

# Understanding The Response Of Bangladesh To The International Law: A Case Study On The Non-Refoulment Principle Of The Refugee Convention

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## **Abstract**

*This research paper aims to provide an in-depth analysis of Bangladesh's response to the non-refoulement Article of the Refugee Convention. Despite not being a signatory to the 1951 Refugee Convention, Bangladesh has been praised for its response to the non-refoulement article, which prohibits the return of a refugee to a country where they face a risk of persecution. The non-refoulement principle is a cornerstone of international refugee law, prohibiting the return of refugees to situations where their lives or freedom would be at risk. Though Bangladesh is a densely populated and disaster-prone country in South Asia and has been facing significant challenges since the beginning of its independence, its response to non-refoulement has been driven by several factors, including its own history as a refugee-hosting country and its commitment to humanitarian principles. This study delves into the historical context, legal frameworks, and policy measures adopted by Bangladesh in relation to the non-refoulement principle. It also explains the response of Bangladesh to obeying international law in recent years such as non-refoulment issues of the Refugee Convention.*

**Keywords:** Bangladesh, Rohingya, Refugee, Non-refoulement, International law

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## **I. Introduction**

Bangladesh's response to the non-refoulement Article of the Refugee Convention is a remarkable example of humanitarianism and commitment to international law. In the ever-evolving landscape of international refugee law, the principle of non-refoulment stands as a beacon of hope for those who have fled persecution and violence in search of sanctuary (Coleman,2003). This fundamental principle, enshrined in the 1951 Refugee Convention, bars the return of refugees to perilous situations where their lives or freedom would be at grave risk (Pirjola,2007). While Bangladesh may not bear the title of a signatory to the Convention, it has garnered acclaim for its unwavering dedication to upholding the non-refoulement article. Nestled in the heart of South Asia, Bangladesh, a densely populated and disaster-prone nation, has, since its inception, grappled with a multitude of challenges (Streatfield & Karar,2008). Yet, its response to the non-refoulement principle has been nothing short of remarkable. Drawing strength from a rich history of hosting refugees and a steadfast commitment to humanitarian ideals, Bangladesh has emerged as a pivotal player in the global refugee landscape. Bangladesh's history as a refugee-hosting country dates to its independence in 1971. During the Bangladesh Liberation War, millions of Bangladeshis fled to neighboring India to escape persecution by the Pakistani military (Datta,2012). After the war, Bangladesh repatriated most of the refugees, but a significant number remained in India.

In the 1990s, Bangladesh began to host Rohingya refugees from Myanmar. The Rohingya are a Muslim minority group who have faced decades of persecution in Myanmar. In 2017, a military crackdown in Myanmar forced over 700,000 Rohingya to flee to Bangladesh (Lewis,2021).

Bangladesh has provided refuge to the Rohingya despite the significant challenges it faces as a densely populated and disaster-prone country. Bangladesh's response to the Rohingya refugee crisis has been praised by the international community, but it has also placed a heavy burden on the country's resources. Bangladesh's response to the non-refoulement Article of the Refugee Convention is a testament to the country's humanitarian values and its commitment to international law. Bangladesh's experience is also a reminder of the importance of the non-refoulement principle in protecting refugees from persecution. This research paper embarks on a profound journey, seeking to dissect Bangladesh's intricate and nuanced response to the non-refoulement principle. Through a comprehensive exploration of historical context, legal frameworks, and policy measures, we aim to shed light

on the factors that have shaped Bangladesh's steadfast commitment to this cornerstone of international refugee law. Furthermore, we will examine how Bangladesh's evolving relationship with international law, particularly its recent endeavors related to non-refoulement, has contributed to its reputation as a compassionate and responsible refuge for those in dire need.

## **II. Background and Context of Non-refoulement**

The principle of non-refoulement has a long and complex history, which is dynamic and evolving in nature and the present structure is formed through evolution from ancient times to the present day. Some scholars such as James C. Hathaway, a Canadian-American professor of law and director of the Program in Refugee and Asylum Law at the University of Michigan Law School, and Guy S. Goodwin-Gill, a British academic and barrister who specializes in international refugee law, trace the origins of the principle of non-refoulement to the practice of granting asylum to religious refugees who migrated from different regions to ancient Greece and Rome, or to the concept of hospitality to the religious refugees in various cultures and religions. Some other scholars such as Atle Grahl-Madsen, Paul Weis, and Guy S. Goodwin-Gill, point to the emergence of the principle in the context of the religious wars and persecutions in Europe in the 16th and 17th centuries, or to the development of the law of nations and human rights in the 18th and 19th centuries. The atrocities of the two world wars and the Holocaust, which resulted in millions of refugees who needed shelter, also had an impact on the development of the non-refoulement principle. Several states had forcibly returned or refused entry to Jewish refugees fleeing the Holocaust during the conflict. The MS St. Louis case, in which a ship carrying over 900 Jewish immigrants from Germany to Cuba in 1939 was refused entry by Cuba, the United States, and Canada, and was forced to turn around and return to Europe where many of the passengers were ultimately murdered by the Nazis, was one of the most terrible cases (Blakemore, 2019). These atrocities finally led to the creation of the United Nations and the adoption of the Universal Declaration of Human Rights in 1948. The principle of non-refoulement was formally codified in the 1951 Convention Relating to the Status of Refugees, which was drafted by a group of experts under the auspices of the United Nations. The Convention was adopted in Geneva on 28 July 1951 and entered into force on 22 April 1954. The Convention defines the criteria of a refugee and the rights and obligations of refugees and States. According to article 33 of the Convention states, "No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. "Though the 1951 Convention was initially limited only to refugees from Europe and events before 1951, it was later amended by the 1967 Protocol Relating to the Status of Refugees, which withdrew the geographical and temporal restrictions and made the Convention applicable to refugees from any region of the world and any time.

## **III. Non-Refoulement Principle**

The scope of the principle of non-refoulement varies depending on the various applicable bodies of law. Various systems of international law, including refugee law, human rights law, humanitarian law, and customary law, contain the principle. (Office of the United Nations High Commissioner for Human Rights, 2018). Each of these bodies of law has its own criteria, conditions, and circumstances for applying the principle of non-refoulement. The 1951 Refugee Convention's article 33 states that the principle of non-refoulement safeguards refugees who have a justified fear of persecution due to their race, religion, nationality, political opinion, or membership in a particular social group in their home country (Rodenhäuser, 2018). The 1951 Refugee Convention and its 1967 Protocol are the two main legal texts that define the word "refugee" and lay out the rights and conditions that must be met for their protection on an international level. According to the United Nations Network on Migration, the non-refoulement principle Any individual who would be subject to torture, cruel treatment, or other grave violations of human rights duties is protected against being transferred to a nation under international law (Office of the United Nations High Commissioner for Human Rights, 2018). Under human rights law, refoulement is completely and universally prohibited. No matter a person's citizenship, nationality, statelessness, or immigration status, the restriction is applicable to them. It also applies whenever a State has effective control or jurisdiction, including when they are outside of that State's borders. According to the International Committee of The Red Cross (ICRC), the non-refoulement principle, persons who are no longer engaged in hostilities or who have ceased to do so are protected by humanitarian law from being relocated to a place where they would be subject to atrocities against international humanitarian law. Transferring protected individuals to a country where they might be subject to persecution due to their political or religious views is against the Fourth Geneva Convention and Additional Protocol I. The non-refoulement principle It is generally acknowledged that a rule under customary law applies to all States, regardless of their responsibilities under treaties. The idea might also be equivalent to *jus cogens*, which is a norm that supersedes all other norms of international law (Lauerpacht and Bethlehem, 2021).

#### **IV. Legal Framework in Bangladesh about non-refoulement principle**

The 1951 Refugee Convention and its 1967 Protocol, both of which expressly mention the concept of non-refoulement, are not ratified by Bangladesh. (Gopal, 2023). In spite of not being a party to the 1951 Refugee Convention, Bangladesh always follows the principle of non-refoulement voluntarily and respects it as a principle of international law that is likely equivalent to *jus cogens*, meaning that it applies to all governments regardless of their commitments under treaties. Since 2017, Bangladesh has taken in more than a million Rohingya refugees who fled the violence and persecution in Myanmar (Gopal, 2018). Bangladesh has allowed them to enter its territory and provided them with humanitarian assistance and protection in various sectors such as education, food, shelter, water, and health. The UN and other partners help Bangladesh distribute food items to more than 100,000 people and cooked food to more than 18,000 people, according to the World Food Programme (WFP). (Shahin, 2021). The food items include rice, lentils, oil, salt, sugar, and biscuits. The cooked food consists of rice, lentils, and vegetables. Moreover, Bangladesh offers Rohingya refugees with housing kits with the assistance of the other partners. (Shahin, 2021).. The shelter kits include bamboo, tarpaulin, rope, and tools. The shelters are built on raised platforms to protect from flooding and landslides. Moreover, it is installed. The tube wells are equipped with hand pumps and chlorination devices. The water quality is monitored regularly to ensure safety. More than 65,000 Rohingya men, women, and children get primary and reproductive health care from Bangladesh in the fields of health and education (Gopal, 2018). The health services include immunization, antenatal care, delivery care, postnatal care, family planning, and treatment of common diseases and injuries. The health facilities also offer mental health and psychosocial support, and referral services for complicated cases. The education includes basic literacy and numeracy, life skills, and recreational activities. The education facilities also provide safe spaces, child protection, and gender-based violence prevention and response. Along with providing these various facilities in different areas, A repatriation agreement between Bangladesh and Myanmar was also reached in 2018, but it has not yet been put into effect because of worries about the returnees' safety and voluntariness. (Anik, 2022). Although Bangladesh is providing the aforementioned facilities to the Rohingya people, it is always facing various serious challenges and pressures in hosting such a large number of refugees and has sought international support and cooperation to share the responsibility and find a durable solution for the Rohingya crisis. Some of the major problems that Bangladesh is facing are Overcrowding and environmental degradation: Social and economic challenges: Security and human rights issues:(Neef, & Marlowe,2023).In spite of facing these problems According to Bangladesh, it upholds the non-refoulement principle and won't force any Rohingya refugees to return to Myanmar against their will. ( P. Sullivan,2023).

Although The Rohingya refugees' freedom of movement, access to education, and means of subsistence have been restricted by Bangladesh, which may have an impact on their human rights and dignity (Gopal, 2018), it can be said that Bangladesh has followed the principle of non-refoulement in general. Nowadays Bangladesh is facing more difficulties and limitations in ensuring the full protection and well-being of the Rohingya refugees. So, it needs more support and solidarity from the international community to address the root causes of the problem and find a lasting solution that respects the rights and wishes of the Rohingya people. So, we can notice that Bangladesh, a poor and overpopulated country, is not a party to the 1951 Refugee Convention or its 1967 Protocol, but it has hosted millions of refugees from Myanmar and other countries over the years and it has followed the principle of non-refoulement by allowing refugees to enter and stay in its territory, despite facing many challenges and pressures. whereas some other rich and developed countries like Australia, the United States, and some of the EU countries have not respected this principle appropriately and have forcibly returned refugees to situations of danger or denied them access to asylum procedures.

#### **V. The European Union (EU) and the principle of non-refoulement**

The concept of non-refoulement, which is expressly guaranteed by the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union (EU), as well as by other human rights treaties, binds the EU and its Member States. (Lang & Nagy,2021). Despite some of the EU countries violating the principle of non-refoulement such as Greece, Italy, and Hungary Greece has been accused of pushing back thousands of migrants and asylum seekers at its land and sea borders with Turkey, without assessing their protection needs or allowing them to apply for asylum. This practice may expose the migrants to persecution, torture, or other serious harm in Turkey or their countries of origin. The European Court of Human Rights (ECHR) has found Greece responsible for violating the principle of non-refoulement in several cases, such as Sharifi and Others v. Italy and Greece and M.K. and Others v. Poland (Tidona,2021). Italy has been accused of cooperating with Libya to intercept and return migrants and asylum seekers who attempt to cross the Mediterranean Sea to Europe. The ECHR has found Italy responsible for violating the principle of non-refoulement in several cases, such as Hirsi Jamaa and Others v. Italy and Khalifa and Others v. Italy'(Pijnenburg,2018). In March 2016, the European Union entered into a landmark agreement with Turkey, through which hundreds of thousands of migrants had transited to reach EU soil, to limit the number of asylum-seeker arrivals' (Weber,2017).

Hungary has been accused of denying entry or access to asylum procedures to migrants and asylum seekers who arrive at its border with Serbia, and of expelling them to Serbia or other third countries without assessing their protection needs. The ECHR has found Hungary responsible for violating the principle of non-refoulement in several cases (Balla,2016). An extensive investigation by the BBC, among others, found that not only had at least 24 people died, but more than 450 people had been pushed back from Spanish territory into Morocco during the chaos' (Joyner,2023). In exchange, the European Union agreed to resettle Syrian refugees from Turkey on a one-to-one basis, reduce visa restrictions for Turkish citizens, and pay 6 billion euros in aid to Turkey for Syrian migrant communities' (Terry, 2023). These aforementioned practices violate the principle of non-refoulement, and other human rights obligations of the countries involved. They may also undermine the international refugee protection system and the responsibility-sharing among states. Therefore, it is crucial that states respect and uphold the principle of non-refoulement in all their migration policies and actions. These are just some of the cases where the principle of non-refoulement has been violated by powerful European Union countries. Such violations may have serious consequences for the human rights and dignity of the people involved.

## **VI. Bangladesh's Response to non-refoulement principle in the International Law**

In spite of not being a party to the 1951 Refugee Convention, Bangladesh always follows the principle of non-refoulement voluntarily and respects it as a principle of customary international law. Since 2017, Bangladesh has taken in more than a million Rohingya refugees who fled the violence and persecution in Myanmar (Gopal,2018). Bangladesh has allowed them to enter its territory and provided them with humanitarian assistance and protection in various sectors such as education, food, shelter, water, and health. The locals rallied to offer the Rohingyas escaping persecution on the opposite side of the border desperately needed emergency relief help. The Bangladeshi government has spearheaded a significant humanitarian effort in response to "the world's fastest-growing refugee crisis" at the moment, with the assistance of United Nations (UN) agencies, non-governmental organizations (NGOs), and donor nations (UN News, 2017). Bangladesh has received praise from the international community for its commitment to the "global public good" by giving refuge and support to such a huge number of Rohingyas (Sun & Haung, 2019). According to the World Food Programme (WFP), Bangladesh delivers food products to more than 100,000 people and prepares food for more than 18,000 people with the assistance of the UN and other partners (Shahin, 2021). Shelter kits are given to the Rohingya refugees by Bangladesh with assistance from the other partners. The food items include rice, lentils, oil, salt, sugar, and biscuits. The cooked food consists of rice, lentils, and vegetables. Moreover, the shelter kits include bamboo, tarpaulin, rope, and tools (Rahman, 2023). The shelters are built on raised platforms to protect from flooding and landslides. Moreover, to supply the Rohingya population with drinkable water, it installs 81 deep tube wells. The tube wells are equipped with hand pumps and chlorination devices. The water quality is monitored regularly to ensure safety. More than 65,000 Rohingya men, women, and children get primary and reproductive health care from Bangladesh in the fields of health and education. The health services include immunization, antenatal care, delivery care, postnatal care, family planning, and treatment of common diseases and injuries (Prodip, 2017). The health facilities also offer mental health and psychosocial support, and referral services for complicated cases. It also provides informal education to more than 145,000 children and adolescents (Hossain, 2021). The education includes basic literacy and numeracy, life skills, and recreational activities. The education facilities also provide safe spaces, child protection, and gender-based violence prevention and response. In spite of facing these problems According to Bangladesh, it upholds the non-refoulement principle and won't force any Rohingya refugees to return to Myanmar against their will (Sullivan,2023). Nowadays Bangladesh is facing more difficulties and limitations in ensuring the full protection and well-being of the Rohingya refugees. So, it needs more support and solidarity from the international community to address the root causes of the problem and find a lasting solution that respects the rights and wishes of the Rohingya people.

So, we can notice that Bangladesh, a poor and overpopulated country, is not a party to the 1951 Refugee Convention or its 1967 Protocol, but it has hosted millions of refugees from Myanmar over the years and it has followed the principle of non-refoulement by allowing refugees to enter and stay in its territory, despite facing many challenges and pressures. whereas some other rich and developed countries like Australia, the United States, and some of the EU countries have not respected this principle appropriately and have forcibly returned refugees to situations of danger or denied them access to asylum procedures.

## **VII. Conclusion**

Bangladesh's attitude to the refugee convention's non-refoulement tenet is evidence of its humanitarian principles and adherence to international law. Bangladesh has continuously defended the idea of non-refoulement as a rule of international law, despite not being a signatory to the 1951 Refugee Convention. This dedication was demonstrated in its reaction to the Rohingya refugee crisis, where it offered safety, protection, and humanitarian aid to more than a million Rohingya refugees who had fled persecution and violence in Myanmar.

The way Bangladesh handled the Rohingya issue shows how crucial the non-refoulement principle is for shielding vulnerable groups from damage and persecution. It offers a brilliant example of how a nation may overcome obstacles despite being a heavily populated and disaster-prone country. Despite the burdens and limitations, it faces in hosting such a large refugee population, Bangladesh's dedication to upholding this cornerstone of international refugee law has earned it praise from the international community. Overcrowding, environmental degradation, social and economic challenges, and security issues all pose significant hurdles. Therefore, international support and solidarity are crucial to addressing the root causes of the Rohingya crisis and finding a lasting solution that respects the rights and wishes of the Rohingya people. In a world where some wealthy and developed nations have not always upheld the non-refoulement principle adequately, Bangladesh's example serves as a reminder that the spirit of humanitarianism and international law can transcend boundaries and inspire hope for those seeking refuge from persecution and violence. Bangladesh's response to non-refoulement stands as a beacon of hope in the global landscape of refugee protection

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