

**Symposium on  
Prosecution for Violation of Human Rights: The Rohingya Crisis in Context**

**Date: 19 January, 2019  
Venue: BILIA Auditorium**

The Rohingya refugees are considered as the most disgraced ethnic minority of the present world. The series of brutal crackdown by Myanmar military on Rohingya Muslim minority over the decades, with a view to ethnic cleansing, have forced them leave their own country. The number of Rohingya influx has crossed all the previous records as 600,000 Rohingya refugees have fled persecution following an alleged killing of 12 security officers by ARSA on August 25, 2017. Having considered the brutality on Rohingya, the International Criminal Court (ICC) has ruled on September 6, 2018, that the court may exercise its jurisdiction over the alleged deportation of Rohingya people from Myanmar to Bangladesh since the crimes are of trans-boundary nature. Besides, the jurists from all around the world are searching for avenues under which the culprits can be held liable for their crimes against humanity. In this respect, the Bangladesh Institute of Law and International Affairs (BILIA) organised a symposium titled "Prosecution for Violation of Human Rights: The Rohingya Crisis in Context" on January 19, 2019 at BILIA Auditorium.

The symposium was presided over by Professor Dr. Rahmat Ullah, Dean, Faculty of Law, University of Dhaka. Barrister Tapas Kanti Baul, Advocate, Supreme Court of Bangladesh and Prosecutor, International Crimes Tribunal, Bangladesh, and Tapos Kumar Das, Assistant Professor, Department of Law and Justice, Jahangirnagar University were the designated discussants. The programme was launched as Dr. Rumana Islam, Assistant Director of BILIA addressed a welcome speech to the audience.

Two papers were presented pertaining to the symposium title. Mr. Md. Mostafa Hosain, Assistant Professor, School of Law, BRAC University presented a paper on "Situation in Myanmar: Questing avenues under International Criminal Law." At the outset, the paper identified five broad measures which can be taken as a feasible response to the ongoing

Rohingya crisis in Myanmar. As the paper thrives, Mr. Mostafa tried to shed lights on multifarious international criminal laws and globally recognized norms under which the perpetrators can be held liable. The author found it difficult to bring the culprits into the book under the Rome Statute of International Criminal Court, 1998 since the Myanmar is not party to the Statute. Despite the reservations by the Myanmar in respect of Articles 6 and 8, it seemed more instrumental to the author to prosecute the offenders under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, as there is genocidal intent behind the ethnic cleansing and Myanmar is the party to the Convention. The ethnic cleansing as an evidence of genocidal intent found its place in ICTY in the cases of *Krstic*, *S. Melosevic*, *Blagojevic and Jokic*. However, the status of reservations regarding the Articles 6 and 8 of the Genocide Convention is itself questionable as the reservations are with respect to treaties having universal normative value. Considering the substance of Article 2 of the Genocide Convention as a part of Customary International Law (CIL), Mr. Mostafa further contends that the culprits are liable for the atrocities on the Rohingya minority keeping the reservation issue aside. He further argued that, the reflections of *jus cogens* norms in the Convention invoke the Universal Jurisdiction of the crimes since it criminalise the conduct as an offence against the community interest as a whole. In *Attorney General v. Eichman*, the Jerusalem District Court in 1961 also supports the Universal Jurisdiction contending that if the crimes are recognised under CIL, every state can try the these crimes wherever committed. Moreover, the high officials can be held liable as they failed to perform their duty to prevent genocide, let alone to punish the crimes as required by Article 1 of the Convention. The ICJ also declared in a report published in 1996 that the rights and obligations under the convention are *erga omnes*. The obligation upon each state to prevent and punish the crime of genocide is not territorially limited by the Convention. In the later part of the paper, the author mentioned number of cases (for example- Pinochet, Cherif Bassiouni Case) in support of the universality of Genocide Convention. Mr. Mostafa concludes his presentation by showing ICTY and ICTR model represented by UN Security Council and ICTB model in the domestic level to try the offenders of Myanmar Rohingya crisis.

After that, Mr. Quazi Omar Foysal, an Independent Researcher, presented a paper titled “ICC’s Decision on the Jurisdiction over Rohingya Deportation: Prospects and Challenges.” In the first

phase of his paper, Mr. Foysal showed the roadmap of ICC's ruling declaring its jurisdiction over Rohingya Deportation, the triggering factors of ICC's jurisdiction, legality of its regime, clarification by the ICC regarding its competency to investigate and try the perpetrators. The author illustrated Pre-trial Chamber clarification regarding its venture to try the offenders under Article 19(3) and 119(1) of the Statute as well as by virtue of its International personality. In the later phase of his presentation, Mr. Foysal identified five practical challenges including legality of its investigation and trial, challenge of application of non-state party like Myanmar, the immunity of perpetrators as happened in the case of Omar Al-Bashir of South Sudan etc. Besides, he figured out some prospects as well. The employment of Rapporteur by the ICC is considered as one of the advancement towards the ICC's successful intervention. He concludes his presentation by showing some recent developments such as the report of the UN fact-finding mission, which can play a pivotal role in prosecuting the culprits.

Barrister Tapas Kanti Baul has, after the presentation of papers, suggested taking ICTR as model in order to try the offences as it is more close to ongoing Rohingya crisis. Recognising the identity of the Rohingyas as main cause of crisis, he opined that, identity can be plural; everyone should enjoy their own identity. He also suggested restorative justice system in prosecuting instead of adversarial system. The other discussant, Mr. Tapos Kumar Das suggested taking 4<sup>th</sup> Geneva Convention into consideration as ethnic cleansing, in his view, can be regarded as armed conflict.

In the concluding remarks as Chair of the Symposium, Dr. Rahmatullah observed that the co-operation rather than confrontation and meticulous role of diplomats can be the possible way out to this long-lasting problem. The Symposium was overwhelmed by the Participants from different sectors like lawyers, judges, human rights activists, journalists and students. Valuable feedbacks and recommendations were given during the open discussion by experts from different fields.

**The event is covered by Muhammad Zubair, Research Assistant (Law), Bangladesh Institute of Law and International Affairs (BILIA).**

The report also published in the Law and Our Rights section of the Daily Star: **BILIA holds symposium on Rohingya crisis** (<https://www.thedailystar.net/law-our-rights/news/bilia-holds-symposium-rohingya-crisis-1691740>)

And

In the Law and Justice page of the Daily Observer: **Prosecution for Violation of Human Rights: The Rohingya Crisis in Context** (<http://www.observerbd.com/details.php?id=179963>)