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## **An Assessment of the International Legal Obligations Owed to the Rohingya Refugees**

*This paper considers the issue of migration of the Rohingyas from the lens of international law. It evaluates the responses of the countries that have been the destination of these migration flows – namely Bangladesh, Thailand, and increasingly, Malaysia and Indonesia (collectively, the “destination countries”) – against their obligations under international law. The response of the destination countries has, regrettably, not been entirely consistent with the international legal framework. Things are however beginning to take a turn for the better. The discovery of mass graves on Thailand’s border with Malaysia generated international pressure and pushed countries into taking collaborative action. The outcome of this collaboration has been encouraging and it represents a closer alignment with the international legal framework. However, this alignment, stemming as it does from an ad hoc arrangement, might prove to be short-lived for reasons that will be explored. This paper proceeds in the following manner: Section I assesses the extent of the destination countries’ compliance with their international legal obligations, following which Section II explores the durability of the compliance with international law that seems to have emerged recently. Here, it will be argued that this compliance is likely to be short-lived. Even more fundamentally, it will be shown that international law by itself cannot offer a comprehensive solution to this thorny problem; international cooperation is a must.*

## **International Legal Obligations of the Destination Countries**

The arrival of the Rohingyas by sea, in the rickety boats commissioned by human traffickers, creates a tension between international rights and obligations of the destination countries. On one hand, these countries have the right to interdict vessels and implement immigration control measures to ensure security. On the other hand, they also owe international legal obligations to refugees on humanitarian grounds.<sup>2</sup> While states do have a legitimate interest in maintaining effective border and immigration controls to maintain security and stability, this interest coexists with the duty of states to ensure respect for the rights and dignity of persons rescued at sea. There is a need for a genuine balance to be struck between the security interests of the state and the needs of the refugees who require international protection. Three specific obligations that states owe to the refugees arriving by sea can be identified: firstly, the obligation to rescue the boats in distress at sea; secondly, the obligation to determine the status of refugees fairly; and thirdly, the obligation to grant temporary asylum. The content of each of these obligations will be discussed in seriatim, along with an assessment of the extent to which they have been complied with by the destination countries.

### *Obligation to Rescue at Sea*

States have an international law obligation to rescue boats in distress at sea. While the destination countries have shown a deplorable failure to comply with this obligation in the past, there is an encouraging move towards greater compliance that ensued from the Special Meeting on Irregular Migration in the Indian Ocean at Bangkok on 29 May 2015 (the “Special Meeting”). However, the sustainability of this move cannot be taken for granted.

The destination countries have an obligation under international maritime law to rescue boats in distress at sea. Pursuant to Article 98 of the 1982 United Nations Convention on the Law of

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<sup>2</sup> Mallia, P. "Humanitarian Obligations." In *Migrant Smuggling by Sea*, 81-82. Vol. 66. Boston: Martinus Nijhoff Publishers, 2009; Espenilla, Jacqueline Joyce F. 2010. Injustice ignored: A case study of the irregular sea migration of the rohingyan boat people. *Asia Europe Journal* 8, (1): 45-59, 48-50.

the Sea (“UNCLOS”), which all the destination countries have ratified, a state must require the master of a ship carrying its flag to proceed with all possible speed to rescue persons in distress at sea.<sup>3</sup> Furthermore, the UNCLOS requires a coastal state to ensure the establishment, operation, and maintenance of adequate and effective search and rescue services, and where required, to cooperate with neighbouring states for this purpose.<sup>4</sup> All the destination countries are also signatories of the 1974 International Convention for the Safety of Life at Sea (“SOLAS Convention”), and must therefore not act in a manner that is inconsistent with it. Regulation 33(1) of Chapter V of this Convention lays down an obligation to rescue at sea which is similar to the one provided in UNCLOS, by requiring that a master of ship who is in position to provide assistance must proceed with all speed to provide assistance to persons in distress at sea. States have a corresponding obligation to cooperate in rescue situations to relieve the shipmaster of the responsibility to care for survivors and to allow those rescued to be delivered to a place of safety. The SOLAS Convention obliges the government responsible for the search and rescue operations to provide a place of safety or for ensuring that such a place of safety is provided.<sup>5</sup> The obligation to rescue applies regardless of the numbers involved and the maritime zone in which they are found in distress, hence widening the territorial waters in which the duty applies. It also applies regardless of the nationality or status of the person being rescued or the circumstances in which that person is found. Hence it applies to asylum seekers and migrants, whether regular or irregular, trafficked or smuggled.<sup>6</sup>

The record of the destination countries in complying with this obligation has been chequered. Instead of rescuing the refugees, the destination countries have in the past pushed boats carrying Rohingya refugees away from their territorial waters. In May 2015, a Thai police spokesperson made a public statement to the effect that “[our] job is to block the boats and not let them land on our shores”.<sup>7</sup> Indonesian authorities have similarly admitted to pushing back

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<sup>3</sup> UNCLOS Art. 98(1).

<sup>4</sup> UNCLOS Art. 98(2).

<sup>5</sup> 2006 Amendment to SOLAS Regulation 33. See also: “Rescue at Sea: A Guide to Principles and Practice”, leaflet prepared jointly by the International Maritime Organisation (IMO) and the Office of the United Nations High Commissioner for Refugees (UNHCR); IMO, “Guidelines for the Treatment of Persons Rescued at Sea”, Resolution MSC. 167 (78), adopted May 2004 by the Maritime Safety Committee.

<sup>6</sup> Relevant international instruments, such as the Migrant Smuggling Protocol make it clear that their rules have to be applied without prejudice to the obligations deriving from international humanitarian law and other international human rights law. See for instance, Art 19(1) of the Migrant Smuggling Protocol.

<sup>7</sup> “Malaysia Detains More than a Thousand Bangladeshi and Rohingya Refugees after Rescue.” The Telegraph, May 11, 2015. Accessed June 15, 2015. <http://www.telegraph.co.uk/news/worldnews/asia/malaysia/11596731/Malaysia-detains-more-than-a-thousand-Bangladeshi-and-Rohingya-refugees-after-rescue.html>.

a boat carrying approximately 500 refugees on 11 May 2015 and directing it to Malaysia.<sup>8</sup> A boat that had been towed into Malaysian waters by Thai fishermen was also promptly towed back out to sea by the Malaysian authorities.<sup>9</sup> In June 2012, Bangladeshi security forces turned back 16 boats carrying more than 660 Rohingya people, most of them women and children.<sup>10</sup> Thus, instead of rescuing the refugees stranded on the boats, who were not only short of food and other basic necessities but also abandoned by the human smugglers following the crackdown, these refugees became the subject of what a Human Rights Watch spokesperson called “human ping pong”, as the destination countries blatantly disregarded their obligation to rescue at sea.<sup>11</sup> The authorities’ reluctance to render assistance to refugee boats is worrisome as it generates adverse incentives for the shipmasters against rescuing. Shipmasters, not wanting to be embroiled in the states’ arguments as to whose responsibility the rescued persons are, would be increasingly hesitant to undertake rescue measures.<sup>12</sup>

The ‘human ping pong’ seems to have abated since the end of last month. Mounting international pressure following the widespread criticism of countries’ failure to rescue the boats brought different states and international organisations like the Office of the United Nations High Commissioner for Refugees (UNHCR) to Bangkok for the Special Meeting on 29 May 2015 to seek a resolution of the crisis of the stranded boats. The final statement of the meeting mentioned that “regional countries would intensify search-and-rescue efforts to ensure the safety of migrants” and that “a joint task force would be established to co-ordinate assistance to countries dealing with migrants”.<sup>13</sup> Malaysia and Indonesia, a few days prior to the meeting, had also stated that they would stop pushing boats back to the sea.<sup>14</sup>

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<sup>8</sup> Lee, Howard. "Help Rohingya and Bangladeshi Migrants and Asylum Seekers: HRW." *The Online Citizen*, May 29, 2015, <http://www.theonlinecitizen.com/2015/05/help-rohingya-and-bangladeshi-migrants-and-asylum-seekers-hrw/> ed. Accessed June 17, 2015.

<sup>9</sup> Spencer, Richard. "Thousands of Burmese Migrants Feared Adrift at Sea as South-east Asian Governments Refuse Landing." *The Telegraph*, May 14, 2015. Accessed June 29, 2015. <http://www.telegraph.co.uk/news/worldnews/asia/indonesia/11598908/Thousands-of-migrants-feared-adrift-at-sea-could-die-unless-they-are-rescued-UN-warns.html>.

<sup>10</sup> Hassan, Faruk Al Imran, and Nannu Mian. "The Rohingya Refugees in Bangladesh: A Vulnerable Group in Law and Policy." *Journal of Studies in Social Sciences* 8, no. 2 (2014): 226-53, 236.

<sup>11</sup> "These Are People Floating Around, Waiting to Die." Human Rights Watch. May 20, 2015. Accessed June 30, 2015. <http://www.hrw.org/news/2015/05/20/these-are-people-floating-around-waiting-die>.

<sup>12</sup> Mallia (n 2), 81.

<sup>13</sup> "Full Concluding Statement at Migrant Crisis Talks." *Channel News Asia*. May 29, 2015. Accessed June 20, 2015. <http://www.channelnewsasia.com/news/asiapacific/full-concluding-statement/1880646.html>.

<sup>14</sup> "Malaysia, Indonesia, but Not Thailand, Agree to Take in Rohingya Migrants." *The Japan Times*, May 21, 2015. Accessed June 19, 2015. <http://www.japantimes.co.jp/news/2015/05/21/asia-pacific/social-issues-asia-pacific/malaysia-indonesia-will-take-boat-people-u-s-will-help-thailand-balks/#.VX-r2Pmqkko>.

While countries have stopped pushing away boats, this halt may prove to be temporary. This is because of at least two reasons. Firstly, the number of Rohingya refugees at sea has fallen temporarily, making the decision to rescue more palatable to the destination countries. However, once the numbers rise, the destination countries may resume the practice of pushing back the boats citing domestic capacity constraints. The temporary decline in the numbers can be attributed to the fact that the traffickers are lying low after the recent crackdown on their transit camp in southern Thailand. Further, the arrival of the monsoon season, which makes sea travel difficult, may also temporarily reduce the numbers in the short run.<sup>15</sup> The Burmese government, under international pressure, has also adopted the policy of putting a stop to the departures of the Rohingyas. The government has expressed its determination to halt these departures, with the navy recently rescuing a boat carrying 900 migrants at sea. However, the number of outward-bound Rohingyas may continue to rise in the future. While the Burmese government has expressed its determination to stop the departures, it has not shown any commitment towards improving the conditions of the Rohingyas in Myanmar. Given that the national elections are fast approaching in Myanmar, and that a pro-Rohingya stance is electorally unfavourable in the Buddhist majority country, the chances of improvement in the treatment of the Rohingyas look bleak. As long as the underlying discontent persists, the number of refugees is bound to increase. The second reason why the commitment to search and rescue efforts may not last is the absence of any mechanisms to enforce the obligation. Generally, it is the flag state of a vessel in distress that enforces such obligation. However, most boats used in human smuggling tend to be stateless, making enforcement difficult. The final statement of the Special Meeting does not help much on this front either because it fails to stipulate any binding obligations or to prescribe any mechanisms for the enforcement of the proposals that it contains.

## **Obligation to Ensure Fair Determination of Refugee Status**

States are obligated by international law to ensure that a procedure for fair determination of the refugee status is in place, in accordance with the customary international law principle of non-refoulement. International law makes a distinction between migrants and refugees and the

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<sup>15</sup> "No Progress in Changing Myanmar's Position on Migrants." The Straits Times, June 15, 2015.

principle of non-refoulement only applies to the latter group. Rohingyas fleeing Myanmar are refugees and they need to be recognised as such. Procedures that grant them this status should be put in place to ensure compliance with international law. This has hardly been the case.

Pursuant to the principle of non-refoulement, states have an obligation to accord refugee status to the incoming Rohingyas. The principle of non-refoulement has been laid out in Article 33(1) of the 1951 Convention Relating to the Status of Refugees (the “Refugee Convention”), which provides that “no contracting state shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”. Thus, the non-refoulement principle forbids the expulsion of refugees to any country in which they face threat of persecution or human rights abuse.

The principle of non-refoulement has been recognised as a peremptory norm of international law,<sup>16</sup> and is therefore binding on the destination states despite the fact that they are not parties to the Refugee Convention. Some have argued that the Rohingyas are migrants, not refugees, and are therefore not entitled to the protection flowing from the non-refoulement principle.<sup>17</sup> Such an argument may be sustained on the basis of a narrow definition of ‘refugee’, as enshrined in the Refugee Convention, which defines refugees as people facing a “well-founded fear of persecution” in their country of origin. However, the definition of ‘refugee’ has been expanded by state practice to include those seeking protection from human rights abuses, or serious instability and conflicts that fall short of the ‘persecution’ standard enshrined in the Refugee Convention. It is well accepted that the Refugee Convention, which was drafted in the post-World War II period and was devised to address the problem of individual cases of persecution, did not contemplate mass involuntary movements of people suffering human rights abuses. The Rohingyas satisfy the broader definition of refugees that has gained traction

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<sup>16</sup> UN High Commissioner for Refugees (UNHCR). “UNHCR Note on the Principle of Non-Refoulement” November 1997. Accessed 30 June 2015. <http://www.refworld.org/docid/438c6d972.html>; UNHCR and its Executive Committee have even argued that the principle of non-refoulement is progressively acquiring the character of *ius cogens*; see Executive Committee Conclusion No. 25 para. (b); UN docs. A/AC.96/694 para 21; A/AC.96/660 para. 17; A/AC.96/643 para. 15; A/AC.96/609/Rev.1 para. 5

<sup>17</sup> Malaysian foreign minister issued a statement that “Their country is not at war. If there is nothing wrong with the ship, they should sail back to their own country.” His position seems to be grounded in this understanding of the non-refoulement principle: Spencer, Richard. “Thousands of Burmese Migrants Feared Adrift at Sea as South-east Asian Governments Refuse Landing.” *The Telegraph*, May 14, 2014. Accessed June 20, 2014. <http://www.telegraph.co.uk/news/worldnews/asia/indonesia/11598908/Thousands-of-migrants-feared-adrift-at-sea-could-die-unless-they-are-rescued-UN-warns.html>.

at international law.<sup>18</sup> The Rohingya people face grave human rights violations in Myanmar; not only are they denied citizenship, freedom of movement and access to education, but they are also regularly subject to abuses like forced labour, rape, torture, confiscation of food supplies and summary execution.<sup>19</sup> The perilous journeys they make out of Myanmar, paying exorbitant prices to flee in dilapidated boats, risking life and limb, is testimony to the serious human rights abuses they endure in the country. An IMO agency official estimated that around 300 people had died at sea in the first quarter of this year as a result of starvation, dehydration and abuse by boat crews.<sup>20</sup> Thus the Rohingyas are refugees, not migrants, and are entitled to the protection enshrined in the principle of non-refoulement. For this protection to be realised in practice, it is essential that the incoming Rohingyas be given a fair hearing before a decision on their refugee status can be made.

States have not always complied with their obligation to ensure a fair determination of the Rohingyas' refugee status. Firstly, interception at sea, which has until recently been undertaken by Thailand, Malaysia and Indonesia, puts at risk migrants' right to undergo processing as asylum seekers, given that boats are often turned back without an assessment of refugee status of those on board. The possibility of a fair determination at sea is also low in light of the fact that it is highly unlikely that the intercepting boat will have qualified personnel on-board competent to assess refugee statuses.<sup>21</sup> The fact that a refugee boat is turned away before it reaches the territorial waters of a state does not exonerate a state from its responsibility to ensure a fair determination. The obligation applies wherever a state exercises jurisdiction, including at the frontier, on the high seas or the territory of another state. The act of towing a refugee boat, wherever undertaken, amounts to an exercise of a state's jurisdiction and hence, calls for the duty of a fair determination.<sup>22</sup> Secondly, even where determinations have been conducted on shore, they have not been fair. In Bangladesh alone, according to a government estimate, there are 100,000 – 200,000 Rohingyas who have not been recognised as refugees

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<sup>18</sup> Harvey, Colin. "Is Humanity Enough? Refugees, Asylum Seekers and the Rights Regime." In *Contemporary Issues in Refugee Law*, edited by Satvinder Singh Juss and Colin Harvey. Cheltenham: Edward Elgar Publishing, 2013

<sup>19</sup> Ragland, Thomas K. "Burma's Rohingyas in Crisis: Protection of "Humanitarian" Refugees under International Law." *Boston College Third World Law Journal* 14, no. 2 (1994): 301-36, 304-09.

<sup>20</sup> "Hundreds, Mainly Rohingyas, Rescued off Indonesian Waters." *Channel News Asia*, May 11, 2015. Accessed June 15, 2015. <http://www.channelnewsasia.com/news/asiapacific/nearly-600-rescued-off/1838106.html>.

<sup>21</sup> Espenilla, n 2, 53.

<sup>22</sup> Mallia, n 2, 88.

and are therefore living illegally outside the refugee camps without any legal rights.<sup>23</sup> The number of registered refugees only stands at 32,355.<sup>24</sup> Thailand does not allow the UNHCR to conduct refugee status determination for Rohingyas, and, according to some reports, the Thai agency responsible for the refugee status determination does not accord refugee status to Rohingyas because it does not recognise them as needing protection.<sup>25</sup> There is generally a lack of transparency about the procedures adopted in refugee status determination across the destination countries.

Destination countries should ensure that Rohingyas have access to procedures to adjudicate their claims which are fair, non-discriminatory and appropriate to the nature of the claim. The determination should be conducted on land and asylum-seekers should be given access to humanitarian assistance and independent legal counsel from relevant international and local agencies like the UNHCR.<sup>26</sup> In this regard, a recent positive development emerged from the Special Meeting in Bangkok. The final statement of the meeting provides that the UNHCR and the International Organisation for Migration (IOM) will be given access to the Rohingya refugees.<sup>27</sup>

## **Obligation to Grant Temporary Asylum**

States have an obligation to, firstly, grant temporary asylum, and, secondly, to ensure respect for the basic human rights of the refugees throughout the duration of the asylum. These obligations have not always been complied with and the reasons for the non-compliance point to the limits of international law as a comprehensive solution to the problem of migration of the Rohingyas.

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<sup>23</sup> "Bangladesh: Analysis of Gaps in the Protection of Rohingya Refugees." May 1, 2007, 8. The UNHCR estimate diverges significantly from the Bangladeshi government's estimate. According to a UNHCR estimate, the number of Rohingya refugees in Bangladesh stands at 800,000: "Bangladesh Turns Away Rohingya Refugees from Myanmar." Jane's Country Risk Daily Report, June 12, 2012, 118.

<sup>24</sup> "BANGLADESH FACTSHEET." UN High Commissioner for Refugees. September 1, 2014. Accessed June 20, 2015. <http://www.unhcr.org/50001ae09.pdf>.

<sup>25</sup> Ostrand, Nikki. "The Stateless Rohingya in Thailand." Center for Migration Studies. July 16, 2014. <http://cmsny.org/the-stateless-rohingya-in-thailand/#ixzz3dmgOgPHK>.

<sup>26</sup> "Global Consultations on International Protection/Third Track: Asylum Processes (Fair and Efficient Asylum Procedures)." United Nations Commissioner for Human Rights. May 31, 2001. <http://www.refworld.org/docid/3b36f2fca.html>.

<sup>27</sup> Full Concluding Statement, n 13.



Firstly, states have an obligation at customary international law to grant temporary asylum. This obligation is a corollary of the principle of non-refoulement, which requires the refugees not to be sent back to their country of origin until the threats they face cease. Pursuant to this obligation, an asylum seeker should also not be sent to a third state unless the responsibility of assessing the particular asylum application is assumed by that third state and it is certain that the asylum seeker will be protected from refoulement in that state and will be able to seek, and, if recognised, enjoy asylum there in accordance with international standards.<sup>28</sup> Pursuant to this obligation, the Rohingya refugees should not be sent back to Myanmar until the human rights violations come to an end and should not be sent to other countries unless the above-mentioned conditions are fulfilled. Destination countries have breached this obligation on multiple occasions. These include the recent boat turning incidents mentioned above, and the 1992 expulsion of the Rohingyas from Bangladesh.<sup>29</sup> The final statement of the Special Meeting in Bangkok provides that Indonesia and Malaysia will continue to provide temporary shelter for migrants, which is consistent with these states' duty at international law. However, the compliance is not complete. Shelter has only been promised for one year, which may not prove to be long enough for the treatment of the Rohingyas to improve in Myanmar.

Secondly, states have an obligation to ensure that the basic human rights of the refugees are respected while they are in temporary asylum by ensuring, among other things, equal benefit and protection under the law and access to essential services like food, education and housing. Included among the Rohingya refugees are also children, who are further entitled to protection under the Convention on the Rights of the Child, which all the destination countries have ratified. Article 22 of that Convention stipulates that governments must ensure protection and humanitarian assistance for children seeking refugee status. Numerous incidents point to violation of human rights of the refugees. The government of Bangladesh has been accused of withholding food aid and of punitive restrictions on international organizations providing lifesaving humanitarian aid.<sup>30</sup> Dhaka's recent bid to relocate Rohingya refugees to Thengar Char island, which is under about a meter of water during high tide and is located in an area

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<sup>28</sup> Fair and Efficient Asylum Procedures, n 26.

<sup>29</sup> Ragland, n 19, 312-13.

<sup>30</sup> "Bangladesh: Information on the Situation of Rohingya Refugees." United States Bureau of Citizenship and Immigration Services. March 28, 2001. Accessed June 17, 2015. <http://www.refworld.org/docid/3decceb113.html>.

that is frequently hit by cyclones, has raised alarm.<sup>31</sup> Similarly, Thailand has been accused of arresting and detaining the refugees, of not providing them with adequate food and subjecting them to ill-treatment such as kicking and beatings.<sup>32</sup> A 2012 report by Human Rights Watch<sup>33</sup> highlights how Thailand's refugee policies are devoid of any grounding in the law, with the country not having ratified the Refugee Convention or having implemented any domestic refugee legislation. Refugees living outside refugee camps in Thailand are considered illegal immigrants, subject to arrest, immediate deportation and exploitation at the hands of corrupt officials. The plight of those living in the camps is not much better either. Of the 140,000 people living in the nine refugee camps along the Burmese border, only 60 percent have been accorded the official refugee status. Furthermore, the refugee camps are located in inaccessible and isolated mountainous locations, tend to be over-crowded and are overseen by abusive officials. Those living in the camps have their freedom of movement heavily curtailed and are prohibited from seeking employment.

The root cause of the destination countries' non-compliance with these obligations is resource constrains. For instance, Bangladesh has expressed concern over its inability to accommodate more refugees on the account of its inability to shoulder the resultant economic burden and the environmental damage in the form of the illegal clearing of forested land for habitation that the refugee influx has been causing.<sup>34</sup>

## **A Sustainable Solution**

The ability of international law to improve the treatment of the Rohingya refugees is constrained to a large extent. Even though international law spells out clear obligations that are

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<sup>31</sup> "Bangladesh Plan to Relocate Rohingya to 'uninhabitable' Remote Island Raises Concerns - See More at: [Http://www.straitstimes.com/news/asia/south-asia/story/bangladesh-plan-relocate-rohingya-uninhabitable-remote-island-raises-conc#sthash.272tqwkU.dpuf](http://www.straitstimes.com/news/asia/south-asia/story/bangladesh-plan-relocate-rohingya-uninhabitable-remote-island-raises-conc#sthash.272tqwkU.dpuf)." The Straits Times, June 14, 2015, Asia sec. Accessed June 17, 2015. <http://www.straitstimes.com/news/asia/south-asia/story/bangladesh-plan-relocate-rohingya-uninhabitable-remote-island-raises-conc>.

<sup>32</sup> "Statement on the Treatment of Rohingya and Bangladeshi 'Boat People' in Asia." Refugees International. July 2, 2009. Accessed June 30, 2015. <https://www.refintl.org/policy/letter/statement-treatment-rohingya-and-bangladeshi-boat-people-asia>.

<sup>33</sup> "Ad Hoc and Inadequate: Thailand's Treatment of Refugees and Asylum Seekers." Human Rights Watch. September 2012. Accessed 15 September, 2015. <http://www.hrw.org/sites/default/files/reports/thailand0912.pdf>.

<sup>34</sup> Hassan, n 10, 237.

owed to the refugees, it suffers from two key limitations - weak enforcement mechanisms and the inability to solve the root cause of the problem.

Firstly, the enforcement mechanisms are weak. This point was illustrated in the context of the obligation to rescue a vessel in distress at sea. The obligation is typically enforced by the flag state of the vessel but boats carrying refugees tend to be stateless. The obligation to grant a fair hearing for a refugee status claim and to grant temporary asylum are also difficult to enforce for practical reasons.

The second shortcoming is that international law does not address the root cause of the problem at hand - resource constraints on the part of the destination countries. This point is linked to the first limitation of international law. The problem of scarce resources in destination countries cannot be mounted by merely articulating rules that these countries must comply with, which have dubious enforceability to begin with. Overcoming these resource constraints calls for the deepening of cooperation and burden sharing by the international community, which has a Responsibility to Protect<sup>35</sup> the Rohingya people given their home states' abject failure to do so. Signs of increasing cooperation are emerging. The US, Australia and Philippines have offered to resettle Rohingya refugees. The US pledged \$3 million to help the IOM deal with the crisis, while Australia pledged \$3.8 million. Thailand has allowed the US military to operate flights out of Thailand to search for migrants stuck on boats. A general consensus that emerged from the Special Meeting in Bangkok was that cooperation is essential to a comprehensive solution.<sup>36</sup>

While these are moves in the right direction, they may not be enough as the numbers of refugees surge in the future. Cooperation so far has been largely ad-hoc and many of the outcomes of the Bangkok meeting were termed 'proposals and recommendations'. It was not clear if any agreement to implement them has been reached. Consequently, the cooperation that seems to be emerging may prove illusionary and may wither away in the face of pressures resulting from larger refugee flows. Further, the Special Meeting was attended by senior officials and representatives from countries, not their heads of state. Although the Thai Prime Minister

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<sup>35</sup> See generally: Rimmer, Susan Harris. "Refugees, Internally Displaced Persons and the 'responsibility to Protect'." United Nations Commissioner for Human Rights. March 1, 2010. <http://www.refworld.org/pdfid/4c23257d0.pdf>.

<sup>36</sup> "Myanmar Picks up Migrants as Asean Agrees to Tackle Crisis." BBC, May 29, 2015, Asia sec. Accessed June 21, 2015. <http://www.bbc.com/news/world-asia-32925815>.

Prayut Chan-o-cha had called for a summit on the problem, other countries did not respond to his call.<sup>37</sup> This exemplifies a deficit in the attention that this very pertinent cross-border problem is receiving. There is a need for a more institutional and binding response to the problem of refugee resettlement in the region. Such action would reaffirm the commitment of states in the region to the protection of human rights and would be consistent with the recent ratification of the ASEAN Charter and the development of an ASEAN Human Rights Body.

International pressure should be put on Myanmar to improve its treatment of the Rohingya people. It is an unchallenged fact that the dire condition of the Rohingya people is driving them out of the country. As long as people remain desperate, the migrations will continue unabated. China, which is making a large economic footprint in Myanmar, is in a position to exert considerable pressure. Even though China, with its strict interpretation of the concept of ‘sovereignty’, claims to adopt the policy of non-interference in the domestic politics of other countries, its emerging clout demands that such a stand be reconsidered. China, as a member of the international community also owes a Responsibility to Protect the Rohingya people. That being said, changing the attitudes of the Burmese government will be a challenge given that it has been adamant in its rejection of allegations that it is largely to blame for the crisis.

## **Conclusion**

This paper has sought to approach the issue of treatment of the Rohingya refugees by the destination countries from an international law perspective. International law imposes, in no uncertain terms, the obligation to rescue the refugees in distress at sea, to grant them a fair determination of their refugee status, and to grant them temporary asylum. While the obligations are clear, their enforcement is less so. Less clear also is the ability of countries to undertake these obligations. The necessary implication of these limitations is that any sustainable solution aimed at improving the condition of the refugees must be based on international cooperation and cooperation that has substance and bite. International law can only work effectively against the backdrop of credible international cooperation.

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<sup>37</sup> "Meeting on Migrant Crisis Set for May 29." Bangkok Post, May 12, 2015. Accessed June 16, 2015. <http://www.bangkokpost.com/news/general/559203/summit-on-migrant-crisis-set-for-may-29>.