



Rohingya refugees from Myanmar at the “gates of hell” International law duties of neighbouring States to refugees and asylum seekers

Briefing note

Catherine Morris, BA, JD, LL.M.¹

9 November 2017

Four pages plus references. Please send corrections to cmorris@peacemakers.ca or lrwc@portal.org.

The catastrophic exodus of Rohingya people from Myanmar’s Rakhine State is being compared to the massive² flight from Rwanda at the time of its 1994 genocide. Since 25 August 2017, an estimated 613,000³ of Rakhine’s 1.1 million Rohingya have surged across the Bangladesh border to Cox’s Bazar to join 213,000 already encamped there after earlier waves of displacement. Numbers increase by thousands each day. Fifty-four percent of those fleeing are children.⁴ The world is transfixed by shocking descriptions of the suffering of children, women and men at the “gates of hell”⁵ at Cox’s Bazar, but there is comparatively little focus on other potential destinations for Rohingya refugees. This briefing note summarizes the international law obligations of neighbouring States regarding refugees and asylum seekers with reference to Thailand and Malaysia, significant destinations for Rohingya refugees until 2015.

Brief background: Rohingya refugees have been fleeing Myanmar for decades

For decades, Myanmar’s policies and practices of discrimination, exclusion and violence against Rohingya people have led them to flee in massive numbers.⁶ Waves of Rohingya people have fled violence in Myanmar in 1978 (200,000), 1991-1992 (250,000), 2012 (100,000), 2015-2016 (tens of thousands), and since late August 2017 (613,000).⁷ Bangladesh has been the main destination, but Rohingya people have also sought asylum in other countries in the region, including Malaysia, Thailand, Indonesia and India.⁸

Myanmar has long applied its discriminatory 1982 Citizenship Law in violation of international human rights standards so as to effectively deny citizenship rights to Rohingya people,⁹ which group is not recognized among Myanmar’s official ethnic minorities.¹⁰ This renders most Rohingya people stateless, including persons whose families have lived in Myanmar for generations. Myanmar also refuses to recognize the group’s self-identified name, “Rohingya,” referring to them instead as “Muslims,” “Muslim groups”¹¹ or illegal “Bengali” migrants.¹² The violence leading to 2012’s wave of Rohingya refugees led human rights groups to describe the situation as “ethnic cleansing” and “crimes against humanity.”¹³

On 25 August 2017 attacks by about 20 members of the Arakan Rohingya Salvation Army (ARSA) killed 12 officers at 30 Rakhine State police and military posts.¹⁴ This triggered a retaliatory military “clearance operation” marked by reported burnings of entire Rohingya villages,¹⁵ killing of civilian men, women, and children, and sexual violence against fleeing girls and women.¹⁶

In September 2017, the UN Secretary General and the UN High Commissioner for Human Rights classified the forced displacements and atrocities as “ethnic cleansing” and “crimes

against humanity.”¹⁷ Increasingly, human rights experts have been using the term “genocide.”¹⁸ Yet, on 6 November the Security Council was able to prevent China’s veto¹⁹ only by resorting to a non-binding Statement²⁰ that avoids all these terms. Instead, the unanimous Statement “strongly” condemns the “violence” and expresses “grave concern over reports of human rights violations and abuses.”

Duties of Myanmar’s neighbours towards Rohingya refugees

The Security Council’s Statement stresses Myanmar’s primary responsibility to protect the human rights of its population, and joined the world’s commendation of the Bangladesh government for sheltering the refugees. The Statement urges the Bangladesh government to continue to do so until the refugees can return voluntarily and safely to Myanmar.

Bangladesh has not ratified the UN Refugee Convention²¹ which forbids States from involuntarily returning any persons to any places where they would be subjected to indefinite detention, torture and ill-treatment or other persecution (“refoulement”²²). Nor have any other countries in the region with Rohingya refugees within their territories ratified the Refugee Convention.

As a matter of overriding norms of customary international law (CIL),²³ all States are forbidden from denying temporary asylum to refugees who arrive at their borders, whether or not the States have ratified the Refugee Convention. This is a corollary of the CIL duty of non-refoulement.²⁴ The Security Council Statement urges Bangladesh to “give due regard to the principle of non-refoulement.” While the Security Council applauds other States for their humanitarian assistance, its Statement says nothing about the application of the principle of non-refoulement to all potential destination States for Rohingya asylum seekers.

Thailand: Invisibility, push-back, deportation, risk of exploitation, and indefinite detention

Until 2015, many Rohingya refugees not fleeing to Bangladesh sought boats to Thailand as a first destination on their way to Malaysia or Indonesia. While there are more than a million people from Myanmar living in Thailand, they are mainly from Myanmar’s officially recognized ethnic minorities (e.g. Karen, Karenni, Mon and Shan). Of approximately 102,000 refugees from Myanmar residing in refugee camps along the Thailand-Myanmar border, few in those camps are Rohingya.²⁵ There appears to be no available estimate of numbers of Rohingya refugees or migrants.²⁶

Thailand reportedly has not cooperated with the efforts of the UN High Commissioner for Refugees (UNHCR) to conduct refugee status determination for Rohingya people.²⁷ The official invisibility of smuggled or trafficked Rohingya people contributes to lack of transparency of numbers of Rohingya landing in Thailand. In 2013 an estimated 1,700 Rohingya men, women and children were detained in Thailand in extremely overcrowded and inhumane conditions.²⁸ As of September 2017, 121 Rohingya migrants were in detention.²⁹

In 2013, some 40,000 Rohingya people were smuggled through human traffickers’ camps in Thailand.³⁰ Traffickers attempted to extort ransoms from migrants’ families to secure their freedom and subjected their human “cargo” to severe forms of torture and ill-treatment.³¹ These trafficking routes were reportedly established in approximately 2006³² but were disrupted in 2015 after mass graves of unidentified Rohingya people were discovered in Thailand close to the

Malaysia border. Thailand responded to the news of the atrocities by pushing away boatloads of Rohingya migrants, leaving them stranded at sea.

The international outcry led Thailand to prosecute a number of traffickers, including several senior Thai military officers, one of whom was convicted in July 2017.³³ As this year's "sailing season" approaches, it is reported that some Rohingya people may again be attempting voyages from Sittwe in Rakhine State or from Bangladesh,³⁴ paying smugglers approximately 400,000 or 500,000 kyat (US \$300 or \$US 350). So far there are no news reports about Rohingya refugees disembarking in Thailand after 25 August 2017.

Thailand has not been welcoming of Rohingya migrants and refugees and since 2008 has had a policy of pushing back boatloads of Rohingya migrants to prevent them from landing.³⁵ On 29 August 2017, Thailand's Prime Minister stated that Thailand would accept Rohingya refugees and send them back "when they are ready."³⁶ At the Third Committee of the General Assembly on 1 November 2017, Thailand's representatives affirmed that Thailand would "continue to improve the situation of migrants and displaced persons" noting that "Thailand's Constitution guaranteed all persons were equal before the law and the Government was committed to implementing obligations under the International Convention."³⁷

Thailand's record of implementation of its treaty obligations in national laws, courts or administrative practice is inconsistent,³⁸ and there is serious, longstanding, and ongoing concern about discrimination, exploitation, indefinite detention, and ill-treatment of refugees.³⁹ Thailand's practice of deporting unregistered migrant workers puts migrants in precarious and often exploitive conditions.⁴⁰ A number of registered migrant workers complaining of labour rights violations are currently facing charges of criminal defamation and other offences.⁴¹ Human rights defenders and journalists reporting on human trafficking and human rights violations against migrant workers have been subjected to threats and prosecutions.⁴²

Even though Thailand has not ratified the Refugee Convention, it has a duty under CIL to give temporary asylum to refugees.⁴³ In addition, all refugee and migrant children, women and men located within Thailand's territory are entitled to all internationally protected rights enumerated in international human rights conventions to which Thailand is party, including the *International Covenant on Civil and Political Rights* (ICCPR),⁴⁴ the *International Covenant on Economic and Social Rights* (ICESCR),⁴⁵ the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD),⁴⁶ the *Convention against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment* (CAT),⁴⁷ the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW),⁴⁸ the *Convention on the Rights of the Child* (CRC) and its optional protocols on children in armed conflict (OP-CRC-AC) and on the sale of children (OP-CRC-SC),⁴⁹ the *Convention on the Rights of Persons with Disabilities* (CRPD),⁵⁰ and the *Convention against Transnational Organised Crime* (UNTOC) and its Trafficking and Smuggling protocols.⁵¹ Thailand also has an international law obligation to provide assistance to people at sea pursuant to the *UN Convention on the Law of the Sea* (UNCLOS).⁵²

Malaysia: Indefinite detention and exploitation

Prior to 25 August 2017, there were reportedly approximately 59,100 Rohingya refugees in Malaysia.⁵³ On 1 September 2017, Malaysia's Maritime Enforcement Agency was reported as stating that despite Malaysia's push back policy, they would not turn back Rohingya refugees but would give them temporary shelter, probably in immigration detention centres.⁵⁴

Until 2015, the porous border between Thailand and Malaysia allowed traffickers to transport migrants from south Thailand into jungle camps in northern Malaysia and from there to crowded compounds in border towns.⁵⁵ As in Thailand, traffickers extorted ransoms from families of victims. In March 2015, the UN Special Rapporteur on trafficking in persons noted that Malaysia has the “institutional and legal framework to prevent and combat trafficking” but needs to make mechanisms “more effective and able to deal with the ever changing features of trafficking, especially concerning its labour dimension, and its connection with migration policies.”⁵⁶

Malaysia has not ratified the Refugee Convention and considers refugees to be illegal migrants. As of May 2016, Malaysia was holding 340 Rohingya in indefinite detention.⁵⁷ Refugees not in detention face obstacles for education and work and are vulnerable to exploitation and trafficking.⁵⁸ In addition to its obligations to refugees and asylum seekers under CIL, Malaysia is bound by the CEDAW, the CRC, the OP-CRC-AC, the OP-CRC-SC, the CRPD, the UNTOC Trafficking Protocol, and UNCLOS. However, Malaysia has not ratified a number of core human rights treaties such as the ICCPR, the ICESCR, the ICERD, or the CAT.

Recommendations

Thailand and Malaysia (and all other States to which refugees from Myanmar are fleeing, including Bangladesh) are urged to:

- ensure the safety of Rohingya refugees, ensuring that they are not returned involuntarily to Myanmar to the likelihood of violations of their right to life, liberty and freedom from torture and ill-treatment and other grave human rights violations;
- adhere to international human rights law, including the *Universal Declaration of Human Rights* (UDHR),⁵⁹ CIL, and all multilateral human rights treaty obligations in relation to migrants and refugees fleeing Myanmar;
- ensure adequate domestic legal frameworks to prevent, investigate and prosecute all those involved in violations of CIL and human rights treaties;
- ratify the *Refugee Convention* of 1951 and other unratified core human rights treaties;
- ensure protection of human rights defenders and journalists in conformity with the *UN Declaration on Human Rights Defenders*.⁶⁰

Myanmar is urged to immediately:

- allow and ensure access for all necessary humanitarian aid including provision of necessities of food, water, medical care, housing and transportation to all Rohingya people in Myanmar negatively impacted by Myanmar’s policies and actions against them in violation of their internationally protected human rights;
- facilitate all necessary humanitarian assistance to Rohingya people who have fled to Bangladesh and other neighbouring countries until such time as the refugees can safely and voluntarily return to Myanmar;
- cease all military action and use of force against Rohingya people and their dwellings, property and communities;
- adopt the recommendations of the Advisory Commission on Rakhine State;
- fully cooperate with the UN Independent International Fact Finding Mission (IFFM), and grant the IFFM unrestricted access to all areas of Myanmar, pursuant to UN Human Rights Council Resolutions of 22 March 2017⁶¹ and 27 September 2017,⁶² and
- uphold the UDHR, CIL and all human rights treaty obligations under the ICESCR, CEDAW, CRC, OP-CRC-AC, OP-CRC-SC, and the CRPD.

References

¹ Catherine Morris, BA, JD, LL.M., is an adjunct professor at University of Victoria (UVic), Canada and an Associate of UVic's Centre for Asia Pacific Initiatives (CAPI). She is the UN Liaison Director for Lawyers' Rights Watch Canada (LRWC: www.lrwc.org) and serves on monitoring and advocacy teams for several countries in Southeast Asia, including, Thailand, Cambodia, and Myanmar. She is the managing director of Peacemakers Trust (www.peacemakers.ca), a Canadian charitable organization for research and education on conflict transformation and peacebuilding. She has regularly visited Thailand and Cambodia for teaching and research purposes since the mid-1990s and conducted several short monitoring visits to Myanmar from 2006 to 2012.

² "The Rohingya refugee crisis is the worst in decades: The weekly outflow from Myanmar is the highest since the Rwandan genocide," *The Economist*, 21 September 2017, available at: <https://www.economist.com/blogs/graphicdetail/2017/09/daily-chart-13>.

³ International Organization for Migration, Inter Sector Coordination Group, International ISCG Situation Report: Cox's Bazar Influx, 9 November 2017, available at ReliefWeb: <https://reliefweb.int/report/bangladesh/iscg-situation-update-rohingya-refugee-crisis-cox-s-bazar-9-november-2017>; numbers increased from 609,000 to 613,000 from 5 to 9 November 2017. International Organization for Migration, Inter Sector Coordination Group, International ISCG Situation Report: Cox's Bazar Influx, 5 November 2017, available at ReliefWeb: <https://reliefweb.int/report/bangladesh/iscg-situation-report-cox-s-bazar-influx-5-november-2017> Bangladesh bearing brunt of Rohingya refugees crisis as Indonesia, Malaysia and Thailand offer help, First Post, 19 September 2017, available at: <http://www.firstpost.com/world/bangladesh-bearing-brunt-of-rohingya-refugees-crisis-as-indonesia-malaysia-and-thailand-offer-help-4058789.html>; Amnesty International, Myanmar / Bangladesh: Rohingya refugees must not be forced home. AI, 4 October 2017, available at <https://www.amnesty.org/en/press-releases/2017/10/myanmar-bangladesh-rohingya-refugees-must-not-be-forced-home-to-abuses-and-discrimination/>; Human Rights Watch, "Bangladesh: Reject Rohingya Refugee Relocation Plan: Provide Protection, Not Isolation on Flooded Island," 8 February 2017, HRW, available at <https://www.hrw.org/news/2017/02/08/bangladesh-reject-rohingya-refugee-relocation-plan>; Human Rights Watch, Bangladesh: Assist, Protect Rohingya Refugees: Humanitarian Aid Desperately Needed; Crisis Situation in Burma Continues, 22 August 2017, available at: <https://www.hrw.org/news/2012/08/22/bangladesh-assist-protect-rohingya-refugees>; Pia Prytz Phiri, "Rohingyas and refugee status in Bangladesh," *Forced Migration Review*, April 2008, available at: <http://www.fmreview.org/burma/phiri.html>.

⁴ UNHCR, "First results of family counting in Bangladesh find every third refugee household vulnerable, News briefing, 7 November 2017, available at: <http://www.unhcr.org/news/briefing/2017/11/5a0192138/first-results-family-counting-bangladesh-find-third-refugee-household-vulnerable.html>.

⁵ Tim Costello, World Vision Australia. "I've Visited Many Terrible Refugee Camps But Cox's Bazar Felt Like The Gates Of Hell," *Huffington Post*, 2 November 2017, available at: http://www.huffingtonpost.com.au/tim-costello/ive-visited-many-terrible-refugee-camps-but-coxs-bazar-felt-like-the-gates-of-hell_a_23260127/

⁶ Chris Lewa, Forum Asia. "Conflict, discrimination and humanitarian challenges in Northern Arakan State," Paper delivered at EU-Burma Day 2003 Conference, Brussels, 8 October 2003, available at:

<https://www.scribd.com/document/118103992/EU-Paper-on-Rohingya-by-Chris-Lewa>; Chris Lewa, "Asia's new boat people," *Forced Migration Review* 30 (2009), available at:

<http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/burma/lewa.pdf>; Most Rohingya people in Myanmar reside in Rakhine State. See Myanmar Information Management Unit (MIMU)

http://themimu.info/Census_2014_SR_dashboard%20. The estimated population of Rohingya was 1.1 million in 2016. Rohingya people were permitted to be registered only as "Bengali," so many Rohingya boycotted the 2016 census. See UNFPA welcomes release of Myanmar census data on religion, 21 July 2016, available at:

<http://myanmar.unfpa.org/news/unfpa-welcomes-release-myanmar-census-data-religion>; also see map at http://themimu.info/sites/themimu.info/files/documents/Population_Map_2014_Census_Population_St-Rg_MIMU841v05_26Sep2014_A4.pdf. The Myanmar government's report on population in Rakhine State is at http://www.dop.gov.mm/moip/index.php?route=product/product&product_id=110.

⁷ Sultana Yesmin, "Policy Towards Rohingya Refugees: A Comparative Analysis of Bangladesh, Malaysia and Thailand," *Journal of the Asiatic Society of Bangladesh* (Hum.), Vol. 61(1), 2016, pp. 71-100, available at: http://www.asiaticsociety.org.bd/journal/4_H_883.pdf; Lewa, "Asia's new boat people," *ibid*; Vivian Tan (UNHCR spokesperson), "Over 168,000 Rohingya likely fled Myanmar since 2012, UNHCR report: Study finds thousands of Rohingya fleeing violence and desperation have sought safety and stability in countries like Bangladesh and

Malaysia in the last five years,” UNHCR, available: <http://www.unhcr.org/news/latest/2017/5/590990ff4/168000-rohingya-likely-fled-myanmar-since-2012-unhcr-report.html><http://www.unhcr.org/news/latest/2017/5/590990ff4/168000-rohingya-likely-fled-myanmar-since-2012-unhcr-report.html>. Full report at <https://unhcr.atavist.com/mm2016>.

⁸ For discussion of India’s role and obligations to Myanmar refugees, see Niranjan Sahoo, "India’s Rohingya Realpolitik," Carnegie Endowment for International Peace, 31 October 31, 2017, available at: <http://carnegieendowment.org/2017/10/31/india-s-rohingya-realpolitik-pub-74590>; Vidushi Sanghadia, An International Law Perspective on India’s Response toward the Rohingya Refugee Crisis, Oxford Human Rights Lab, 22 September 2017, available at: <http://ohrh.law.ox.ac.uk/an-international-law-perspective-on-indias-response-toward-the-rohingya-refugee-crisis/>; Office of the High Commissioner for Human Rights, "Darker and more dangerous: High Commissioner updates the Human Rights Council on human rights issues in 40 countries," Human Rights Council 36th session, Opening Statement by Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights, 11 September 2017, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22041> (see India’s response quoted in “India hits back at UN criticism over Rohingya human rights issue,” *Times of India*, 12 September 2017, available at: <https://timesofindia.indiatimes.com/india/india-hits-back-at-un-criticism-over-rohingya-human-rights-issue/articleshow/60479559.cms>; India: Rohingya fleeing persecution need support, not threats of arbitrary expulsion, Amnesty International Netherlands, 18 August 2017, <https://www.amnesty.nl/actueel/india-rohingya-fleeing-persecution-need-support-not-threats-of-arbitrary-expulsion>; India: Don’t Forcibly Return Rohingya Refugees, Human Rights Watch, 17 August 2017, available at: <https://www.hrw.org/news/2017/08/17/india-dont-forcibly-return-rohingya-refugees>).

⁹ UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee A/HRC/31, 8 March 2016, para 35-36, available at: <http://www.refworld.org/pdfid/56ead91d4.pdf>; UN General Assembly, Resolution adopted by the General Assembly on 29 December 2014, [on the report of the Third Committee (A/69/488/Add.3)] 69/248.Situation of human rights in Myanmar, para 8, 9, available at: https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/69/248. For details, including discussion of how the 1982 Citizenship Law is misunderstood by media, human rights organizations and other commentators, see Cheesman, "How in Myanmar 'National Races' Came to Surpass Citizenship and Exclude Rohingya," *Journal of Contemporary Asia* 47(3)(2017): 440-460, at 471ff; also see Human Rights Watch, "Discrimination in Arakan, in *Burmese Refugees in Bangladesh: Still No Durable Solution*, Vol 12. No. 3 (C) May 2000, available at: https://www.hrw.org/reports/2000/burma/burm005-02.htm#P134_35016 . Full report at <https://www.hrw.org/reports/2000/burma/>.

¹⁰ Cheesman, *ibid*.

¹¹ Myanmar Military Chief Defends Crackdown Against Rohingya in Rakhine State, RFA, 27 March 2017, available at: <http://www.rfa.org/english/news/myanmar/myanmar-military-chief-defends-crackdown-against-rohingya-in-rakhine-state-03272017154143.html>

¹² Speech delivered by Her Excellency Daw Aung San Suu Kyi, State Counsellor of the Republic of the Union of Myanmar on Government’s efforts with regard to National Reconciliation and Peace (Nay Pyi Taw, 19 September 2017), available at: <http://www.mofa.gov.mm/wp-content/uploads/2017/09/SC-speech-transcription-Final-19-9-2017.pdf> Aung San Suu Kyi On Rohingya Crisis - Full Interview, Republic World, available at: <https://www.youtube.com/watch?v=q4O3AreGcYk>.

¹³ Human Rights Watch, Burma: End ‘Ethnic Cleansing’ of Rohingya Muslims: Unpunished Crimes Against Humanity, Humanitarian Crisis in Arakan State, News release, 22 April 2013, available at: <https://www.hrw.org/news/2013/04/22/burma-end-ethnic-cleansing-rohingya-muslims>

¹⁴ International Crisis Group, Myanmar Tips into New Crisis after Rakhine State Attacks, 27 August 2017, available at: <https://www.crisisgroup.org/asia/south-east-asia/myanmar/myanmar-tips-new-crisis-after-rakhine-state-attacks>; Also see “Myanmar: Who are the Arakan Rohingya Salvation Army?,” BBC, 6 September 2017, available at: <http://www.bbc.com/news/world-asia-41160679>.

¹⁵ Burma: Satellite Images Show Massive Fire Destruction, Human Rights Watch 2 September 2017, available at: <https://www.hrw.org/news/2017/09/02/burma-satellite-images-show-massive-fire-destruction>.

¹⁶ Bob Rae on Rohingyas: 'Somebody has to be held responsible', CTV, 4 November 2017, available at: <http://www.ctvnews.ca/politics/bob-rae-on-rohingyas-somebody-has-to-be-held-responsible-1.3663836>; Tejshree Thapa, Human Rights Watch Senior South Asia Researcher, Rohingya Muslims Flee Burmese Army, Seek Aid Abroad, Human Rights Watch, 4 September 2017, available at: <https://www.hrw.org/news/2017/09/04/watching-burma-flames-bangladesh>.

¹⁷ Zeid Ra'ad Al Hussein, *supra* note 9; Secretary-General António Guterres at United Nations Headquarters, Press Conference, 13 September 2017, available at: <https://www.un.org/press/en/2017/sgsm18676.doc.htm>.

¹⁸ Param Kumaraswamy, Olivier De Schutter, John Dugard, Richard Falk, Hannu Halinen, Thomas Hammarberg, Christof Heyns, Sigma Huda, Peter Leuprecht, Najat Maalla M'jid, Nowak Manfred, Rashida Manjoo, Farida Shaheed, Gulnara Shahinian, Theo van Boven and Amos Wako, "Former United Nations Special Rapporteurs Call for End to Human Rights Abuses Against Rohingya, Joint statement published by Canadian Centre for international Justice, 5 October 2017, available at: <https://www.ccij.ca/news/former-un-special-rapporteurs-rohingya/>; Also see Allard K. Lowenstein International Human Rights Clinic, Yale Law School, for Fortify Rights, *Persecution of the Rohingya Muslims: Is Genocide Occurring in Myanmar's Rakhine State? A Legal Analysis*, Fortify Rights, October 2015, available at: <https://law.yale.edu/system/files/documents/pdf/Clinics/fortifyrights.pdf>

¹⁹ Edith M. Lederer, The Associated Press, UN condemns violence against Rohingyas after China opposes stronger resolution, CTV, 6 November 2017, available at: <http://www.ctvnews.ca/world/un-condemns-violence-against-rohingyas-after-china-opposes-stronger-resolution-1.3665933>

²⁰ Sebastiano Cardi, President, United Nations Security Council, Presidential Statement S/PRST/2017/22, 6 November 2017, available at: <http://www.un.org/press/en/2017/sc13055.doc.htm> (scroll down).

²¹ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <http://www.refworld.org/docid/3be01b964.html>. Of ASEAN states, only Philippines and Cambodia have ratified this treaty. Also, none of the relevant states have ratified the *Convention Relating to the Status of Stateless Persons*. UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, available at: <http://www.refworld.org/docid/3ae6b3840.html>.

²² Refoulement refers to the forcible return of any asylum seeker or refugee to any country where there is reason to believe she or he will be subjected to persecution on the basis of her or his race, religion, nationality, membership of a particular social group or political opinion. UN High Commissioner on Refugees, Note on Non-Refoulement (Submitted by the High Commissioner). Available at: <http://www.unhcr.org/excom/scip/3ae68ccd10/note-non-refoulement-submitted-high-commissioner.html>; UN General Assembly Resolution 51/75, A/RES/51/75, 12 February, para 3, available at: <http://www.un.org/ga/documents/gares51/gar51-75.htm>; UN Refugee Agency, "Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, paras 14 to 22, especially para 21, available at: <http://www.unhcr.org/4d9486929.pdf>; Amnesty International, Myanmar/Bangladesh: Rohingya refugees must not be forced home to abuse and discrimination, 4 October 2017, available at:

<https://www.amnesty.org/en/latest/news/2017/10/myanmar-bangladesh-rohingya-refugees-must-not-be-forced-home-to-abuses-and-discrimination/>. Human Rights Watch, India Can't Mistreat Refugees By Not Signing Refugee Convention: Customary International Law Prohibits Returning Rohingya to Burma, 24 September 2017, available at: <https://www.hrw.org/news/2017/09/24/india-cant-mistreat-refugees-not-signing-refugee-convention>;

²³ Customary international law (CIL) a primary source of international law arising from norms consistently practiced by a preponderance of States out of a sense of legal obligation (Latin, "opinio juris"). See the definition of the Cornell Law School, Legal Information Institute (LII), available at:

https://www.law.cornell.edu/wex/customary_international_law. CIL is binding on all States whether or not they have ratified treaties on relevant subject matters. Overriding norms of CIL refer to which are peremptory norms of CIL (*jus cogens*) which cannot be derogated. For discussion of *jus cogens*, see International Law Commission, *Jus Cogens* (Mr. Dire D. Tladi), Annex, in Report on the work of the sixty-sixth session (2014), A/69/10, <http://legal.un.org/ilc/reports/2014/>, at <http://legal.un.org/ilc/reports/2014/english/annex.pdf>

²⁴ Ramandeep Kaur, *An Assessment of the International Legal Obligations Owed to the Rohingya Refugees*, ISAS Working Papers No. 229, at 9-10, Institute of South Asian Studies, and National University of Singapore, 16 February 2016, available at available at: <https://www.isas.nus.edu.sg/ISAS%20Reports/ISAS%20Working%20Paper%20No.%20229%20-%20An%20Assessment%20of%20the%20International%20Legal%20Obligations%20Owed%20to%20the%20Rohingya%20Refugees.pdf>.

²⁵ Human Rights Watch, *Ad hoc and Inadequate: Thailand's Treatment of Refugees and Asylum Seekers* (2012), <https://www.hrw.org/report/2012/09/12/ad-hoc-and-inadequate/thailands-treatment-refugees-and-asylum-seekers>

²⁶ Nikki Ostrand, *The Stateless Rohingya in Thailand*, Center for Migration Studies, 16 July 2014, available at: <http://cmsny.org/the-stateless-rohingya-in-thailand/>;

²⁷ *Ibid.*

²⁸ Human Rights Watch, “Thailand: End Inhumane Detention of Rohingya: Provide Asylum Seekers Access to UN Refugee Agency”(2013), at <http://www.hrw.org/news/2013/06/03/thailand-end-inhumane-detention-rohingya> .

²⁹ Fortify Rights, Thailand: Urge Myanmar to End Attacks on Rohingya Civilians, Press release, 26 September 2017, available at: <http://www.fortifyrights.org/publication-20170926.html>; The number detained was estimated at 151 as of July 2017, European Commission, European Civil Protection and Humanitarian Aid Operations, “Refugees in Thailand: Fact Sheet, ECHO, May 2017, available at: Amnesty International, Thailand is failing to fulfil its obligation to protect refugees,” September 2017, available at <https://www.amnesty.org/en/latest/news/2017/09/refugees-in-thailand-forcibly-returned-to-danger/>; Bangkok Post, Absorbing Rohingya becomes a regional challenge. Reliefweb, 12 December 2016 <https://reliefweb.int/report/thailand/absorbing-rohingya-becomes-regional-challenge>

³⁰ Andrew R.C. Marshall, Amy Sawitta Lefevre, Special Report: Flaws found in Thailand’s human-trafficking crackdown, Reuters, 10 April 2014, available at: <https://www.reuters.com/article/us-thailand-rohingya-special-report/special-report-flaws-found-in-thailands-human-trafficking-crackdown-idUSBREA3922P20140410>.

³¹ For a brief summary, see LRWC, “Southeast Asia: Systematic violations of the internationally protected rights of Rohingya and other migrants is costing lives and must be stopped,” Statement, 26 May 2015, available at <http://www.lrwc.org/?p=9116>.

³² Lewa, "Asia’s new boat people," *supra* note 7.

³³ Kaweewit Kaewjinda, "Thai Army general convicted in human trafficking case, AP, 20 July 2017, available at: <https://apnews.com/ea174075aa14f0e9355e557d9255954>.

³⁴ Audrey Gaughran, Amnesty International’s Director of Global Issues, “Rohingya Fleeing Myanmar Face Difficulties in Thailand,” *The Diplomat*, 29 September 2017, available at: <https://thediplomat.com/2017/09/rohingya-fleeing-myanmar-face-difficulties-in-thailand/>.

³⁵ Yesmin, *supra* note 8.

³⁶ Reuters Staff, "Thailand 'preparing to receive' those fleeing Myanmar violence," Reuters, 29 August 2017, available at: <https://www.reuters.com/article/us-myanmar-rohingya-thailand/thailand-preparing-to-receive-those-fleeing-myanmar-violence-idUSKCN1B9164>

³⁷ High Commissioner Describes New Model Placing Refugee, Migrant Rights at Heart of Crisis Response, as Third Committee Hears Calls for Sharing Responsibility. Relief Web, 1 November 2017, available at: <https://www.un.org/press/en/2017/gashc4216.doc.htm>.

³⁸ Equal Rights Trust, in partnership with the Institute of Human Rights and Peace Studies, Mahidol University, The Human Rights of Stateless Rohingya in Thailand, February 2014, available at: <http://www.equalrightstrust.org/ertdocumentbank/The%20Human%20Rights%20of%20Stateless%20Rohingya%20in%20Thailand%28small%29.pdf>

³⁹ European Commission, European Civil Protection and Humanitarian Aid Operations, “Refugees in Thailand: Fact Sheet, *supra* note 30; Gaughran *supra* note 35; Amnesty International USA, *Between a Rock and a Hard Place: Thailand’s Refugee Policies and Violations of the Principle of Non-Refoulement*, 28 September 2017, available at: <https://www.amnestyusa.org/reports/between-a-rock-and-a-hard-place/>; http://ec.europa.eu/echo/files/aid/countries/factsheets/thematic/refugees_thailand_en.pdf; Human Rights Watch, *Ad hoc and Inadequate*, *supra* note 26; Human Rights Watch, “Thailand: End Inhumane Detention of Rohingya, *supra* note 29.

⁴⁰ Kannikar Petchkaew, “In Thailand, migrant workers find common ground,” *Gulf News*, 1 November 2017. available at: <http://gulfnews.com/opinion/thinkers/in-thailand-migrant-workers-find-common-ground-1.2117133>

⁴¹ Thailand: Decriminalize Defamations and Protect Rights of Migrant Workers and Human Rights Defenders | Joint Letter with 87 Organizations, 20 September 2017, available at: <https://www.lrwc.org/thailand-decriminalize-defamations-and-protect-rights-of-migrant-workers-and-human-rights-defenders-joint-letter-with-87-organizations/>; Thailand: Thailand must cease prosecution of human rights defenders, Press Release, 12 December 2016, available at: <https://www.lrwc.org/thailand-thailand-must-cease-prosecution-of-human-rights-defenders-press-release/>.

⁴² *Ibid.* Also see Lawyers' Rights Watch Canada. Thailand: Phuket Journalists Ms. Chutima Sidasathian and Mr. Alan Morison prosecuted for criminal defamation for reporting on human trafficking of Rohingya and other migrants, 10 July 2015, available at: <https://www.lrwc.org/thailand-phuket-journalists-ms-chutima-sidasathian-and-mr-alan-morison-prosecuted-for-criminal-defamation-for-reporting-on-human-trafficking-of-rohingya-and-other-migrants/>

⁴³ Kaur, *supra* note 25, at 9-10.

-
- ⁴⁴ *International Covenant on Civil and Political Rights* (ICCPR), available at: <http://www.refworld.org/docid/3ae6b3aa0.html>.
- ⁴⁵ *International Covenant on Economic, Social and Cultural Rights* (ICESCR), available at: <http://www.refworld.org/docid/3ae6b36c0.html>.
- ⁴⁶ *International Convention on the Elimination of All forms of Racial Discrimination* (ICERD), available at: <http://www.refworld.org/docid/3ae6b3940.html>.
- ⁴⁷ *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT), A/RES/39/46, available at: <http://www.refworld.org/docid/3b00f2224.html>.
- ⁴⁸ *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>
- ⁴⁹ *Convention on the Rights of the Child* (CRC), available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>; Optional Protocol to the *Convention on the Rights of the Child on the involvement of children in armed conflict* (OP-CRC-AC), available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCRC.aspx>; Optional Protocol to the *Convention on the Rights of the Child on the sale of children child prostitution and child pornography* (CRC-OP-SC), available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>.
- ⁵⁰ *Convention on the Rights of Persons with Disabilities* (CRPD), available at: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx> .
- ⁵¹ *UN Convention against Transnational Organised Crime* (UNTOC), and its Protocols on Trafficking and Smuggling, available at: <https://www.unodc.org/unodc/en/treaties/CTOC/#Fulltext>
- ⁵² *United Nations Convention on the Law of the Sea* (UNCLOS), Article 98, available at: http://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm; Kaur, *supra* note 25.
- ⁵³ Dominique F. Fernandes, The Plight of Rohingyas in Malaysia, *The Diplomat*, 1 September 2017, available at: <https://thediplomat.com/2017/09/the-plight-of-rohingyas-in-malaysia/>; for more detail on Malaysia’s historical treatment of Rohingya refugees, see Yesmin, *supra* note 8, at 84ff.
- ⁵⁴ Malaysia ready to provide temporary shelter for Rohingya fleeing violence, Reuters, 7 September 2017, available at: <https://www.reuters.com/article/us-myanmar-rohingya-malaysia/malaysia-ready-to-provide-temporary-shelter-for-rohingya-fleeing-violence-idUSKCN1BJ0G7>
- ⁵⁵ Stuart Grudgings, “Trafficking abuse of Myanmar Rohingya spreads to Malaysia,” Reuters, 6 March 2014, <http://uk.reuters.com/article/2014/03/06/uk-malaysia-rohingya-exclusive-idUKBREA2504Y20140306>
- ⁵⁶ “Trafficking in persons: UN human rights expert urges Malaysia to focus efforts on victims,” OHCHR, 2 March 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15633&LangID=E#sthash.Gn2SJprf.dpuf>
- ⁵⁷ Chris Lewa (Director, The Arakan Project, as an Individual), at the Subcommittee on International Human Rights, Parliament of Canada, 5 May 2016 available at Open Parliament: <https://openparliament.ca/committees/international-human-rights/42-1/6/chris-lewa-1/?singlepage=1>
- ⁵⁸ Josh Hong, Rohingya issue shines spotlight on Malaysia’s refugee policies, *Asia Times*, 26 September 2017, available at: <http://www.atimes.com/rohingya-issue-shines-spotlight-malaysias-refugee-policies/>.
- ⁵⁹ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <http://www.refworld.org/docid/3ae6b3712c.html>.
- ⁶⁰ UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: resolution / adopted by the General Assembly (UN Declaration on Human Rights Defenders)*, 8 March 1999, A/RES/53/144, available at: <http://www.refworld.org/docid/3b00f54c14.html>. The *Declaration*, while not in itself a binding instrument, is based on human rights standards enshrined in other international instruments that are legally binding, including the ICCPR. The *Declaration* was adopted by consensus of the General Assembly and thus represents a unanimous commitment by States to its implementation.
- ⁶¹ UN Human Rights Council, Resolution on the situation of human rights in Myanmar, A/HRC/34/L.8/Rev.1, 22 March 2017, available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/L.8/Rev.1
- ⁶² UN Human Rights Council, Extension of the mandate of the independent international fact-finding mission on Myanmar, A/HRC/36/L.31/Rev.1, 27 September 2017, available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/36/L.31/Rev.1