN and Government officials. Debates are in full swing on the issues like whether the Compacts should be binding or non-binding; what should be included in the Compacts and what should not be included; whether the Compacts should reiterate the principles of refugee protection, and safe and orderly migration as already mentioned respectively in the 1951 Refugee Convention and its 1967 Protocol, the 1990 UN Convention on Migration, the *Addis Ababa Action Agenda*, the *Agenda 2030 for Sustainable Development*, and the 2016 *New York Declaration for Refugees and Migrants*, or not. A group of government representatives, UN officials and experts is suggesting that only those new dimensions and ideas should be incorporated in the Compacts that are not already mentioned in any other instruments, because there is no point of repetition. Another group of the same clusters is arguing that repetition is necessary in order to make the Compacts as the complete codes of refugee protection and migration governance respectively. Against the backdrop, it is high time for civil society activists to stand up and take the lead of the Compact processes. They must do it, because, they have responsibilities to monitor human rights issues, in fact they can be held 'officially accountable to ensure human rights in a country'.¹¹

There are scopes and avenues for Bangladeshi and global civil society to inform the Compacts. Firstly, they should set a country wise strategy to inform the Compacts. The strategy could include, but would not be limited to three dimensions. The first dimension may intend to produce a strategy paper on the Compact that will incorporate the respective country's civil society's recommendations for the Compacts. This can be produced through sitting in a series of coordination meetings, and organizing some national and local consultations on the Compacts. These consultations must include all relevant stakeholders including the Government and media representatives of the respective countries. The second dimension may propose for meeting with the respective Government's focal point on the Compacts for handing over the strategy papers for the

¹¹ Beth A. Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge: Cambridge University Press, 2009).

two Compacts or the recommendations and lobbying for incorporation of civil society's concerns onto the text of the Compacts. The third dimension may encourage the civil society representatives to keep posted on the media by writing different articles on the Compacts, or migrants' rights, so that it creates pressure on their respective Government for pursuing their recommendations as stated in the two strategy papers.

Secondly, once the strategy for dealing with the Compacts is finalized, the civil society immediately needs to start drafting two working papers for the two Compacts. It is understood that the two working papers eventually will turn into two strategy papers for the Compacts through different meetings, workshops, and consultation programs. Therefore, ideally it helps if the working papers are available in all civil society's programs to make comments or changes to the draft so that those truly chart out in details respective country's civil society's position and recommendations including the best methods, strategies and tools to take action together on the Compacts.

In order to draft the working papers on the two Global Compacts, the members of the civil society need sitting down together and identifying the issues of concern and jotting those down in some thematic areas and drawing recommendations and setting targets or timeline. The process of identification of issues of concern should ideally be informed on one hand, by migrants' voices and facts from the field, and on the other hand, by the 2016 *New York Declaration for Refugees and Migrants*.

In Bangladesh context, the civil society should get involved in activities relating to protecting the Rohingya asylum seekers, managing irregular migration and countering human trafficking. In fact, they have the potentiality to play a vital role in addressing these issues. However, I have not seen much pro-refugee activities among the members of the civil society in Bangladesh. Rather, I have observed an unhealthy competition among the civil society organizations (CSOs) in the country just for securing funds for migration related projects. I have also observed a coordination gap among them to address the challenges of migration governance and

refugee protection. Therefore, in order to gather under the same platform and raise a concerted voice for ensuring the human rights of irregular migrants and asylum seekers with refused refugee status, the CSOs need to overcome these shortcomings.

Last but not least, since migration is a political phenomenon, an honest political commitment by the political leaders is must for protecting and upholding the human rights of migrants and refugees. Therefore, both in Bangladesh and global contexts, civil society can also play an important role to influence the politicians of their respective country, so that a strong political commitment can be ensured in advance in the ratification and the implementation of the two Global Compacts, as soon as they are passed by the UN.¹²

Concerns Rose over the Proposed Global Compacts

The implications of the two Compacts will be enormous, because they are going to govern the refugee and migratory movements, much more beyond than just managing them, through international cooperation. This means that our future national and international policies, which will affect our lives, will be at least influenced, if not guided and shaped by the Compacts. However, despite all these possibilities, and despite the fact that the issue of migration governance came at the forefront of international discussion for the first time through the proposal of developing the Compacts, there are scopes to express concerns on the proposed Compacts. For say, the text of the Compacts is being draft in a moment when the developed world is practically trying to stemming the flow of migration. Recent terrorist attacks in Europe and other parts of the world have helped to increasing xenophobia and concerns over national security. For example, the issue of BREXIT and President Trump's recent emigration ordinance do not indicate a friendly political environment for adopting such Compacts. A report indicates that the Compacts are, 'being negotiated at a time when various legal and institutional arrangements on international migration are gradually being moved

¹² This section has been informed by my other write up.

Md. Mahbubur Rahman, "Global Compact for Migration: Taking the Civil Society on Board," *The Financial Express*, October 7, 2017, 12.

out of the UN multilateral framework, undermining the principles of human and labour rights'.¹³ Perhaps the most serious concern over the Compacts is that whether these will finally be able to protect the human rights of irregular migrants and address the critical refugee and migratory movements like the Rohingya influx in Bangladesh, or not.

Rohingya: Asylum Seekers with Refused Refugee Status in Bangladesh

Rohingyas are the inhabitants of the Northern Rakhine State (formerly known as Arakan) of Myanmar. History suggests that they have been living in Arakan for centuries since 1500 B.C. Arakan was part of Bengal before the independence of Myanmar. Therefore, ethnically, linguistically and religiously Rohingya people are related to the people live in Chittagong area in Bangladesh. However, this does not mean that Rohingyas are Bengali or Bangladeshi, because they have a distinct ethnic identity. Under the 1982 citizenship law of Myanmar, Rohingyas were declared as 'non-national' or, as 'foreign residents' and therefore are made stateless. According to UNHCR, they are the most persecuted ethnic minority and the largest stateless group of people in the world.¹⁴ They are also the world's most persecuted community¹⁵ who has been victimized with cultural adulteration through the Burmanisation policy by the State authority of Myanmar. They have very limited access to travel inside Myanmar

¹³ Refugee and Migratory Movements Research Unit (RMMRU), *Labour Migration from Bangladesh 2016: Achievements and Challenges* (Dhaka: RMMRU, 2016), 8.

¹⁴ United Nations High Commissioner for Refugees (UNHCR), *Bangladesh: Analysis of Gaps in the Protection of Rohingya Refugees* (Geneva: UNHCR, 2007), 8.

¹⁵ Zehra Kazmi, "Who are the Rohingya, why are they called 'security threat' and 'nowhere people'?" *Hindustan Times*, September 18, 2017, accessed October 7, 2017, <http://www.hindustantimes.com/india-news/the-world-s-most-persecuted-community-who-are-the-rohingyas/story-PgNwZ4URpdpMpZXXNryw88I.html>

and they cannot travel outside the country, and face low economic status.

The Bengal has a long history, which goes back to the middle age, of providing asylum with Rohingyas fleeing persecution in Myanmar (the former Burma). After the independence of present Bangladesh, Rohingyas entered the country several times due to serious state repression in Myanmar. The first major influx of Rohingya asylum seekers occurred in 1978 due to 'Operation Nagamin' in Arakan by the Burmese army. This generated more than 200,000 Rohingya asylum seekers in Bangladesh. The country was able to send the majority of them back to Arakan in 1979 through a bilateral agreement with Burma. The second major influx of Rohingya asylum seekers occurred in 1991 due to 'Operation Clean and Beautiful' in Arakan by the Burmese army. Again, more than 200,000 Rohingyas took asylum in Bangladesh. However, the country was again succeeded to send the majority of the Rohingyas back to Arakan through another bilateral agreement with the Burmese authority. Later, a significant number of Rohingya asylum seekers entered Bangladesh different times, particularly in the year of 2012, 2014 and 2016. All these migrations generated 31,000 registered Rohingya refugees living in the two official refugee camps at Kutupalong and Nayapara areas under Ukhia upazila of Cox's Bazar district in Bangladesh, and an estimated further 300,000-500,000 undocumented Rohingya asylum seekers staying in some unofficial makeshift camps and different villages of Cox's Bazar in Bangladesh.¹⁶

The most recent and most serious influx of Rohingya asylum seekers occurred in 2017. It has been observed that an estimated 600,000 new Rohingya asylum seekers (most of them are women and children) have already entered Bangladesh in just two months from September to October 2017, and the entrance has been continuing, creating a massive refugee crisis. The influx has been a result of a security operation began in the Northern Rakhine State of Myanmar since August 2017 by the Myanmar army against an emerging radical

¹⁶ United Nations High Commissioner for Refugees (UNHCR), *UNHCR Statistical Year Book 2013* (Geneva: UNHCR, 2014), 46.

Rohingya group called the Arakan Rohingya Salvation Army (ARSA). Reports say that ARSA attacked some police posts in Rakhine state on 25th August 2017, killing at least 12 security personnel, which, in turn, prompted launching the ‘Clearance Operations’, a counter-insurgency clampdown by the Burmese security forces.¹⁷ This military operation against the Rohingya civilians is ‘violent and disproportionate’ that includes ‘systematic burnings of villages by security forces and Rakhine Buddhist vigilantes, abuses and killings.’¹⁸ As of this article is being written, the security operation and atrocity by the Burmese army in the Rakhine state has been going on. UN calls it a ‘textbook example of ethnic cleansing.’ Bangladesh calls it ‘genocide.’

It might be interesting to notice that coincidentally the ARSA’s attack and the counter operation began a few hours after a Rakhine Advisory Commission led by former U.N. Secretary-General Kofi Annan submitted its final report and recommended that the government act quickly to improve economic development and social justice in Rakhine state to resolve violence between Buddhists and the Rohingya Muslim minority. But who is ARSA and why did they do so? ARSA, previously known by other names including ‘Harakah al-Yaqin,’ claims itself a ‘nationalist’ and fighting for the rights of the Rohingyas in Myanmar while there are allegations that it is an Islamist militant group. Myanmar government calls it a terrorist group. ARSA rejects the terrorist label and its involvement with Islamic extremists. ARSA says its aims are to defend, salvage and protect the Rohingyas in Myanmar.¹⁹ Reports suggest that with the emergence of ARSA and the continuous deteriorating human rights conditions of Rohingyas, the radicalization of Rohingya movement in Myanmar is getting

¹⁷ “Myanmar: Who are the Arakan Rohingya Salvation Army?” *BBC News*, September 6, 2017, accessed October 5, 2017, <http://www.bbc.com/news/world-asia-41160679>

¹⁸ “Myanmar: September 2017,” *Crisis Watch*, accessed October 5, 2017, <https://www.crisisgroup.org/crisiswatch/september-2017#myanmar>

¹⁹ “Myanmar: Who are the Arakan Rohingya Salvation Army?” *BBC News*, September 6, 2017, accessed October 5, 2017, <http://www.bbc.com/news/world-asia-41160679>

critical which may lead to change the current political landscape in Myanmar.²⁰

Following the developments in Myanmar, Bangladesh is now facing the world's fastest-growing refugee crisis since the Second World War. Although the primary factor that has promoted this massive migration is the national security drive in Myanmar, the root causes of this problem are many folds and complex and embedded in the political and cultural contexts in Myanmar. It includes the peculiar characteristics of the government system of Myanmar where democracy is running side by side with visible military autocracy and invisible Buddhist aristocracy; geo-political and geo-economic interests of China, India and Russia over the barren lands of Arakan; and clash of civilizations between Buddhism and Islam in Myanmar. Rohingyas are the victims of these factors that periodically forced them to seek asylum in Bangladesh. After the 2017 influx, the total number of Rohingya asylum seekers in Bangladesh now reached to more than one million.

Although initially Bangladesh tried to resist the Rohingya asylum seekers at the border, finally the country is not getting its hands dirty by closing its border in resisting trespass of the Rohingyas fleeing the persecution in Myanmar's Rakhine State. If it did so, the country would actually violate the international principle of non-refoulment, which prohibits the forcible return of refugees in any manner whatsoever to countries or territories where their lives would be at risk. It is to be mentioned that the principle of non-refoulment is part of the customary international laws and therefore it is binding on all countries, whether or not they have signed on the 1951 Refugee Convention and/or its 1967 Protocol.²¹

²⁰ "Myanmar: A New Muslim insurgency in Rakhine State."

International Crisis Group, December 15, 2016,
<https://www.crisisgroup.org/asia/south-east-asia/myanmar/283-myanmar-new-muslim-insurgency-rakhine-state>

²¹ This part has been informed by my other write up.

Md. Mahbubur Rahman, "Rohingya Issue: From Regional Security Perspective," *The Financial Express*, September 23, 2017, 13.

In Bangladesh, Rohingya asylum seekers are victims of politics of migration that had kept almost half a million of them undocumented for several years. In this context it is worth to mention that the documentation is a legal process that starts with the registration of a particular group of people and ends in the issuance of ID cards or letters or certificates by the Government or UNHCR that confirms the legal status of a person as a refugee. In general, a documentation process has three main stages: registration, issuance of identity card and updating of registration data. Therefore, it is also an ongoing process once it is started. The preparation and implementation of the documentation process may include but not limited to several phases including: setting up coordination mechanisms, consolidating existing baseline information, training of staff, setting up logistics, setting up the provision of documentation, ensure that the data are entered accurately, and conducting a profiling of the registered population. Although the documentation is the responsibility of host Government, UNHCR invariably play an operational role in the process.

Thanks to the Government of Bangladesh that although a bit late, finally it has started to make documentation of approximately one million Rohingyas asylum seekers in Bangladesh. But politics of migration applies to the process of documentation too. The country is implementing the modern biometric registration system. Although on a *prima facie*²² basis all Rohingya asylum seekers in Bangladesh are regarded as refugees, the Government has decided not giving the refugee status to the asylum seekers. Bangladesh is calling them as ‘forcibly displaced Myanmar nationals’ and treating them as ‘externally displaced persons,’ a new categorization in the field of migration governance. Therefore, the previous undocumented Rohingyas as well as the new arrivals in Bangladesh actually fall into the category of asylum seekers with refused refugee status.

²² A practice, recognized by the international human rights and humanitarian law, by which all asylum seekers forming part of a large-scale influx are regarded as refugees. *Prima facie* determination of refugee status is also known as group determination of refugee status.

Policy Implications on Rohingya Issue

States, in many cases, do not want to document the asylum seekers as refugees. A number of factors may create condition for this unwillingness. For Bangladesh, at least five factors have created this condition. Firstly, it is clearly the fear of being fall into the bindings of international refugee law. The same fear has barred the country not only from formulating a national refugee law and/or policy, but also from signing the 1951 *Convention Relating to the Status of Refugees* and its 1967 Protocol. Therefore, the country is now taking the diplomatic advantage of saying that it is not obliged to grant refugee status to the asylum seekers.

Secondly, Bangladesh Government does not want to register the Rohingya asylum seekers as refugees due to the perception that it might create a pull-factor generating a further influx to this poor and over-populated country, since a register refugee enjoys greater protection than other categories of displaced people. Against the backdrop, Bangladesh Government thinks that if it documents the Rohingya asylum seekers as refugees, other persecuted Rohingyas in Myanmar may prefer to adopt a dignified refugee life in Bangladesh rather than to live as stateless people in Myanmar.

Thirdly, inter agency politics is obvious here. This has been observed that for some unknown reasons the present Government of Bangladesh prefers IOM than UNHCR although UNHCR has a vast experience in refugee administration around the globe while IOM is relatively new in the domain. Therefore, if Bangladesh registers these asylum seekers as refugees, as per the UN Resolution no. 319/A, dated 3rd December 1949, UNHCR will automatically be solely responsible for coordinating and administering all funds in relation to Rohingya refugees in Bangladesh, which the country does not want to be happened.

Fourthly, Bangladesh is more interested to use the term 'Myanmar nationals' for Rohingyas, thinking that this approach will help the country to better negotiate with Myanmar. Finally, Bangladesh believes that it will be difficult to send these asylum seekers back to Myanmar if they are registered as refugees. Can, in any case, the country be able to send them back against their will?

The Government of Bangladesh needs some motivation to get rid of its funny perceptions over refugee issue. It is true that the documentation of the Rohingya asylum seekers as refugees will provide them with certain rights that might generate a further influx. Therefore, the Government is not interested in documenting the Rohingyas as refugees so as not to create a pull factor. Since this is the case, then what the Government cannot see is that the documentation of asylum seekers as refugees actually increases the overall security of a country by guarantying better human rights. Further, Bangladesh Government needs to understand that terming the Rohingyas as refugees is important for the greater interests of Bangladesh. For example, when the situations in Myanmar will be calm down, Myanmar Government may refuse to take the Rohingyas back saying that they are not Myanmar nationals. In that case, the refugee identification of the Rohingyas will help Bangladesh to gain international support for returning the refugees.

It is ironic that Bangladesh does not have a comprehensive Rohingya policy although the country has been facing the crisis for the last forty years. The case needs to be discussed in the light of the overall migration policy of Bangladesh that does not exist as a single document or a complete set of documents. A substantial part of the policy lies in bureaucratic behavior and/or practices. Other parts of the policy are incorporated in some national instruments.

The principal regulatory instrument which the government follows is the Emigration Ordinance of 1982. In recent year, different interested parties have strongly recommended the revision of the ordinance in order to better address the current nature of migration in Bangladesh. This led to the development of the Overseas Employment and Migration Act, 2013. Bangladesh Government also adopted the Expatriates' Welfare and Overseas Employment Policy in 2016, which supersedes the Overseas Employment Policy of 2006. The enactment of this policy is a major breakthrough in the field of migration management in Bangladesh as among other issues it proclaims the principles of gender equality and human rights of the migrants. However, one of the limitations of this policy is that it does not address the challenges of reintegration of the returnee Bangladeshi migrants into their own communities. Other relevant

national legal and policy instruments are the Emigration Rules-2002, the Wage Earners' Welfare Fund Rules-2002, the Recruiting Agents' License and Conduct Rules-2002, the Prevention and Suppression of Human Trafficking Act-2012, the Domestic Worker Protection and Welfare Policy-2015, the Wage Earners' Welfare Board Act-2016 etc. These legal and policy initiatives could not ensure better migration governance in Bangladesh because these are much directive and less responsive. Also, these are not linked to other national policies such as poverty reduction policy, slum development policy, women's development policy etc. Even, none of the migration related major national policy documents of Bangladesh are talked about Rohingya asylum seekers in the country.

In absence of an effective central migration policy of the country that can cover and govern all actors and sections with relevance to migration issues including Rohingya issue, Bangladesh has adopted a temporary policy to the Rohingya asylum seekers. On 9 September 2013, the Government of Bangladesh has adopted a 'National Strategy on Myanmar Refugees and Undocumented Myanmar Nationals' in Bangladesh. Later, a summary of the strategy paper was shared with the international community in February 2014 by the Ministry of Foreign Affairs. To summarize in brief, the Government of Bangladesh identifies the Rohingya asylum seekers as 'undocumented Myanmar nationals' under the adopted strategy.²³ Bangladesh Government is following the same legacy of not recognizing the asylum seekers as refugees even after the initiation of the documentation process.

By not granting the refugee status to Rohingya asylum seekers, Bangladesh Government can actually not skip from its commitment to the international humanitarian and human rights law. In this context, it is worth to note that Bangladesh is a State party to more than 18 major international human rights and humanitarian instruments including: *International Convention on the Protection of the Rights of All Migrants Workers and Their Families*; *International Covenant on*

²³ This part has been informed by my other writer up. Md. Mahbubur Rahman, "The Crisis of Undocumented Rohingyas," *The Daily Star*, November 29, 2016, 12.

Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; The Convention on the Rights of the Child (CRC), and its two optional protocols; Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and its optional protocol; International Convention on the Elimination of All Forms of Racial Discrimination (CERD); Convention for the Suppression of the Trafficking in Persons and of the Exploitation of the Prostitution of Others; and more.²⁴

Through the signing of these international instruments, Bangladesh has pledged to domesticate the international humanitarian and human rights obligations and principles. Therefore, in principle, the country cannot breach its pledge to contribute to the promotion of humanitarian assistance and protection of human rights by saying that the Rohingyas are not refugees in Bangladesh.

As ‘migration has proved to be difficult to control directly,’ a judicious policy intervention towards the Rohingya asylum seekers is required for ‘maximizing its benefits and minimizing its harmful effects’²⁵ and bringing a durable solution to the problem.

Bangladesh Case Explores New Correlation between Human Rights and Security

The tensions between security issues and human rights concerns are always there in migration governance. The common perception among the policy makers is that asylum seekers with refused refugee status and irregular migrants are threat to the national security of a host country. As a result, whenever a State tries to formulate a migration policy, there are tendencies to undermine the human rights of refugees and migrants on the grounds of security. Therefore, this has always been a great challenge to balancing security with migrants’ and refugees’ rights. In order to create such a balance in migration

²⁴ Note Verbale reference no. PMBNY/Elections/HCR/06, *Aide Memoire on Bangladesh’s Voluntary Pledges towards Human Rights*, 13 April 2006, Permanent Mission of Bangladesh to the United Nations, 4.

²⁵ Ronald Skeldon, “Migration and Migration Policy in Asia: A Synthesis of Selected Cases,” in *Migration and Development: Pro-Poor Policy Choices*, ed. Tasneem Siddiqui (Dhaka: University Press Limited, 2005).

governance, our policy makers' general understanding on security and human rights issues actually suggests to compromise human rights for security, but it also urges that impacting on human rights must be proportional to the threat to which it is seeking to respond.

Therefore, in a way it supports cutting human rights on the grounds of security. However, the Bangladesh case indicates that under no circumstances the human rights of refugees and migrants and other categories of people on move should undermine. My key research finding from Bangladesh experience is presented in the below box:

A country faces security challenges when human rights concerns of asylum seekers, refugees or, migrants or, displaced persons or, any other groups of people who fall in the category of 'people on move' are not addressed properly.

My finding is based on Bangladesh's experience on hosting the Rohingya asylum seekers. The life of the Rohingyas in Bangladesh was never satisfactory. The Rohingya women and children were being frequently victims of sexual and gender-based violence (SGBV) in Bangladesh. On one hand, domestic SGBV was widespread within the refugee families, and on the other hand, rape was also prevalent outside of family spheres with local villagers, boatman (*Mahjees*), and members of law enforcement agencies. Also, shocking levels of poverty was existed in that community.

When this was the condition, a government directive towards the Rohingyas further aggravating their human rights conditions in July 2012 when Bangladeshi authorities put an official ban on NGOs to provide humanitarian services, including health care and nutrition assistance to then undocumented Rohingyas. This sanction which shrunk their rights was based on the fear of protecting the national interest and security. This incidence reminds the statement of Pollis and Schwab who argues that 'rights are limited when leadership or

institutions are seen as threatened and that often the most basic rights of populations are violated'.²⁶

Reports indicate that when the Rohingya asylum seekers needed to approach the police or other members of law enforcement agencies for legal protection, they risked being jailed for at least five years on the criminal charge of illegal entrance into Bangladesh under the 1946 Foreigners' Act of the country.²⁷ This has been observed that the then prevailing human rights conditions of the Rohingya asylum seekers promoted non-traditional security challenges to the country, such as, human trafficking, smuggling and other forms of irregular migratory movement to and from Bangladesh. The deteriorating human rights situations of the Rohingyas had actually forced them to look for options for survival and eventually they became easy victims to what was still a small incipient group of human traffickers. Very soon a massive profit accrued from this human trade, which created conditions for the traffickers to cash in. They lured unsuspecting Bangladeshis with lucrative jobs in the Pacific region. 'The traffickers targeted regions that generally do not produce large scale international migrants. In these areas information and awareness about pitfalls of migration through irregular channel is scarce.'²⁸

This made the number of Bangladeshi victims of human trafficking not significantly lower than that of the Rohingya asylum seekers. In fact the ratio of Rohingya and Bangladeshi victims was 60:40, and among the victims of human trafficking who got temporary shelter in Malaysia in 2015, at least 60 percent was Bangladeshi.²⁹ It is to be noted that at the beginning, Bangladeshi authorities were not serious

²⁶ Adamanita Pollis and Peter Schwab, eds., *Human Rights: New Perspectives, New Realities* (New Delhi: Viva Books Private Limited, 2002), 1.

²⁷ This part has been informed by my other write up.

Md. Mahbubur Rahman, "The Crisis of Undocumented Rohingyas," *The Daily Star*, November 29, 2016, 12.

²⁸ CR Abrar, "New Boat People: Creation of Exclusion, Inanity and Inaction," *The Daily Star*, May 22, 2015, 15.

²⁹ Kamal Ahmed, "Asun Amra Lojjito Hoi," *The Daily Prothom Alo*, May 23, 2015, 11.

about the issue, rather, they let it go in a sense that the Rohingya asylum seekers were getting out of the country, which in turn, however, became boomerang to them. Later, it appeared as a great challenge for the Government of Bangladesh to control human trafficking.

Recommendations

Rohingya Issue

1. Bangladesh must grant the refugee status to Rohingya asylum seekers.
2. Bangladesh should not return the Rohingyas against their will and the UNHCR must be involved with the repatriation process.
3. The UN should deploy peacekeeping mission in the Northern Rakhine State of Myanmar.
4. On the grounds of regional security, the ASEAN and the SAARC must create an effective pressure on Myanmar for bringing a durable solution to the protracted Rohingya crisis.
5. CSOs in Bangladesh and Myanmar should be mobilized for ensuring human rights of the Rohingyas for the greater interest of both countries.
6. Myanmar must grant the full citizenship to Rohingyas.

The Global Compact on Refugees

7. The GCR must call on States to depoliticize refugee issues and stop adopting such national policies that keep people who need international protection outside the purview of refugee status.
8. The GCR should guarantee human rights of asylum seekers with refused refugee status and other groups of people who do not fall any standard categorization of persons of concern but who need international protection.

The Global Compact for Safe, Orderly and Regular Migration

9. The GCM should call on States to recognize the social and economic contributions of the irregular migrants in the countries of destination.

10. The GCM must prohibit States to treating irregular migrants as a threat to national security and violating their human rights on the grounds of security.

Conclusion

I would like to conclude by highlighting the possible future implications of this article. I believe that this article will be useful in various ways. Firstly, it will help students to get an overview of politics of migration with particular reference to the Global Compacts on refugees and migrants, and the Rohingya asylum seekers in Bangladesh. Secondly, it will help the civil society activists, particularly the civil society of Bangladesh, to see their scopes of engagement for negotiations with the Government on the Global Compacts. Thirdly, it may encourage the Government of Bangladesh to bring a change to its current policy on Rohingyas by granting them the refugee status in Bangladesh. Finally, this article will contribute to develop a more comprehensive, predictable, systematic, orderly and equitable global approach in dealing with large movements of people by ensuring full human rights of irregular migrants and asylum seekers with refused refugee status.

References

- Abrar, CR. "New Boat People: Creation of Exclusion, Inanity and Inaction." *The Daily Star*, May 22, 2015.
- Ahmed, K. "Asun Amra Lojjito Hoi." *The Daily Prothom Alo*, May 23, 2015.
- Bangladesh Government. Note Verbale reference no. PMBNY/Elections/HCR/06, *Aide Memoire on Bangladesh's Voluntary Pledges towards Human Rights*, 13 April 2006. This note verbale was submitted to the Department of General Assembly and Conference Management of the United Nations by the Permanent Mission of Bangladesh to the United Nations.
- "Bangladesh's Rohingya Camps—Promise or Peril?" IRIN. November 25, 2014.
<http://www.irinnews.org/report/100882/bangladesh-rohingya-camps-promise-or-peril>
- Dearden, L. "Bangladesh is now the single biggest country of origin for refugees on boats as new route to Europe emerges." *The Independent*, May 5, 2017. Accessed October 5, 2017.
<http://www.independent.co.uk/news/world/europe/refugee-crisis-migrants-bangladesh-libya-italy-numbers-smuggling-dhaka-dubai-turkey-detained-a7713911.html>
- "Latest Global Figures." Missing Migrants. Last modified: August 28, 2017.
<http://www.missingmigrants.iom.int/latest-global-figures>
- "Myanmar: Who are the Arakan Rohingya Salvation Army?" *BBC News*, September 6, 2017. Accessed October 5, 2017.
<http://www.bbc.com/news/world-asia-41160679>
- "Myanmar: A New Muslim insurgency in Rakhine State." International Crisis Group. December 15, 2016.
<https://www.crisisgroup.org/asia/south-east-asia/myanmar/283-myanmar-new-muslim-insurgency-rakhine-state>
- Pollis, A. and Peter Schwab, eds. *Human Rights: New Perspectives, New Realities*. New Delhi: Viva Books Private Limited, 2002.
- Rahman, M.M. "The Crisis of Undocumented Rohingyas." *The Daily Star*, November 29, 2016.
- Rahman, M.M. "Global Compact for Migration: Taking the Civil Society on Board." *The Financial Express*, October 7, 2017.

- Rahman, M.M. "Rohingya Issue: From Regional Security Perspective." *The Financial Express*, October 7, 2017.
- Refugee and Migratory Movements Research Unit (RMMRU). *Labour Migration from Bangladesh 2016: Achievements and Challenges*. Dhaka: RMMRU, 2016. "Global Compact on Refugees." Refugees and Migrants. Last modified: September 2017. <http://refugeesmigrants.un.org/refugees-compact>
- Kazmi, Z. "Who are the Rohingya, why are they called 'security threat' and 'nowhere people'?" *Hindustan Times*, September 18, 2017. Accessed: October 7, 2017. <http://www.hindustantimes.com/india-news/the-world-s-most-persecuted-community-who-are-the-rohingyas/story-PgNwZ4URpdpMpZNXNryw88I.html>
- Simmons, B.A. *Mobilizing for Human Rights: International Law in Domestic Politics*. Cambridge: Cambridge University Press, 2009.
- Skeldon, R. "Migration and Migration Policy in Asia: A Synthesis of Selected Cases." In *Migration and Development: Pro-Poor Policy Choices*, edited by Tasneem Siddiqui. Dhaka: University Press Limited, 2005.
- United Nations High Commissioner for Refugees (UNHCR). *Bangladesh: Analysis of Gaps in the Protection of Rohingya Refugees*. Geneva: UNHCR, 2007.
- United Nations High Commissioner for Refugees (UNHCR). *UNHCR Statistical Year Book 2013*. Geneva: UNHCR, 2014.
- United Nations. New York. A/RES/71/1, *New York Declaration for Refugees and Migrants*. 71st session, Resolution adopted by the United Nations General Assembly on 19 September 2016.