

The investigation of committed crimes against “Myanmar’s Rohingya” and the invoke necessity to" The theory of responsibility to protect"

Assistant professor **Alireza ARASHPUOR**¹
Ph.D. student **Alireza ROUSTA EI**²

Abstract

For several decades, the Rohingya ethnic minority, in "Myanmar's Rakhine state" is exposed to the systematic violence by the state and governmental agents. The intensity of this violence was emerged in June 2012 and attract the international community attention towards of the Myanmar's country. The theory of responsibility to protect, is the primary responsibility to protect of the people against the four major crimes, including genocide, war crimes, crimes against humanity and ethnic cleansing which are in charge of the each country state. At the same time, in the absence of willing or clear ability of the mentioned government, the international community has a responsibility to act under the Charter of the United Nations and in accordance with the charter provisions to prevent or stop of the mentioned crimes. According to the necessary urgent support from the Rohingya, in this study, in addition to explain the concept of theory of responsibility to protect, the possibility of international crimes against of them is examined and whereas with regard to this question whether in the Myanmar's Rohingya situation, there is the invoke condition in terms of the theory of responsibility to protect or not, indeed, whether the international community can invoke to protect them with regard to this theory or not, will be answered.

Keywords: *Ethnic minorities, The Rohingya, Myanmar, Genocide, Crimes against humanity, Theory of responsibility to protect*

JEL Classification: K14, K33

1. Introduction

The Rohingya are frontiersman that their ancestral roots and cultural ties are placed along the borders of Myanmar (Burma) and Bangladesh and today their residence place are located in Rakhine (Arakan) State Myanmar country. After Myanmar's independence from Britain colonial rule in 1948, in the regimes that have ruled in Myanmar one after another, the ethnic-linguistic identity of this group was recognized, but this identity systematically by the anti-Islamic military governments that since 1962 have organized, has been ignored³.

For several decades in Myanmar's state media, official documents and

¹ Alireza Arashpuor - Assistant Professor in Public International Law, University of Isfahan, Isfahan, Iran, rezaarashpour@gmail.com

² Alireza Roustaei - Ph.D. Student in Public International Law, Khorasgan (Isfahan) Branch, Islamic Azad University, Isfahan, Iran, alireza.roostayi@yahoo.com

³ Zarni, Maung; Cowley, Alice (2014), *The Slow-Burning Genocide of Myanmar's Rohingya*, „Pacific Rim Law & Policy Journal”, 23/3: 682-752. Available from: http://www.academia.edu/7787141/Compilation_2014_Pacific_Rim_Law_and_Policy_Journal_AssociationZarni,2012

school textbooks, the Rohingya is referred to as Bengali, which is somehow a racist gesture and they imagine them as the remained illegal immigrants from colonial periods that endanger the national security. However, there are serious differences about the population amount of this ethnic minority, but the Rohingya states that ten percent of the Myanmar population is formed about five million people⁴. Today, the majority of the Rohingya population is living in Northern Rakhine State and are stateless⁵. It is about twenty years that the United Nations General Assembly has asked the Myanmar government that "This state should be ensured from the full respect to the person's rights who belong to ethnic and religious minorities and be finished to the torture, disappearances and hurried executions"⁶.

The United Nations special rapporteurs and representatives, have reported constantly the violence, including murder, rape, destruction of property and forced labor against the Rohingya and sometimes have been described this violence as "Organized" and a part of the government policy⁷. In the past decades, the Rohingya are placed frequently subjected to violence by Myanmar Buddhists and government agents. The history of conflict between the Rakhine people and Muslims returns to World War II, when Muslims were remained loyal to Britain colonial rulers and other Rakhine people who were supported from the Japanese invaders. The Muslims after Myanmar's state independence in 1948, have faced with the next government violence, so that the government has paid to the Muslims' persecution and in order to change the racial context of Rakhine state has been acted to their forced deportation⁸. In the year 1978, Myanmar army was expelled from the country more than 200 thousand people of the Rohingya population with the barbaric acts such as murder, rape and the burning of homes. The most important discrimination against Muslims was started in 1982 and with the approval "Burma Citizenship Law". This law was denied the Rohingya Myanmar citizenship based on racial discriminating fields. Since this law was not replaced the Rohingya as the ethnics who were recognized as national races and had been granted the title of citizenship to them, so they must provide strong evidence based on their ancestors were living in this country before Myanmar's independence that this work was very difficult for most Rohingya⁹. In January 2000, the United Nations special reporter in his report was considered the main reasons that have led to the Rohingya mass exit from Myanmar that are as follows:

⁴ World Wide Magazine, 2015, p. 50

⁵ Szep, Jason; Marshall, Andrew R.C, (2013). "Myanmar Minister Backs Two-child Policy For Rohingya Minority, Reuters". Available from: <http://www.reuters.com/article/2013/06/11/us-myanmar-rohingyaaidUSBRE95A04B20130611>. [Accessed 14 June 2014].

⁶ Yokota, Yozo (1996). "Human rights questions, human rights situations and reports of special rapporteurs and representatives", United Nation General Assembly, A/51/466, para. 1

⁷ International Human Rights Clinic (2009). "Crimes in Burma". Harvard Law School. Available from: http://www.law.harvard.edu/news/2009/05/28_burma.html. [Accessed 6 December 2014]

⁸ Human Rights Watch (2013). All You Can Do is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State, 165 p. Available from: http://www.hrw.org/sites/default/files/reports/burma0413_webwcover_0.pdf, p 15.

⁹ Idem, p. 16

1-The lack of citizenship and widespread non-utilization of national rights; 2-The applied restrictions about the transportation and by the Myanmar government officials; 3-The force labor for the army; 4-Cut food, extortion and taxation discriminative receiving; 5-Land expropriation or change of location; 6-Create deliberate restrictions on the distribution of food (Rice) along with expensive prices. These factors, along with the systematic human rights violence and underdevelopment has led to massive migration of Rohingya¹⁰.

Myanmar government, to deny Rohingya citizenship has been put as an excuse for depriving them of many fundamental rights. The Rohingya people are facing with limitations in relation to the freedom to change place of residence, education, marriage and employment, while these kind of freedom in international law have recognized in addition to citizens even also for non-citizens. The violation of fundamental human rights of the Rohingya by torturing them for several years were including of illegal detention, force labor imposition, rape and sexual violence, persecution, force displacement and other violence¹¹. In 2010, "Quintana" the United Nation Special Rapporteur has reported that the discrimination against the Rohingya has been led to their forced expel and create the restrictions in the transportation that is the result of historical differences Rohingya in citizenship, especially the adoption of Citizenship Act1982.

It seems that the rules related to property confiscation, is restrictions on transportation and their expel using the tools of violence, widespread and systematic. Finally, the discriminatory actions that could lead to torture, which is considered as the intentional and severe deprivation of fundamental human rights of a group or population due to those group special identity and is described contrary to the norms of international law¹². Given the history of several decades of discrimination and violence against the Rohingya and be unresolved of this issue in Myanmar, it was evident that at any moment there was an excuse to flare up of violence fire and riots in Rakhine state. In 2012, the violence against Rohingya was intensified. According to Human Rights Watch report, by the beginning of the riots and violences in June month in the different cities of Rakhine state, the hundreds people were dead and wounded and thousands of homes and mosque were burned.

This organization has estimated that these violences have caused the homeless of hundreds of thousands of people, which among them there are 75 thousand Muslims, as well as these violences have been led to mass arrests hundreds people of Rohingya¹³. In response to the expanding violence against Muslim, the United Nation Special Rapporteur on the situation of human rights in Myanmar, has stated that he has received the reports about government involvement in some of these violences and also he was added that this

¹⁰ Lallah, Rajsoomer (2000). "Question of the violation of human rights and fundamental freedoms in any part of the world," UN Economic and Social Council, Situation of human rights in Myanmar, E/CN.4/2000/38, p. 14

¹¹ Human Rights Watch, *op. cit.* (2013), p. 14

¹² Quintana, Tomás Ojea, (2010), "Situation of human rights in Myanmar", UN General Assembly, A/65/368, p. 16-17.

¹³ Human Rights Watch, *op. cit.* (2013), p. 21

involvement is included the direct involvement of some of the government departments or tacit collusion and support of violence actions.

However, Myanmar contemporary history shows that the Muslims of this country for many years are exposed to the types of violence and discrimination, including deprivation of fundamental human rights, persecution, deportation and forcible transfer. These violences are applied by the country security forces and extremists Buddhist who are involved with the government support.

The Myanmar's government silence and the actions, including citizenship law adoption 1982 and to deny Muslims citizenship has led to violence intension against them. However, for many years the international community and dependent organizations to the United Nations, especially the Security Council, for committing these crimes, have decided to be silent. According to the Rohingya urgent need for support of the international community, in this study, in addition to explain the concept of theory of responsibility to protect and according to its condition in terms of the international law, we will examine the situation of Rohingya, whereas with regard to this question whether the mentioned theories of the Rohingya is applicable or not, to provide a convincing answer.

2. The concept of the theory of responsibility to protect

The theory of responsibility to protect, which in 2001 by the "International Commission on Intervention and State Sovereignty" was proposed, in fact, it was an attempt in response to the mystery of intervention / Sovereignty that the international community was faced in the 1990s with it. This doctrine which in 2005 was reached to the adoption of the world's countries officials, the primary responsibility to protect people against the four major crimes, including genocide, war crimes, crimes against humanity and ethnic cleansing is in charge of the government of each country.

Meanwhile, in the absence of a clear willingness or ability of the mentioned government, the international community has a responsibility under the Charter of the United Nations and in accordance with the Charter provisions is acting to prevent or stop of the mentioned crimes¹⁴.

Given that the Rohingya for several decades has been placed under a variety of international crimes, including crimes against humanity, genocide and ethnic cleansing and the international community is placed at the head of the United Nations, so far any action has not applied in order to punish the perpetrators of these crimes and prevent from happening them again, therefore, it is merit that to explain the concept of the theory of responsibility to protect and consequently be answered to this question whether the international community to protect of the Rohingya can invoke to this theory or not.

Higher board of Kofi Annan, the United Nation former Secretary-General, which in November 2003 was the officer a comprehensive study of threats and

¹⁴ Soltanzadeh, Sajjad, (2009), *The legal review of Russia's invoke to the theory responsibility to protect for attack on Georgia*, „Foreign Policy Journal”, Vol. 23 (4), p. 938

challenges confronting the contemporary world and subsequently provide practical recommendations for restructuring the United Nations to meet these challenges and threats, was offered the outcome of his studies in a report entitled of "A More Secure World: Our Shared Responsibility" on December 2, 2004 to the United Nations Secretary-General.

This report also discusses the new concept of sovereignty and emphasize on this point that the concept of sovereignty is not only the immunity of governments, but also this report must be noted to two new elements in relation to states sovereignty, namely: 1- The duty of the states towards its citizens; 2- The states' obligations towards the international community, so this report also stipulates that if the government did not want or unable to act its commitment towards its own nationals, the international community should intervene and be responsible for a part of the responsibility of this government.

This report in paragraphs 201 and 202 based on repetition and confirmation of the basic concepts and principles, criteria and practical recommendations stipulates the report of responsibility to protect for the international community to protect the victims in paragraph 203:

"We have approved the emerging norm based on international collective responsibility, which according to it, the Security Council can in the event of genocide and other widespread killing, ethnic cleansing or serious violations of international humanitarian law and the lack of willingness or inability of governments having sovereignty to prevent of them, could apply the military intervention as a last resort."

The United Nations Secretary-General warmly welcomed this report and its suggestion were included in the field of the responsibility to protect and the use of force by the Security Council in March 2005 report to the General Assembly.

General Assembly during the Summit meeting in 2005, was confirmed the responsibility to protect. Thus, 191 present countries have committed themselves that the principle of non-intervention in situations where a government is doing genocide, vast ethnic cleansing within itself, is not sacred issue. Although this document is not binding, but many leaders were believed that if such a statement would have occurred in 1994, it could prevent the genocide occurrence in Rwanda¹⁵.

In paragraph 138, "The World Summit Outcome, 2005" the responsibility of every government in order to protect its citizens from genocide, ethnic cleansing and crimes against humanity and the necessity encouraging and helping to the countries on behalf of the international community in this regard was emphasized and in paragraph 139 stated that "The international community also through the United Nations has a responsibility via diplomatic relationship, humanitarian and other peaceful means, in accordance with Chapter 6 and 8 of the Charter helps to protect of the people from genocide, war crimes, ethnic cleansing and crimes

¹⁵ Idem, p. 948

against humanity.

In this context, if peaceful means were inadequate and national authorities manifestly are not able to protect its people against genocide, war crimes, ethnic cleansing and crimes against humanity... We are prepared that through the Security Council and in accordance with the Charter, including seventh section and case-to-case, if necessary, in cooperation with regional organizations to do effective collective measures and timely. We are emphasized to the necessary attention to the responsibility to protect people against genocide, war crimes, ethnic cleansing and crimes against humanity, and its consequences, according to the principles of international law and the Charter of the General Assembly...".

Moreover, the theory of responsibility to protect in multiple resolutions of the Security Council has been approved. For example, the Resolution 1769 dated 31 July 2007 of the Security Council on the licensing issue of peacekeeping mission of the United Nations and the African Union based on the Charter seventh Chapter by recalling and approving previous resolutions about Darfur Sudan, was approved the responsibility to protect.

Some believe that the responsibility to protect is the responsibility based on peremptory norms of international law (Genocide, war crimes, ethnic cleansing and crimes against humanity). Contractual obligations and customary international law oblige the states that to apply for prevent and punish the genocide, war crimes and crimes against humanity. These cases are included in "Rome Statute of the International Criminal Court" and basically the performance of these international criminals is applied to implement and strengthen the responsibility to protect¹⁶.

In 2012, after the outbreak of deadly violence against the Rohingya, the United Nations General Assembly (Which has raised its theory of responsibility to protect), was adopted a resolution in relation to Myanmar that it was raised its serious concern about the situation in the Rakhine state.

Then, the Myanmar government was requested to perform such actions in relation to "The individual arbitrary arrest," "The individual return to their main communities," "property return" and "integration policy... and peaceful coexistence". Although the Myanmar government was accepted the General Assembly requests, but it was objected to the use of the word "Rohingya" in the resolution text¹⁷.

In the mentioned resolution, the General Assembly did not formally invoke the theory of responsibility to protect. Maybe because the General Assembly did not want to judge about to commit crimes against humanity or genocide and ethnic cleansing in Rakhine state and it is assumed that the Myanmar government implements the primary responsibility protect from its citizens. However, despite the international crimes against the Rohingya, the Myanmar government has been failure clearly the protection from them and this failure was obvious in violence in June 2012, therefore, the international community should be prepared with the

¹⁶ Soltanzadeh, Sajjad, op. cit. (2009), p. 951

¹⁷ Zawacki, Benjamin (2013), Defining Myanmar's "Rohingya Problem", p 18-25. Available from: <http://digitalcommons.wcl.american.edu/hrbrief/vol20/iss3/2/Zawacki>, 2013, p. 23.

responsibility to protect doctrine, for collective action to protect the Rohingya, according to the United Nation Charter¹⁸.

However, it is said that the theory of responsibility to protect regarding to the Rohingya, if it is applicable that the first at least one of war crimes, crimes against humanity, ethnic cleansing and genocide to be committed against them; and secondly, the Myanmar government openly fails to protect them. In the following, we analyze the possibility incidence of the two mentioned conditions in detail.

3. The committed international crimes against Rohingya

As it was said, if national authorities clearly are not able to protect its people from genocide, war crimes, ethnic cleansing and crimes against humanity, then the international community can be acted with the theory of responsibility to protect to support of these people against these crimes. So, in order to response to this question which whether the theory of responsibility to protect in relation to the Rohingya issue is also applicable or not, should be demonstrated initially the commit each one of the crimes against the Rohingya and any failure of the Myanmar government to protect them.

3.1 War crimes

War crimes are as follows: The serious violations of the rules and the regulation of war rights or armed conflict¹⁹. War crimes without arrest statement includes of: The committed crimes against civilians, the committed crimes against the wounded and prisoners of war, robbery public or private property during the war, attack, bombing and destruction of towns and villages and, in general, the enemy civilian targets which is without military necessity, the committed crimes in the occupied territories, killing and injuring soldiers who laid down their arms or have no means to defend themselves and have surrendered, war betrayal and the use of prohibited weapons. Article 8 "Rome Statute of the International Criminal Court" more or less and deal with more details, is including the aforementioned points.

Despite committing many acts of violence by the Myanmar government security forces, including the army, the police, Nasaka force and the Peace and Development State Council, against the Rohingya in Rakhine state, it must be said that absolutely in this state there wasn't existed any armed conflict which the rules of armed conflict is applicable in it.

Myanmar State Peace and Development Council always has been attempted to justify the military presence in Rakhine state, according to the

¹⁸ *Idem*, p. 23.

¹⁹ Ziaee Bigdeli, Mohammadreza (2007), *Public International Law*, Tehran: Danesh Ganj publication, 28 edition, new edition, p. 294

necessity conflict with Islamic terrorist riots in this region²⁰.

But the Rohingya non-governmental armed groups, do not impose no serious threat against the Myanmar military government and the Myanmar society²¹.

Also, the internal armed conflict, is not included of the domestic unrest and riots and other acts of violence and serious violation of the rules of civil war should be committed during the armed conflict which will flow in the territory of a state in the form of long and lasting between government armed forces and systematic armed groups or between such groups²².

Therefore, it can be said that about the Rohingya issue, war crimes is not committable.

3.2 Crimes against humanity

Rome Statute of the International Criminal Court, to investigate for crimes against humanity has considered within the jurisdiction of the International Criminal Court (ICC), but did not provide any definition of crimes against humanity and has adequate only to mention its various manifestations²³.

According to Article 7 of the Rome Statute," The meaning of crimes against humanity, is any one of the below enumerated acts, when it is occurred in the context of a widespread or systematic attack against a civilian population with knowledge towards to those attack: Murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty, torture, sexual violence, persecution, forced disappearances, racial discrimination and similar inhumane acts".

Article 7 of the Rome Statute by indicating this phrase "When in the context of a widespread or systematic attack against a civilian population with knowledge towards to those attack" in some cases of crimes against humanity, limits the scope of such crimes. However, according to the Rome Statute and international case law, there are several conditions for applying the crimes against humanity: The perpetrators action must be a part of this attack; the attack must be committed directly against a civilian population; the attack must be widespread or systematic; the committed should be aware of the extent of the attack.

Given that the Rohingya in recent decades, as a civilian population, have been subjected to violence and multiple attacks by Buddhists and also the Myanmar government security forces, therefore it is merit to study this issue whether these violences have complied with instances of crimes against humanity

²⁰ Irish Center for Human Rights (2010). Crimes Against Humanity in Western Burma: The Situation of the Rohingyas, National University of Ireland, Galway, p. 29. Available from: <http://www.nuigalway.ie/media/intranet/Crimes-Against-Humanit-in-Western-Burma.pdf>

²¹ Human Rights Watch (1996). "The Rohingya Muslims: Ending a Cycle of Exodus". Available from: <http://www.hrw.org/en/reports/1996/09/01/rohingya-muslims-ending-cycle-exodus>, p. 14

²² Mir Mohammad Sadeghi, Hossein (2008), International Criminal Court, Tehran: Dadgostar Publication, p. 133

²³ Ziaee Bigdeli, op. cit. (2007), p. 293.

under international criminal law or not. In the following, we examine some of the possible three important indicators crimes against humanity against the Rohingya.

3.2.1 Forced labor imposition

In international law and international criminal law, introduction of forced labor prohibition has combined with the absolute prohibition outline of slavery and practices such as slavery (Forced labor). Article 7 (2) (c) of the Rome Statute in definition of the crime as enslavement Constitution states that: "enslavement means the exercise of some or all rights of ownership on human and includes the exercise of such options in order to buy and sell human beings, especially women and children".

As it is observed in Article 7 (1) (c), the forced labor imposition has not been stipulated as one of the examples of the enslavement. However, the legal theory clearly proves that the forced labor imposition accordance with customary international law is a definite example of crime to enslavement²⁴.

It should also be said, "Elements of Crimes document" about the scope of Article 7 (2) (c) of the Rome Statute states that: "To commit some or all rights related to ownership over one or more persons, through the cases such as buy, sell, rent or deal with one or more persons or applies through imposing the conditions similar to the freedom prohibition" At the first glance, the phrase "Through imposing the conditions similar to the freedom prohibition" in paragraph one from Article seems somewhat ambiguous, but the forced labor imposition and putting under forced labor conditions can be mentioned as the examples of freedom prohibition that is different from the exercise of some or all rights related to ownership.

Therefore, the forced labor imposition with regard to the provisions contained in Article 7 (1),(For example, in the context of widespread or systematic attack against the civilian population) – is necessary without the exercise conditions, some or all rights of ownership is considered as the enslavement and is intended as one of the crimes against humanity.

With regard to the history related to the struggle for the abolition of slavery, measures such as slavery and forced labor has been lasted more than two centuries, it is reasonable to assume the Rome Statute drafters have been requested the qualified court for investigation on the measures such as forced or compulsory labor as crimes against humanity instances²⁵.

In 2007, "Quintana", the United Nation Special Rapporteur according to the situation of human rights in Myanmar in addition to confirming the forced labor against the Rohingya, has stated that: "In eastern Myanmar, the Muslim minority is discriminated and having their citizenship right is denied according to the citizenship Act 1982.

²⁴ Irish Centre for Human Rights, *op. cit.*, p. 58

²⁵ Schabas, William. A. (2010). *The International Criminal Court: A Commentary on the Rome Statut*, Oxford University Press, p. 160-163.

The Muslim minority is escaped to Bangladesh for asylum asking. They are exposed to extreme violence, especially forced labor (Including the construction of roads, bridges, model villages and military facilities, camps protection and guards) and direct taxes²⁶.

Moreover, in Human Rights Council, 2009 report, the Special Rapporteur was confirmed that "The reports indicate that the army are forced the civilians to military service ... to build and repair roads, the construction of military camps and working in infrastructure projects"²⁷.

One of the most important instances of forced labor imposed against the Rohingya, is using them in the development of "Model villages". The model villages in the local language are called "Natala" villages which is the abbreviation the phrase "Ministry for Development of Border Areas and National Races".

These villages were made on the basis the Myanmar's Peace and Development Organization policy based on the individuals and families transfer from cities to the country's border areas in order to create human diversity and the development of remote regions. The construction of model villages against the Rohingya has impact in two ways: A) The construction of model villages involves the confiscation of land and reallocated of them; B) The construction of model villages lead to the forced labor widespread imposition²⁸.

3.2.2 Rape and sexual violence

The cases of sexual violence as an example of crime against humanity have listed in paragraph (G) of Article 7 of the Rome Statute of the International Criminal Court. " Rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or any other form of sexual violence" are instances of sexual violence which have been recognized in the mentioned paragraph of Rome Statute. Rape is the most manifest instances of sexual violence that according to Article 7 (1) of the Rome Statute is considered as an example of crimes against humanity.

"Elements of Crimes document" entry and compelling introduces as two main conditions the occurrence of rape:

1- The committed person is doing an act which leads to enter (Though little) to any part of the victim's body or to enter its the penis, whether it is an object or any part of the body.

2- The aggression has been made with the force or threat or coercion, so that the fear factor of violence, force, detention, psychological pressure or abuse of power against such person or persons or another person or utilizing coercive conditions or has been done in a situation that the person was being unqualified for real satisfaction statement.

According to the report, "Ireland Centre for Human Rights", the researches

²⁶ Quintana, Tomás Ojea, (2007). 'Report of the Special Rapporteur on the Situation of Human Rights in Myanmar,' UN Human Right Council, UN Doc. A/HRC/4/14, para. 59, 78

²⁷ Idem, para. 65.

²⁸ Irish Centre for Human Rights, *op. cit.*, p. 43

show that in Northern Rakhine State, the Rohingyas women and girls are raped and more government agents are involved in the rape commit. The committed violations in terms of the occurrence condition include the three categories: Women in prison, especially in military camps; women without husband, which are at home during the night inspection; women and girls who work on the farm²⁹.

In the case of the Rohingya issue, the victims and alleged evidence show that the victims were not doing anything to avoid the rape. Psychological pressure and physical violence have been reported as one of the common characteristics of the rapes. For example, it was raped to the victims in front of their families and were regularly beaten, which sometimes was led to death³⁰.

The United Nation Special Rapporteur in the Myanmar explains that "Soldiers have generally committed rape, are exercised the extreme violence and sometimes are tortured and killed the victims"³¹. The documents show that the army forces and Nakasa, the Rohingyas women and girls are forced into sexual acts, and these actions have been conducted with the threat, force, and violence. The rape effect on mental and physical health of the victims is catastrophic³².

3.3 Deportation and population forcible transfer

The second paragraph (D) of Article 7 the Rome Statute of the International Criminal Court, deportation and population forcible transfer defines as the entitled "The individual forced displacement relevance with deportation or other forced action from the area in which these individual are lawfully present, without good reason according to international law ". In both cases, the material element, the transfer of individuals from one land to another land is demanded (Forced displacement).

Elements of Crimes document, suggests that the transfer even one person from a land is sufficient to realize of these crimes³³. The difference between deportation and population forcible transfer, it is only whether these individual have passed from the border or not. The deportation means the transmission of one or more persons from one the country's territory to another country's territory. In contrast, the forced transfer means the transmission of one or more persons from point to another point in a country's territory³⁴.

The first mass exodus of the Rohingya people, which was attracted the attention of the international society to itself, is mass immigration from northern

²⁹ Idem, p. 75-79

³⁰ Idem, p. 79

³¹ Nowak, Manfred, (2008). 'Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: Addendum, Summary of information, including individual cases, transmitted to Governments and replies received, UN Human Rights Council, UN Doc. A/HRC/7/3/Add.1, p.160

³² Irish Centre for Human Rights, *op. cit.*, p. 76

³³ Varleh, Gerhard (2008), *Crimes against humanity in contemporary international law*. Translated by Amir Saed vakil, „International Law Journal”, Vol. 25, (39), pp. 59-100, p. 79.

³⁴ Idem, p. 80

Arakan State to Bangladesh newly independent state in 1978. In this process, more than two hundred and twenty thousand Rohingyas have been displaced in Bangladesh borders³⁵.

The second mass exodus of the Rohingya people to Bangladesh was occurring between May 1991 and March 1992. The strict forced labor, land confiscation, restrictions on freedom and widespread rape and torture, was causing a large portion of the population have no choice except escape³⁶.

In June 2012, the widespread violence against the Rohingya was began which their escaping third wave has sparked from their home in Arakan State. According to Human Rights Watch, these violences were causing the displacement of hundreds of thousands of people, which among them there are 75 thousand Muslims³⁷.

However, over the past several decades, the Myanmar government has attempted to expel the Rohingya from the country or transfer them to camps which are located far from their home and there is still serious concerns about this fact that the Burmese government is trying to divide the population of Buddhists and Muslims from each other and thereby facilitate the ethnic cleansing of Rohingya Muslims of Arakan State³⁸.

However, it can be said that the thousands of Muslims have escaped from a Northern Arakan state for violence against them and now they see themselves in a risky situation that should be live in Bangladesh country as the not registered refugees, so the victims are deported from the crimes against humanity. In this way, the thousands of people who have been seizure their lands, but they are still present in the region, "The stranger" who have not only any place in Burma law, but also there are the people that their nationality has been denied arbitrarily and victims are the forcible transfer. As it was noted earlier, we can firmly argue that the crime against humanity and deportation and forced transfer of the Rohingya have been conducted widespread and systematic.

3.4 Crime of genocide

With the adoption of the "Convention on the Prevention and Punishment of the Crime of Genocide" in 1948, was passed the crime of genocide prohibition for the first time. Article 2 of the Convention, defines the genocide as follows: "In this convention, the genocide is said to each one of the following acts which is committed with intent to destroy in all or a part of national, ethnic, racial or religious group as follows: (1) killing members of the group; (2) Creating severe damage to the physical or psychological health of members of a group; (3) To deliberate put a group under poor living conditions that lead to physical destruction in whole or in part of the group; (4) Implementing the measures that are carried out

³⁵ Irish Centre for Human Rights, *op. cit.*, p. 91

³⁶ Human Rights Watch, *op. cit.* (1996), p. 12

³⁷ *Idem*, p. 21

³⁸ *Idem*, p. 16-17

with intent to prevent procreation among the group; (5) Children forcible transfer of a group to another group."

However, "The statute of the International Criminal Court for Rwanda" (Article 2)," The statute of the International Criminal Court for the former Yugoslavia"(Article 4) and" The statute of the International Criminal Court" (Article 4) in the definition of genocide, which have inspired from Article 2 of the Convention on genocide prohibition. According to the definition of genocide, the indices of this international crime are as follows: Grouping of Victim (Group element); Commit of specific material acts (Material element); group destroys the intention (Moral element).

In fact, the main and fundamental aim of identifying genocide in international criminal law as an independent international crime is to protect the group and protect of the people is placed in secondary importance degree. About the material element of this crime should be said that the material element of the genocide crime constitutes of fivefold measures which in Article 2 of genocide convention are listed and definition and detailed explanation of these measures is defined in case law.

Genocide crime has homogeneous nature with crime against humanity. The fundamental difference is that in the crimes against humanity, the non- civilian population in the framework widespread or systematic attack are targeted, while to commit the crime of genocide is necessary that to be exist specific intent destroy of the protected group (In whole or in part). In some cases, overlap and compatibility between these two concepts is created³⁹.

The Rohingya characteristics and history shows that they are considered as a national, ethnic, racial and religious group under the Genocide Convention. Although the Myanmar officials deny the Rohingya historical presence, but historians have proved signs of the presence of Rohingya in Rakhine state before the nineteenth century⁴⁰.

Their language is "Rohingyalish" and the majority of them are Muslims. Therefore, their language and religion is different with other ethnic groups in Rakhine state and Myanmar's country and this two part of the Rohingya people identity form as a distinct group⁴¹.

About the material element of this crime should be said that the material element of the genocide crime constitutes of fivefold measures which in Article 2 of genocide convention are listed and definition and detailed explanation of these measures is defined in case law.

³⁹ Azizi, Sattar, (2007), *Protection the right of minorities in the light punishment of perpetrators of genocide in international case law*, „Journal of Law”, Faculty of Law and Political Science at Tehran University, No. 4, Winter 2007, p. 135-134.

⁴⁰ Yegar, Moshe, (1972), *The Muslims of Burma: a study of a minority group*. Available from: <http://www.netipr.org/policy/downloads/19720101-Muslims-Of-Burma-by-Moshe-Yegar.pdf>, p. 2

⁴¹ International Human Rights Clinic (2015). *Persecution of the Rohingya Muslims: is Genocide occurring in Myanmar's Rakhine State*, Prepared by the Allard K. Lowenstein International Human Rights Clinic, Yale Law School for fortify rights. Available from: http://www.fortifyrights.org/downloads/Yale_Persecution_of_the_Rohingya_October_2015.pdf, p. 42- 43.

By studying the violence which have occurred in recent decades against the Rohingya, can be proved that the five acts of genocide which explicitly has been explained in Article 2 of Crime and Prevention of Genocide Convention, 1948, the four first action- intentional killing, injuring to the body and soul of victim's groups, imposing difficult living conditions, somehow it lead to physical destruction in all or part of a group, preventing from birth of the group, which has been committed by rulers of Myanmar against the Rohingya⁴².

As it was mentioned earlier, in order to fulfill the genocide crime, it is necessary that the destruction specific intent of partial or whole one of the protected groups exists. Available evidence suggests that the Myanmar government and local authorities have the destruction intention to the Rohingya in Rakhine state.

The officials' measures that are carried out to deny the Rohingya people ethnic identity, clearly it indicates that the government wants to destroy the foundations that the Rohingya existence is based on it. The Rohingya person's identity denies is formed in various forms of violence, including the governmental authorities are forced them to introduce themselves as "Bengali" and the people are clawing towards of targeted sanctions against the Rohingya and violence action⁴³.

In any case, can be said that firstly the Rohingya to form a group under Genocide Convention and secondly to commit a series of systematic actions against the Rohingya has led to the destruction of a significant part of this group and the Myanmar government is not performing any action to prevent or stop the extermination of Rohingya.

In addition, the government's response towards of the Rohingya, despite the conflict of the Rohingya in Myanmar, the outbreak of widespread violence against them and placing them in a difficult life situation, has been avid us towards to prove bad intention necessary for genocide⁴⁴.

The Myanmar's government can due to genocide, acts which has been committed by the country's security forces against the Rohingya, is recognized responsible, because according to the Genocide Convention, the governments are responsible for the genocide exercises of the governmental institution. Myanmar army, Myanmar police forces and Nasaka to form the Myanmar's security forces which according to the internal laws of Myanmar's country, are considered the governmental institution and their actions are attributable to the Myanmar's government⁴⁵.

Also, according to international law, the Myanmar government duty is to prevent genocide in its territory. Without trail of the people who commit

⁴² Zarney, Maung, (2013), "Buddhist nationalism in Myanmar: genocide and institutionalized racism against the Rohingya's Muslim" Translated by Javad Taheri, *Siahat-e gharb monthly* (118 and 119), 132-125, p. 129

⁴³ Zarni, Maung; Cowley, Alice (2014), *The Slow-Burning Genocide of Myanmar's Rohingya*, „Pacific Rim Law & Policy Journal”, 23/3:682-752. Available from: http://www.academia.edu/7787141/Compilation_2014_Pacific_Rim_Law_and_Policy_Journal_Association, p. 745

⁴⁴ International Human Rights Clinic, Yale Law School, *op. cit.*, 2015, p. 59.

⁴⁵ *Idem*, p. 61

international crimes against the Rohingya, this claim strengthens the Myanmar government has refused the Rohingya protect.

3.5 Ethnic-cleansing

According to "The Commission of Experts Established Pursuant to Security Council Resolution" the term of ethnic-cleansing is a relatively new term. With regard to the wars incidence field in the former Yugoslavia, ethnic cleansing means homogenous and homogeneity of an area in terms of the racial using force or threat to displace of the respective group's individual of those regions. The purpose of the governments to exercise this policy is that by expelling the other groups, as far as possible to make country in terms of homogeneous and uniform or at least the minority groups to deport from areas of the country that has historical and traditional value or is included of the political and economic interests for the majority people⁴⁶.

In fact, can be said that ethnic cleansing is a set of actions which it ultimately has caused none of members of ethnic groups that are targeted the ethnic cleansing, are not to be present in the cleaning area and in summary, ethnic cleansing can be defined as "Remove from the territory"⁴⁷.

Ethnic cleansing in fact is a particular kind of deportation and forced transfer of population and "there is the absolute relationship between the ethnic cleansing and crimes against humanity, because ethnic cleansing is concerned only with conflicts which is underway between ethnic rival groups, but deportation and forcible transfer of population is not related only to the ethnic cases"⁴⁸.

In addition, according to the international case law, if ethnic cleansing is associated with the specific intent and examples of the recognized cases in Articles 2 and 3" Convention on the Prevention and Punishment of Genocide" it can be considered as genocide. However, ethnic cleansing in international criminal law is not only criminalized as an independent crime, but also should be initiated in the context of crimes against humanity or genocide.

It must be said that the increasing evidence which exist about the killings and violence against the Rohingya people in the Rakhine state, indicates that the forced transfer of Muslims, their deportation from the Myanmar and adoption the specific rules and guidelines of Rohingya people helps to facilitate the destruction and violence against the Rohingya people, which is done with government support, therefore, the government's intention is not only to expel the Rohingya people of the Rakhine state, but also it is followed that by killing members of the group, inflicting serious physical or mental damages and imposing the conditions that lead to physical destruction of group to remove them⁴⁹. Therefore, the government's intention is not only to cleanse them from the Rakhine State, but also with regard to

⁴⁶ Azizi, Sattar, *op. cit.*, p. 222

⁴⁷ Bevan, Robert (2006). *The Destruction of Memory*. London, cpi/Bath Press, p. 27

⁴⁸ Azizi, Sattar, *op.cit.*, p. 223

⁴⁹ Zarni, Maung; Cowley, Alice, *op. cit.*, p. 724, 725

the implementation of discriminatory policies, their destruction has been also targeted. In fact, eventually ethnic cleansing has led to the genocide.

4. Conclusion

In this article, we discussed the possibility of committing international crimes against the Rohingya. From the obtained discussion can be found that while the war crimes due to the lack of armed war in Myanmar is not committable against the Rohingya ethnic minority, but for many years the Myanmar Rohingyas are the victim of crimes against humanity, genocide and ethnic cleansing and numerous examples have been committed the crimes against them. Regarding to the role of Myanmar's government and the government agents in the occurrence of these crimes must be said that in some cases, including deportation and forced transfer of population, ethnic cleansing and genocide, Myanmar's government and the government institutions, including the police and army indirectly and with their discriminatory policies have facilitated the occurrence of these crimes and in other cases, such as the forced labor imposition and rape and sexual violence, the government agents and civilians have been directly as the actual perpetrator of these crimes.

Without trail of the people who commit international crimes against the Rohingya, this claim strengthens the Myanmar government has refused the Rohingya protect. Of course, the Myanmar's government does not know the Rohingya ethnic minority of its citizens and the citizenship law of this country, has been deprived their citizenship without any reasonable justification, can not to deprive the responsibility to protect of them by the Myanmar's government. In any case, the history shows that for years they live in Rakhine state and even in the military government after the Myanmar's independent in 1948, they are considered as citizens, but as a result of the adoption of the Citizenship Law in 1982, due to complex rules and regulations of citizenship has not been able to Myanmar citizenship and have remained stateless.

In any case, there are serious concerns about the crimes which are happening in Northern Rakhine State of Myanmar against the Rohingya ethnic minority and to end the Rohingya community suffering and protect of them is necessary an immediate and effective measure. The responsibility to protect doctrine regarding the Rohingya is applicable, because despite of the crimes against humanity, genocide and ethnic cleansing against the Rohingya, the Myanmar's government has clearly failed to support them and this failure was obvious at least in violence in June 2012. Therefore, the international community with the responsibility to protect doctrine should be prepared for collective action to protect the Rohingya ethnic minority, according to the United Nation Charter.

Bibliography

1. Azizi, Sattar, (2007), *Protection the right of minorities in the light punishment of perpetrators of genocide in international case law*, „Journal of Law”, Faculty of Law and Political Science at Tehran University, No. 4,
2. Bevan, Robert (2006). *The Destruction of Memory*. London, cpi/Bath Press, p. 27
3. Human Rights Watch (1996). “The Rohingya Muslims: Ending a Cycle of Exodus”. Available from: <http://www.hrw.org/en/reports/1996/09/01/rohingya-muslims-ending-cycle-exodus>],
4. Human Rights Watch (2013). *All You Can Do is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State*, 165 p. Available from: http://www.hrw.org/sites/default/files/reports/burma0413_webwcover_0.pdf,
5. International Human Rights Clinic (2009). “Crimes in Burma”. Harvard Law School. Available from: http://www.law.harvard.edu/news/2009/05/28_burma.html. [Accessed 6 December 2014]
6. International Human Rights Clinic (2015). *Persecution of the Rohingya Muslims: is Genocide occurring in Myanmar's Rakhine State*, Prepared by the Allard K. Lowenstein International Human Rights Clinic, Yale Law School for fortify rights. Available from: http://www.fortifyrights.org/downloads/Yale_Persecution_of_the_Rohingya_October_2015.pdf,
7. Irish Center for Human Rights (2010). *Crimes Against Humanity in Western Burma: The Situation of the Rohingyas*, National University of Ireland, Galway. Available from: <http://www.nuigalway.ie/media/intranet/ Crimes-Against-Humanit-in-Western -Burma.pdf>
8. Lallah, Rajsoomer (2000). “Question of the violation of human rights and fundamental freedoms in any part of the world,” UN Economic and Social Council, *Situation of human rights in Myanmar*, E/CN.4/2000/38,
9. Mir Mohammad Sadeghi, Hossein (2008), International Criminal Court, Tehran: Dadgostar Publication,
10. Nowak, Manfred, (2008). ‘Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: Addendum, Summary of information, including individual cases, transmitted to Governments and replies received, UN Human Rights Council, UN Doc. A/HRC/7/3/Add.1,
11. Quintana, Tomás Ojea, (2007). ‘Report of the Special Rapporteur on the Situation of Human Rights in Myanmar,’ UN Human Right Council, UN Doc. A/HRC/4/14,
12. Quintana, Tomás Ojea, (2010), “Situation of human rights in Myanmar”, UN General Assembly, A/65/368,
13. Schabas, William A, (2010). *The International Criminal Court: A Commentary on the Rome Statut*, Oxford University Press,
14. Soltanzadeh, Sajjad, (2009), *The legal review of Russia's invoke to the theory responsibility to protect for attack on Georgia*, „Foreign Policy Journal”, Vól. 23 (4),
15. Szep, Jason; Marshall, Andrew R.C, (2013). “Myanmar Minister Backs Two-child Policy For Rohingya Minority, Reuters”. Available from: http://www.reuters.com/article/2013/06/11/us-myanmar-rohing_yaidUSBRE95A04B20130611. [Accessed 14 June 2014].
16. Varleh, Gerhard (2008), *Crimes against humanity in contemporary international law*. Translated by Amir Saed vakil, „International Law Journal”, Vól. 25, (39), pp. 59-100,

17. Yegar, Moshe, (1972), *The Muslims of Burma: a study of a minority group*. Available from: <http://www.netipr.org/policy/downloads/19720101-Muslims-Of-Burma-by-Moshe-Yegar.pdf>,
18. Yokota, Yozo (1996). "Human rights questions, human rights situations and reports of special rapporteurs and representatives", United Nation General Assembly, A/51/466,
19. Zarney, Maung, (2013), "Buddhist nationalism in Myanmar: genocide and institutionalized racism against the Rohingya's Muslim" Translated by Javad Taheri, Siahat-e gharb monthly (118 and 119), 132-125,
20. Zarni, Maung; Cowley, Alice (2014), *The Slow-Burning Genocide of Myanmar's Rohingya*, „Pacific Rim Law & Policy Journal”, 23/3: 682-752. Available from: http://www.academia.edu/7787141/Compilation_2014_Pacific_Rim_Law_and_Policy_Journal_AssociationZarni, 2012
21. Zarni, Maung; Cowley, Alice (2014), *The Slow-Burning Genocide of Myanmar's Rohingya*, „Pacific Rim Law & Policy Journal”, 23/3:682-752. Available from: http://www.academia.edu/7787141/Compilation_2014_Pacific_Rim_Law_and_Policy_Journal_Association,
22. Zawacki, Benjamin (2013), Defining Myanmar's "Rohingya Problem", p 18-25. Available from: <http://digitalcommons.wcl.american.edu/hrbrief/vol20/iss3/2/Zawacki>,
23. Ziaee Bigdeli, Mohammadreza (2007), *Public International Law*, Tehran: Danesh Ganj publication, 28 edition, new edition.