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Addressing COVID-ified maritime migration in the Bay of Bengal: the case of stateless Rohingya boat people

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ABSTRACT

Historically, people have for a long time been using the seas to migrate perilously in unseaworthy boats and risking their lives primarily for safe havens when fleeing persecution or for gaining better economic opportunities in countries of destination. This kind of unsafe migration by sea continues even in the challenging times of countries trying to manage the global pandemic Covid-19. Governing maritime movements is as it is a complex challenge and Covid-19, by raising public health concerns and triggering border-closures across the world, has added to its complexity. Taking the case of Rohingyas, the world's largest stateless minority who have been trying to seek refuge in Southeast Asian countries by taking perilous journeys through the Bay of Bengal, this article analyses the COVID-ification of migration by sea that has pitted the human rights of non-refoulement and rescue at sea against the sovereign responsibility of states to protect public health of citizenry.

KEYWORDS

Covid-19; maritime migration; stateless people; Rohingyas

As states across the world reel under the weight of Covid-19 pandemic, the primary and uniform strategy adopted by them has been to shut their borders so as to contain the spread of corona virus. Visa controls have tightened, air travel has been subjected to severe restrictions and most states have aggressively brought their citizens abroad back home. However, the plight of stateless persons that refers to persons without a nationality and devoid of the sovereign protection of any state have been most affected during these times of global public health emergency.

The severity of the plight of stateless persons can be gauged from seeing the case of Rohingyas, the world's largest stateless community¹ who have been persecuted and arbitrarily denied their citizenship by Myanmar. In the times on Covid-19 pandemic, Rohingyas, have been undertaking risking sea journeys, in fishing boats often arranged by smugglers, fleeing Bangladesh's refugee camps to reach countries like Malaysia for better life opportunities. While such maritime movements have been a common feature of the Bay of Bengal, the pandemic as a factor has however, drastically changed the equations of such migration.

The pandemic counter-stream

The Covid-19 pandemic has led to countries like Malaysia viewing the issue of Rohingyas entering its maritime borders as a serious cause of concern, thereby undertaking measures

to strengthen security at borders. Malaysia had resorted to continuously turning back such boats. Even in one case where a boat could not be turned back on account of its engine failure, the Malaysian authorities have detained the Rohingyas aboard. But there are still fears that they may again be sent back to international waters once their boat is repaired (Reuters 2020).

Malaysian Prime Minister Muhyiddin Yassin has cited the reasons of economic struggles and scarce resources faced by the country due to the coronavirus pandemic for pushing back the Rohingya boat people (Aljazeera 2020a). Coupled with this is also the anti-Rohingya sentiment that has gained currency in Malaysia during this time. As rumours about Rohingyas demanding Malaysian citizenship spread faster than the corona virus, the stateless community as well as human rights defenders became increasingly subjected to hate speech and death threats on social media platforms like Facebook, Twitter, Change.org and Avaaz (Human Rights Watch 2020). Cases of doxing also have seen a rise in this case. For example, a female Malaysian activist, from the European Rohingya Council rights group was threatened with rape on Facebook when she asked the Malaysian government to allow Rohingyas to disembark (Dhaka Tribune 2020a). Similarly, Australian Al Jazeera journalists have faced death threats, doxing, sedition and defamation charges for releasing a documentary that criticised harsh Malaysian government's policies against undocumented migrant workers during the Covid-19 period (The Guardian 2020a).

The Malaysian stance under the pandemic has been in sharp contrast to its earlier sympathetic approach towards accommodating the Rohingyas. Malaysia for a long time has been the most preferred destination for this stateless community. A recent report by Stable Seas, that analysed maritime security in the Bay of Bengal, had showcased Malaysia as a role model of reception destination country in southeast asia of maritime migration as it had offered legal work to Rohingya refugees and asylum seekers in the plantation and manufacturing sectors of the economy (Stable Seas 2020). However, it is not the case that the situation of Rohingyas living in Malaysia has in any way improved. The situation remains grim as Rohingyas living in the country have reported how they live with the mental trauma on a daily basis and face a continual fear of detention and harassment by police making their life worse than that in the refugee camps of Bangladesh (Reuters 2019a). The pandemic has further questioned this 'image' of Malaysia as a model reception state by causing a 'counter-stream of migration' of Rohingyas back to Bangladesh resulting in further boat tragedies (see Table 1).

Bangladesh too that has always been applauded for absorbing the maximum number of Rohingya refugees, the largest being the Cox bazar camp housing 1.1 million refugees, has tightened its borders even after taking back the Rohingyas who could not reach Malaysia. Around 308 Rohingyas have already been sent to live in the cyclone shelters built on the isolated island of Bhasan Char (Dhaka Tribune 2020b). Bangladesh was already planning to decongest the refugee camps in cox bazar by relocating thousands of Rohingya refugees to Bhasan Char island. However, this proposal was met with resistance from United Nations (UN) and various civil society organisations as the island is prone to natural disasters. During a visit to the island in early 2019, Yanghee Lee, the United Nations special rapporteur on Myanmar, not only questioned the habitability potential of it but rather warned that it had the potential to create a 'new crisis' situation (Reuters 2019b). But now the pandemic has been able to change this equation and resuscitate Bangladesh's proposal. The fear of this infectious corona virus has in a way fructified

Table 1. A summary of major Rohingya boat tragedies during Covid-19 (February–June 2020).^a

Number of incident	Estimated number of Rohingyas on board	Reported deaths	Unreported deaths/missing persons	Number of persons rescued/detained	Location of incident	Month of incident
1.	130	15	46	69 rescued by Bangladesh	St. Martin's Island near Bangladesh	February 2020
2.	–	Around 30	–	400 rescued by Bangladesh coastguard	Near Cox Bazar after being turned back by Malaysia	April 2020
2.	More than 300	–	–	269 detained by Malaysia	Langkawi, an island off the coast of Malaysia	June 2020
3.	500	–	–	–	Boat still at sea and not yet located	–
4.	–	–	–	94 rescued by Indonesian fishermen	Indonesia's Aceh Province	June 2020

^aCollated by author using news sources like Washington Post, The Guardian and Radio Free Asia (The Washington Post 2020; The Guardian 2020b; Radio Free Asia 2020; The Guardian 2020).

the relocation of refugees as Bhasan Char currently serves as a preferred quarantine destination for incoming Rohingyas who failed to reach Malaysia and were rescued by the Bangladesh coastguard.

COVID-ified maritime migration in the Bay

The UN Refugee Agency, United Nations High Commissioner for Refugees (UNHCR), while recognising the sovereign right of states to restrict the entry of non-nationals to protect public health, said in a statement that

imposing a blanket measure to preclude the admission of refugees or asylum-seekers, or of those of a particular nationality or nationalities, without evidence of a health risk and without measures to protect against refolement, would be discriminatory and would not meet international standards, in particular as linked to the principle of nonrefoulement. (UNHCR 2020a)

However, ensuring that states respect these guidelines and customary principle of international law of non-refoulement has become difficult to monitor even as agencies like UNHCR is often unable to reach the refugees and asylum seekers due to lockdowns and restrictions on freedom of movement within countries due to the pandemic.

In a joint statement of May 2020, *on protection at sea in the Bay of Bengal and Andaman Sea*, the UN agencies, UNHCR, International Organization for Migration (IOM) and United Nations Office on Drugs and Crime (UNODC) feared that the boat tragedies of 2020 under Covid-19 were quickly becoming a 2.0 version of the 2015 'boat crisis' in the Bay of Bengal where again thousands of refugees and migrants including vulnerable groups like women and children in distress at sea will die (UNHCR 2020b). They urged a regional solution to this problem of irregular migration by making use of the regional mechanism of Bali process that comprises of 49 members co-chaired by Indonesia and Australia. This forum adopted an important declaration called as the *Bali Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime 2016* which stressed that

while sovereign states take measures to disrupt the smuggling networks and punish human traffickers involved in arranging boats for irregular migration by sea, they must adopt a victim-centered and protection-sensitive approach vis-à-vis vulnerable groups such as women and children and those in need of asylum (Bali Process 2016).

However, in addressing this issue there exist no straightforward solutions. This is because Maritime Migration (MM) is undeniably a very complex mode of migration. Firstly, this type of migration is 'irregular' and illegal and so the issue of national security comes in. However, states are also obliged under *UN Convention on the Law of the Sea 1982* to save the lives of everyone found in distress at sea (International Maritime Organization 2015). However, currently, the sensitivity of states is heightened towards this migration as protecting public health from the global pandemic is also seen as a national security issue and so border controls against non-nationals become justified.

Secondly, MM involves an element of crime as human smuggling networks are often involved in arranging fishing boats of all sizes to undertake risky sea-crossings. The size of these unseaworthy boats used for unsafe migration in the Bay of Bengal region has undergone a change. According to UNHCR, large fishing trawlers or cargo boats were being used to smuggle 300 to 1000 people in one trip in 2015 which shifted to smaller fishing boats to incorporate 20 to 100 persons in 2018 and in the current phase larger vessels that can take in 200 people at one go are in use (UNHCR 2019a). Even in the latest boat incidents under Covid-19, human smugglers were involved and there were even reports of them asking for more money by holding stranded Rohingyas at sea as hostages (Aljazeera 2020b).

Thirdly, MM often involves a mixed group of people that migrate for different reasons and have varying protection needs and profiles. They can either comprise of refugees, asylum-seekers and stateless people who may be fleeing persecution and conflict or poor migrants who are seeking better economic opportunities. While the 2015 Bay of Bengal crisis saw mixed flows of Bangladeshi immigrants alongwith Rohingya refugees, in 2020, only Rohingyas have been seen to migrate from Bangladesh perhaps to seek better opportunities in Malaysia. But it is still not yet clear as to why the pandemic couldn't deter them from taking such perilous journeys. Nevertheless, the principle of non-refoulement, that is a refugee should not be returned to a country where they face serious threats to their life or freedom, should apply to the Rohingyas reaching the shores of Malaysia even if they have departed from refugee camps in Bangladesh which are considered safe. Returning Rohingyas to harsh international waters or even putting them on a flood prone island that poses serious threats to their life is nothing but indirect refoulement.

As the urgent need to care for citizens takes over and borders are shut down to control the virus, the distinctions between insider and outsider have become sharpest in the age of Covid-19. Stateless persons who are non-citizens everywhere face extreme difficulties and discrimination in accessing basic services of health care, education and employment and so, the rightlessness associated with Statelessness often becomes a push factor for migration (Sironi 2016). What the pandemic has shown through the case of irregular maritime migration of stateless Rohingyas in the bay is this: the world continues to be deeply divided into sovereign states and if a person isn't a citizen of any of these states, they have no human rights whatsoever and belong nowhere. The seas are not habitable and harsh to human life. But they seem even harsher to the stateless who undertake such desperate journeys in desperate times.

A glimmer of hope in this COVID-ification of desperate maritime journeys has been the exemplary humanitarian resolve displayed by the ordinary fishermen of Indonesia who saved the lives of Rohingya boat people in June 2020 (The Guardian 2020a). By this act, they not only upheld the customary law of rescuing people at sea but also indirectly kept the promise contained in the pledges of Indonesian government, of assisting the needs of stateless persons, made at the 2019 *High-Level Segment on Statelessness* (UNHCR 2019b). Whether or not Indonesia will now show political will and take lead as the co-chair of the Bali process mechanism in solving this complex regional crisis is something only time will tell.

Note

1. It is important to note that the UN Refugee Agency (UNHCR), equipped with the UN given statelessness mandate, has admitted that though the official world's stateless population figures stand at 3.9 million, these numbers could be much higher and a figure of at least 10 million is regularly accepted (UNHCR 2020). Although there is no statement by the UNHCR directly stating that Rohingya are the largest stateless group, an in-depth statistical analysis of the annual *UNHCR reports on Global trends* by the Institute on Statelessness and Inclusion showed that Rohingya can be regarded as the largest stateless population in the world (Institute on Statelessness and Inclusion 2019).

Disclosure statement

No potential conflict of interest was reported by the author(s).

Notes on contributor

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