

Master's Degree in International Relations

Chair of Comparative History of Political Systems

**The Rohingya Crisis and the Limits of the
International Response: A Legal and
Political Analysis**

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“A chi mi ha amato e sostenuto senza riserve, anche nei momenti in cui ero io a dubitare: la mia famiglia.”

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LIST OF ABBREVIATIONS

5PC - Five-Point Consensus

AFPFL - Anti-Fascist People's Freedom League

AHA Centre - ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management

ANC - African National Congress

ASEAN - Association of Southeast Asian Nations

ARSA - Arakan Rohingya Salvation Army

BRI - Belt and Road Initiative

BROUK - Burmese Rohingya Organization UK

CDM - Civil Disobedience Movement

CL - 1982 Citizenship Law

CMEC - China–Myanmar Economic Corridor

EEAS - European External Action Service

EU - European Union

FDI - Foreign Direct Investment

HRC - Human Rights Council

ICRC - International Committee of the Red Cross

ICTR - International Criminal Tribunal for Rwanda

JRP - Joint Response Plan

MOGE- Myanmar Oil and Gas Enterprise

NDPD - National Democratic Party for Development

NGOs - Non-governmental organizations

NLD - National League for Democracy

NSAs - Non-state actors

NUG - National Unity Government

OAU - Organization of African Unity

OECD - Organization for Economic Co-operation and Development

OIC - Organization of Islamic Cooperation

R2P - Responsibility To Protect

RPF - Rwandan Patriotic Front

SAC - State Administration Council

SLORC - State Law and Order Restoration Council

SPDC - State Peace and Development Council

Tatmadaw - Armed Forces of Myanmar

UCA - Union Citizenship Act

UK - United Kingdom

UN - United Nations

UNAMIR - United Nations Assistance Mission for Rwanda

UNGA - United Nations General Assembly

UNHCR - United Nations High Commissioner for Refugees

UNSC - United Nations Security Council

US - United States

USDP - Union Solidarity and Development Party

WFP - World Food Programme

YMBA - Young Men's Buddhist Association

INTRODUCTION

According to United Nations Secretary-General António Guterres, the Rohingya crisis represents “a humanitarian and human rights nightmare”.¹ This statement, delivered before the Security Council in September 2017, encapsulates the gravity of one of the most severe and protracted humanitarian crises of the twenty-first century. The plight of the Rohingya is marked by systematic and large-scale human rights violations, including mass killings, sexual violence, destruction of villages, and forcible displacement of hundreds of thousands of people from Rakhine State. Beyond its immediate humanitarian consequences, the crisis exposes the profound limitations of both domestic and international legal frameworks in protecting vulnerable ethnic minorities. Despite widespread recognition of the atrocities, the international community has struggled to provide a coherent and effective response, thereby raising critical questions about the adequacy of existing mechanisms in the international community, the enforcement capacity of international judicial mechanisms and the real-world impact of coercive diplomacy. The scale and persistence of abuses, combined with the absence of meaningful judicial redress, have turned the Rohingya crisis into a critical test case for the credibility of global commitments to atrocity prevention and minority protection. It is within this context that the present thesis situates its inquiry.

The methodology of this thesis is primarily qualitative and interpretive, combining legal, historical, and policy analysis with comparative and empirical elements. The research design is based on a single-case study of the Rohingya crisis in Myanmar as a paradigmatic instance of minority persecution and international accountability failure, enriched by comparative references to Rwanda and South Africa. While the former illustrates the results of inconsistent international action in the face of genocide, the latter represents one of the most frequently cited examples of effective sanctions contributing to democratic transition. By systematically comparing these precedents with Myanmar, the study seeks to identify structural similarities and divergences, thereby clarifying the conditions under which international accountability mechanisms can exert real political impact. This structure allows for both a detailed understanding of the Rohingya crisis in its own right and for broader inferences about the conditions under which international accountability mechanisms and sanctions can be effective. The study rests on three complementary pillars: first, it employs an extensive analysis of primary sources. These include official documents, statements, and resolutions issued by

¹ United Nations, SC/13012 (September 28, 2017), 8060th meeting <https://press.un.org/en/2017/sc13012.doc.htm>

the United Nations (Security Council, General Assembly, and Human Rights Council), resolutions and press releases of the European Union, foreign policy documents of the United States, ASEAN communiqués, and reports from relevant governmental bodies. Particular emphasis is also played on official reports by UN-mandated mechanisms such as the Independent International Fact-Finding Mission on Myanmar and the Independent Investigative Mechanism for Myanmar, as well as the Special Rapporteur on the situation of human rights in Myanmar. In addition, the analysis draws on the jurisprudence of the International Court of Justice, the International Criminal Court, and the International Criminal Tribunal for Rwanda, as well as on the core international treaties and conventions governing human rights law, including the Genocide Convention and other instruments of customary international law. Second, these sources are complemented by a wide range of secondary materials. These include academic studies, peer-reviewed journal articles in the fields of international law, human rights, and political science, as well as policy reports produced by leading think tanks and NGOs. Third, the thesis integrates an empirical dimension through a semi-structured interview conducted with Ahmed Adam, Programme Manager for UN Advocacy at the Asian Forum for Human Rights and Development (FORUM-ASIA). The interview was designed to capture field-based perspectives on accountability, enforcement gaps, and the role of regional actors, thereby complementing the documentary and legal analysis with practitioner insights. Its semi-structured format allowed for thematic consistency while leaving space for open-ended reflection, thus providing both depth and flexibility. The transcript is included in the Appendix for transparency, while its analysis is integrated in Chapter 3 as a basis for policy recommendations. Finally, the thesis acknowledges certain methodological limitations. The reliance on documentary sources inevitably reflects the framing of international institutions and advocacy organisations, which may omit or underrepresent perspectives from within Myanmar itself. Direct fieldwork in Myanmar was not feasible, given security constraints and ethical concerns. Moreover, the comparative dimension is limited to two cases, Rwanda and South Africa, which, while carefully selected for their relevance, cannot capture the full diversity of international responses to mass atrocity. Nonetheless, these limitations are offset by the combination of diverse sources and the integration of empirical insights, which together strengthen the validity and comprehensiveness of the analysis.

This thesis investigates the following research question: “How effective is the international community in holding Myanmar accountable for crimes committed against the Rohingya, and what limitations can be observed?”. In addressing this question, the study advances the argument that international mechanisms, from judicial proceedings to diplomatic initiatives at international fora to sanctions, have contributed to documentation, symbolic condemnation, and limited deterrence, yet

have largely failed to deliver meaningful accountability or structural change. The core claim is that the existing architecture of international law and global governance suffers from a dual weakness: on the one hand, a lack of normative coherence and enforceability, and on the other, a profound vulnerability to geopolitical deadlock. In the case of Myanmar, these weaknesses are exacerbated by the protective shield afforded by powerful allies within the UN Security Council, namely China and Russia, whose vetoes systematically obstruct coordinated action, as well as by the resilience of an entrenched authoritarian regime that remains largely impervious to external pressure. Together, these dynamics render international responses both inconsistent and ineffective, leaving the Rohingya people exposed to ongoing persecution and undermining the credibility of global commitments to atrocity prevention and the protection of ethnic minorities.

To situate this thesis within the broader academic debate, it is essential to review the principal strands of scholarly literature that have addressed the Rohingya crisis from historical, legal, and policy perspectives. A first body of literature has sought to reconstruct the long-standing presence of Muslim communities in Arakan (Rakhine State), challenging the dominant narrative that frames the Rohingya as recent illegal migrants from Bangladesh. Among the earliest and most influential contributions is Mohammed Yunus's "A History of Arakan: Past and Present",² which draws on Islamic sources to assert a Muslim presence in Arakan dating back to the 8th century. Similarly, the writings of Ba Tha, notably his "Short History of the Rohingyas and Kamans of Burma",³ attempt to root Rohingya identity within a Hindu–Buddhist cultural context by interpreting early maritime references as evidence of Arab and Persian contact. These historical accounts have laid the groundwork for a counter-narrative against the official denial of indigeneity, portraying Rohingya people as *Kala* (dark-skinned Muslim foreigners). Jacques Leider,⁴ adopting a critical-historical lens, challenges this assumption of a continuous and immutable Rohingya identity. He contends that the emergence of the term "Rohingya" is best understood as the outcome of a postcolonial ethnogenetic process, rather than the survival of an ancient ethnic label. Drawing extensively on colonial-era census data and administrative records, Leider illustrates how classifications such as "Arakan Mahomedans," "Indo-Burmans," and "Chittagonians"⁵ laid the groundwork for contemporary

² Mohammed Yunus, "A History of Arakan: Past and Present." *University of Chittagong Press* (1994) https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/docs21/Yunus-NM-1994-History_of_Arakan-en.pdf

³ Ba Tha, "Short History of the Rohingyas and Kamans of Burma." *Kaman Muslim Literary Society* (1963) https://www.burmalibrary.org/docs21/Ba_Tha-Kaladan-News&Network-Myanmar-2007-09-13-A_Short_History_of_Rohingya_and_Kamans_of_Burma-en.pdf

⁴ Jacques Leider, "Rohingya: The History of a Muslim Identity in Myanmar." *Oxford Research Encyclopedia of Asian History*, (May 24, 2018) <https://doi.org/10.1093/acrefore/9780190277727.013.115>

⁵ *ivi*, 6

identity constructions. In his view, it was only during the 1950s that the term “Rohingya” entered public discourse, as part of a deliberate political project spearheaded by Muslim leaders in northern Arakan seeking ethnic recognition within the new Burmese state. Complementing this historical lens, in his work “How in Myanmar ‘National Races’ Came to Surpass Citizenship and Exclude Rohingya”,⁶ Nick Cheesman critically examines the juridical and symbolic function of the *taing-yin-thar* (national race) paradigm within Myanmar’s postcolonial political order. He argues that *taing-yin-thar* has come to supplant the legal notion of citizenship as the primary marker of belonging, thereby institutionalizing a hierarchy of ethnic legitimacy. In this context, the Rohingya are not merely excluded from citizenship but are categorically erased from the list of the 135 officially recognized “national races,” reinforcing their structural marginalization and statelessness. In parallel, Azeem Ibrahim, in his work “The Rohingyas: Inside Myanmar’s Hidden Genocide”,⁷ attempts to synthesize these perspectives, tracing the Rohingya’s marginalization to British colonial “divide and rule” policies while also highlighting the role of contemporary Buddhist nationalism.

A second axis of scholarship has engaged with the legal characterization of the crimes committed against the Rohingya. A growing consensus among human rights advocates and international legal scholars has identified the 2017 “clearance operations” as potentially constituting genocide and crimes against humanity. The UN Fact-Finding Mission (2018) has unequivocally described the abuses as “widespread and systematic”⁸ concluding that they stem from deliberate state policy and implicate high-level military officials in genocidal intent. Academic work by Zarni and Cowley conceptualizes these events as a “slow-burning genocide”⁹ assessing that “over the past thirty-five years, the State in Myanmar has intentionally formulated, pursued, and executed national and state-level plans aimed at destroying the Rohingya people in Western Myanmar”.¹⁰ The academic literature has largely supported this assessment: William Schabas’ “Genocide in International Law: The Crime of Crimes”¹¹ examines the Rohingya case in light of the Genocide Convention, highlighting the thresholds of intent and targeting required under international law.

⁶ Nick Cheesman, “How in Myanmar ‘National Races’ Came to Surpass Citizenship and Exclude Rohingya.” *Journal of Contemporary Asia* 47 (March 15, 2017) <https://www.tandfonline.com/doi/full/10.1080/00472336.2017.1297476>

⁷ Azeem Ibrahim, “The Rohingyas: Inside Myanmar’s Hidden Genocide.” *Hurst Publishers* (2016)

⁸ United Nations Human Rights Council, Report of the Independent International Fact-Finding Mission on Myanmar, UN Doc. A/HRC/39/CRP.2 (18 September 2018) (“IIFFM 2018 Report”), see https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_64.pdf

⁹ Maung Zarni, Alice Cowley, “The Slow-Burning Genocide of Myanmar’s Rohingya.” *Washington International Law Journal* (2014) <https://digitalcommons.law.uw.edu/wilj/vol23/iss3/8/>

¹⁰ *ivi*, 684

¹¹ William A. Schabas, “Genocide in International Law: The Crime of Crimes.” *Cambridge University Press* (July 2009)

Legal scholarship has thus converged on framing the Rohingya persecution as a paradigmatic case of international crimes, whereas questions of enforcement remain unresolved. In particular, the role of the international community, and specifically the United Nations, has come under scrutiny. Scholars such as Thomas G. Weiss¹² and Alex J. Bellamy¹³ have analyzed the structural failures of the Responsibility to Protect (R2P) framework in the face of geopolitical standstill at the UN Security Council. Myanmar illustrates the paradox of R2P in practice: despite strong language in various General Assembly and Human Rights Council resolutions, the lack of consensus among veto-wielding powers has effectively paralyzed Security Council action. As a matter of fact, Sikkink and Kim, in “The Justice Cascade: The Origins and Effectiveness of Prosecutions of Human Rights Violations”,¹⁴ emphasize that while the “justice cascade” has created norms of accountability, the international system still lacks robust enforcement capabilities in contexts where powerful actors are disinterested or obstructive.

A third and closely related stand of literature concerns the effectiveness of sanctions as tools of international accountability. A considerable segment of the scholarship has adopted a skeptical stance. Authors such as Jiawen¹⁵, Oxenstierna and Olsson¹⁶ demonstrate that while sanctions may exert significant economic pressure, they often fail to produce the desired political change, especially in authoritarian or ideologically driven regimes. Furthermore, scholars like Peksen¹⁷, Escriba-Folch and Wright¹⁸ emphasize that sanctions often fail to induce democratization and may even entrench authoritarian control, as targeted elites shift the economic burden onto civilians and exploit nationalist narratives to consolidate power. Yet, there also exists a pragmatic middle ground, where scholars argue for the use of sanctions as part of a broader strategic toolkit. Marinov, in “Do Economic

¹² Thomas G. Weiss, “Humanitarian Intervention.” *Polity Press* (2016)

¹³ Alex J. Bellamy, “The Responsibility to Protect.” *Polity Press* (2015)

¹⁴ Kathryn Sikkink, Hun Joon Kim, “The Justice Cascade: The Origins and Effectiveness of Prosecutions of Human Rights Violations.” *Annual Review of Law and Social Science* (August 19, 2013)

<https://offices.mtholyoke.edu/sites/default/files/global/docs/Sikkink.pdf>

¹⁵ Chen Jiawen, “Why Economic Sanctions on North Korea Fail to Work?.” *China Quarterly of International Strategic Studies* 3

<https://sanctionsplatform.ohchr.org/record/21006/files/Why%20Economic%20Sanctions%20on%20North%20Korea%20Fail%20to%20Work.pdf>

¹⁶ Susanne Oxenstierna, Per Olsson, “The economic sanctions against Russia.” *FOI* (September 2015)

https://www.researchgate.net/publication/281619387_The_economic_sanctions_against_Russia

¹⁷ Dursun Peksen, “Better or Worse? The Effect of Economic Sanctions on Human Rights.” *Journal of Peace Research* 46 (January 2009) <https://www.jstor.org/stable/27640799?seq=1>

¹⁸ Abel Escriba-Folch, Joseph Wright, “Dealing with Tyranny: International Sanctions and the Survival of Authoritarian Rulers.” *International Studies Quarterly* 54 (2010)

<https://www.ucdc.edu/sites/default/files/uploads/documents/Academic/Courses/V12SB/sanctions%20and%20authoritarian%20rulers.pdf>

Sanctions Destabilize Country Leaders?”,¹⁹ contends that sanctions alone rarely produce desired regime changes, suggesting they are more effective when paired with diplomatic isolation, support for opposition groups, and coordination with multilateral institutions. In the Myanmar case, empirical studies confirm the asymmetry of responses: while Western sanctions were tightened, regional actors continued to provide political and economic support, thereby diluting overall impact. The Burma case thus resonates with the broader theoretical insights of Baldwin²⁰ and Drezner,²¹ who demonstrate that sanctions are most effective under conditions of multilateral enforcement and credible diplomatic backing.

This thesis builds on the existing body of legal and scholarly work by situating the Rohingya case within the broader failure of the international community to uphold its legal responsibilities. At the same time, it advances the debate by addressing dimensions that remain unexplored. While prior studies on the Rohingya crisis have advanced important insights from historical, legal, and political perspectives, they have largely examined these dimensions in isolation. Few contributions have sought to develop an integrated framework that connects the dynamics of historical exclusion with the operation of international legal mechanisms, and the role of sanctions as instruments of accountability. Equally striking is the absence of sustained comparative analysis: although the shortcomings of international engagement in Myanmar are widely acknowledged, there has been little systematic effort to situate them alongside other similar cases of grave human rights violations, such as the genocide in Rwanda or apartheid in South Africa, where international sanctions and accountability mechanisms operated in markedly different ways. By adopting a multidimensional and comparative approach, this thesis seeks to illuminate the structural conditions that undermine accountability in Myanmar and to identify the factors that may enable more effective international responses in future crises.

The relevance of this study lies in the paradox it addresses: while the Rohingya represent one of the most systematically marginalised communities in the world, international awareness of the structural nature of their persecution has remained limited and fragmented.²² Despite being described

¹⁹ Nikolay Marinov, “Do Economic Sanctions Destabilize Country Leaders?.” *American Journal of Political Science* 49 (July 2005) <https://www.jstor.org/stable/pdf/3647732.pdf>

²⁰ David A. Baldwin, “Economic Statecraft.” Princeton: Princeton University Press (1985)

²¹ Daniel Drezner, “The Sanctions Paradox: Economic Statecraft and International Relations.” Cambridge University Press (September 13, 1999)

²² Ankur Jyoti Bhuyan, “Construing the Rohingya Crisis: Tracing indifference and Injustice in a Narrative of Displacement and Refugee.” Jawaharlal Nehru University (May 2018): 5

by the United Nations as the “world’s fastest-developing refugee emergency”,²³ the crisis has too often been treated as a peripheral issue in global politics. This neglect underscores the importance of situating the Rohingya case within broader debates on atrocity prevention, accountability, and minority protection, and of examining it not merely as a regional humanitarian crisis but as a critical test case for the effectiveness of the international legal order. This thesis advances the argument that the Rohingya crisis exposes fundamental deficiencies in both domestic and international mechanisms designed to protect vulnerable minorities. Through a threefold analysis, it first reconstructs the historical and legal roots of Rohingya exclusion; examines the operation and shortcomings of international accountability mechanisms, from judicial institutions to sanctions regimes; adopts a comparative perspective to draw lessons from other cases, including the genocide in Rwanda and apartheid in South Africa. By tracing these dimensions together, the study demonstrates that existing responses have largely failed to deliver accountability or structural change, and it concludes by identifying legal and political reforms necessary to strengthen minority protection and enhance the enforcement of international human rights standards.

To explore this issue, the thesis is structured into three interconnected chapters. The first chapter provides the historical and legal background to the Rohingya crisis. It reconstructs the centuries-long presence of Muslim communities in Arakan (Rakhine State) and examines how successive Burmese governments have progressively institutionalised exclusion through discriminatory laws, notably the 1982 Citizenship Law. The chapter highlights how colonial legacies, post-independence ethno-nationalism, and the state-sponsored erasure of Rohingya identity created the structural conditions for recurring waves of persecution and displacement. This contextualisation establishes the domestic foundations of marginalisation against which international responses must be evaluated.

The second chapter turns to the international legal domain, examining the core instruments of international human rights law relevant to the Rohingya crisis, with particular focus on the Genocide Convention, customary international norms, and jurisprudence on crimes against humanity. It analyses the documented violations against the Rohingya and evaluates the extent to which they meet the legal threshold for genocide and crimes against humanity. The chapter also explores the mechanisms of accountability activated in response to these atrocities, including proceedings before the International Court of Justice, the International Criminal Court, and the Independent Investigative Mechanism for Myanmar. In order to better contextualize the international community’s response, a

https://www.researchgate.net/publication/344496593_Construing_the_Rohingya_Crisis_Tracing_indifference_and_Injustice_in_a_Narrative_of_Displacement_and_Refugee

²³ United Nations, SC/13012

comparative lens is introduced through the case of Rwanda, highlighting patterns of delayed action, geopolitical inertia, and weak enforcement that remain strikingly relevant today.

The third chapter adopts a policy-analytical approach to international sanctions and diplomatic measures adopted by the main international actors in response to the Myanmar crisis. It systematically evaluates the responses of the European Union, the United States, ASEAN, China, Russia, India, and the United Nations, considering instruments such as arms embargoes, travel bans, asset freezes, and political statements. The chapter assesses the effectiveness of these measures, highlighting their symbolic weight but also their limitations in the absence of coordination and enforcement. A comparative discussion of South Africa under apartheid is included to identify conditions under which sanctions have proven effective. The chapter concludes by integrating field-based perspectives drawn from an interview with civil society, advancing a set of policy recommendations to strengthen accountability and to ensure greater protection of vulnerable minorities.

CHAPTER 1: The Rohingya crisis and the politics of Myanmar

This chapter examines the historical and legal dimensions of the Rohingya's presence in Myanmar, challenging the narrative that portrays them as illegal immigrants and outsiders. By retracing the group's centuries-long settlement in Rakhine State and highlighting the cultural, linguistic, and social characteristics that define their distinct identity, it demonstrates that the Rohingya constitute an indigenous and historically rooted component of Myanmar's national fabric. Particular attention is devoted to the legal exclusion mechanisms, most notably the 1982 Citizenship Law, which institutionalize their marginalization and attempt to erase their collective identity. In doing so, the chapter argues that Rohingya's systematic disenfranchisement is not merely the result of political instability, but a deliberate state-led strategy of identity denial and ethno-nationalist repression. More broadly, this chapter lays the analytical foundation of the thesis by demonstrating how historical narratives, legal frameworks, and political strategies have converged to deny the Rohingya's belonging within Myanmar, thereby providing the essential context for the subsequent chapters, which will examine the effectiveness and limitations of international law and the international community in protecting ethnic minority rights.

1.1 Historical roots and demographic foundations of the Rohingya

In order to contextualize Rohingya's exclusion from Myanmar's national framework, it is important to first outline the country's complex ethnic and religious composition. The Republic of the Union of Myanmar is an ethnically diverse country in Southeast Asia, bordered by the Bay of Bengal and the Andaman Sea to the south, China to the northeast, Laos to the east, Thailand to the southeast, Bangladesh to the west and India to the northwest. Its capital is Naypyidaw and the official language is Burmese. As of 2023, the population stands at 54,133,79¹ residents spread over 676,578 square

¹ World Bank, *Population, total – Myanmar, 2023*, The World Bank, <https://data.worldbank.org/indicator/SP.POP.TOTL?locations=MM>

kilometers.² Administratively, the country is divided into seven regions and seven states, officially recognizing 135 ethnic groups, of which eight are designated as major national ethnic races: Burman, Mon, Karen, Karenni, Shan, Kachin, Chin, and Rakhine. The Burman majority comprises about 68% of the population; they practice Buddhism and speak Burmese. Other significant ethnic communities include the Shan (9%), Karen (7%), Rakhine (4%), Chinese (3%), Indian (2%), Mon (2%), and other groups (5%). Regarding religious affiliation, 89% of the population practices Buddhism, followed by 4% Christians, 4% Muslims, 1% animists and 2% other faiths.³

This demographic overview is essential to grasp the structural dominance of the Burman Buddhist majority, whose influence has historically shaped Myanmar's national identity and state policies. Rohingya's exclusion from the country's official list of recognized ethnic groups, despite their centuries-long presence in Rakhine State, is therefore emblematic of a broader pattern of institutionalized marginalization that demands critical examination.

² *Geography*. Myanmar National Portal. <https://data.worldbank.org/indicator/SP.POP.TOTL?locations=MM>

³Haradhan Mohajan, "History of Rakhine State and the Origin of the Rohingya Muslims." *Munich Personal RePEc Archive*, (January 18, 2018): 7 https://mpra.ub.uni-muenchen.de/88186/1/MPRA_paper_88186.pdf



Figure 1: Geographical map of the Rakhine State⁴.

Located on the western coast of Myanmar and covering approximately 36,778 square kilometers, Rakhine is one of the country’s most impoverished regions. This condition is exacerbated by its geographical isolation, as the Rakhine Yoma Mountains, rising to an altitude of nearly 2,000 meters, form a natural barrier separating the state from the rest of the country. According to official estimates, 59.7% of Rakhine’s 3.8 million inhabitants are Buddhists, 35.6% are Muslim Rohingya, and the remainder belong to other religious groups. Nationally, Myanmar is home to around seven million Muslims, accounting for about 15% of the total population, with the Rohingya constituting the largest single Muslim community.⁵ Based on data extrapolated from the 2014 national census, over one million Rohingya reside within Myanmar, primarily concentrated in the northern townships of Maungdaw, Buthidaung and Rathedaung, which lie along the border with Bangladesh and together

⁴ Myanmar: District Map - Rakhine State. *Myanmar Information Management Unit*, (October 23, 2017) <https://reliefweb.int/map/myanmar/myanmar-district-map-rakhine-state-23-oct-2017-enmy>

⁵ Haradhan Mohajan, *op. cit.*, 2

account for roughly one-third of Rakhine State's population. An additional estimated one million Rohingya live abroad, predominantly as refugees or irregular migrants in Bangladesh and the Persian Gulf region, often surviving under semi-legal or undocumented conditions.⁶ Within Rakhine itself, the Rohingya comprise approximately 90% of the population in Maungdaw and Buthidaung, and around 40% in Sittwe, three of the most densely populated townships in Rakhine State.⁷ In particular, the Rakhine State (also known as Arakan) is home to two distinct Muslim groups: the Myanmar Muslims (Kaman) and the Rohingya. The Kaman speak either Rakhine or Burmese, share common cultural practices with the Buddhist majority and are formally recognized as citizens by the Government of Myanmar. In contrast, the Rohingya adhere to Sunni Islam, speak the Rohingya language, which is closely related to the Chittagonian dialect spoken in Bangladesh, and their physical resemblance to the Chittagonian people has contributed to their stigmatization under the negative label of "Kalar" (meaning "black-skinned").⁸

Scholar consensus holds that Muslims have inhabited Rakhine State for centuries prior to its 1784 Burman conquest and that Rohingya have deep historical roots in the country. Nonetheless, as Thawngmung notes, competing historical narratives have emerged, portraying them as "natives" or "illegal immigrants".⁹ Political parties in Rakhine have exploited these divergent accounts to advance their own agendas: in April 2012, the National Democratic Party for Development (NDPD) issued a position paper arguing that Rohingya are "natives by race and citizens of the Republic of the Union of Myanmar under law or by natural birth", while a month later the Rakhine Nationalities Development Party published a counterargument entitled *Criticizing the Historical Fabrication of Bengali Who Assume Themselves as Rohingya and Pretend Themselves to Be Taing-Yin-Thar* (ethnic nationals), thus denying their claims to ethnic legitimacy.¹⁰ These two documents clearly illustrate how historical interpretation has been politicized to justify the Rohingya's marginalizations, thereby intensifying communal tensions and precipitating episodes of interethnic violence. To fully understand the roots of this conflict, one must examine the well-documented history of the Rohingya people and their settlement in Arakan.

⁶ Jacques Leider, "Rohingya: The History of a Muslim Identity in Myanmar." *Oxford Research Encyclopedia of Asian History*, (May 24, 2018): 2 <https://doi.org/10.1093/acrefore/9780190277727.013.115>

⁷ Ardeth Thawngmung, "The Politics of Indigeneity in Myanmar: Competing Narratives in Rakhine State." *Asian Ethnicity*, (May, 2016): 527- 28
https://doi.org/https://www.researchgate.net/publication/302917335_The_politics_of_indigeneity_in_Myanmar_competing_narratives_in_Rakhine_state

⁸ Haradhan Mohajan, *op. cit.*, 10-12

⁹ Ardeth Thawngmung, *op. cit.*, 539

¹⁰ *ivi*, 528, 533-535

According to Rohingya historians, Muslim communities began settling in the region of Arakan through successive waves spanning nearly a millennium. The first of these waves is believed to have occurred between the 6th and 14th centuries, with most Rohingya historical accounts asserting that Arab traders arrived in Arakan as early as the establishment of the Vesali Kingdom in 788 CE. The NDPD report claims that 80 percent of the inscriptions discovered in Vesali were written in languages still spoken by the Rohingya today. This is presented as evidence that contemporary Rohingya are direct descendants of the Vesali population, who later embraced Islam.¹¹ During this era, individuals from the Middle East sailed across the oceans for various purposes, including trade, Islamic missionary activities and colonial expansion. These travelers moved throughout South and Southeast Asia, often intermarrying and integrating with local Arakanese populations, thus contributing to the development of a diverse cultural and religious landscape. As a result, Arakan became home to a thriving Muslim community, with traders and missionaries facilitating the spread of the cult of Muslim saints or “pirs”.¹²

The very etymology of the names *Arakan* and *Rohingya* supports this historical narrative. It is suggested that *Arakan* derives from a distortion of the Arabic term *Rukn*, meaning “pillar”, which symbolically refers to the “Five Pillars of Islam”. The earlier names for Arakan, such as *Roang*, *Rohang* or *Roshang*, are believed to have originated from the Arabic term *Raham*, meaning “mercy”: according to a local myth, in the 8th century, a group of Arab traders shipwrecked along the coast of Rambi Island and repeatedly called out “Raham, Raham, Raham” as asking for help to the local inhabitants. Over time, this expression evolved into *Rohang*. The name *Rohingya* itself is therefore believed to be derived from *Raham* and symbolically linked to the early arrival of Arab traders on the shores of Arakan,¹³ who played a key role in the initial diffusion of Islam among the local population.

The second wave of Muslim presence in Arakan is generally traced to the foundation of the Mrauk-U dynasty in 1430 CE. Min Saw Mun ascended to the Arakanese throne around 1404, but was deposed after two years in a revolt supported by Burmese forces. Forced into exile, he sought refuge in the Bengal Sultanate, hoping to secure assistance in reclaiming his throne. His arrival coincided

¹¹ Anthony Ware, Costas Laoutides, “The Rohingya ‘Origin’ Narrative.” *Myanmar’s ‘Rohingya’ conflict*, (October, 2018): 79,80. <https://doi.org/10.1093/oso/9780190928865.003.0003>

¹² Jacques Leider, “Arakan’s ascent during the Mrauk U period.” *Recalling local pasts: autonomous history in Southeast Asia*, (2002): 55 https://www.researchgate.net/profile/Jacques-Leider/publication/340754791_Recalling_Local_Pasts_Autonomous_History_in_Southeast_Asia/links/5e9bd85ba6fdcc a78924587c/Recalling-Local-Pasts-Autonomous-History-in-Southeast-Asia.pdf

¹³ Iqthyer Uddin Md Zahed, Bertram Ashby Jenkins, “The Politics of Rohingya Ethnicity: Understanding the Debates on Rohingya in Myanmar.” *Journal of Muslim Minority Affairs*, (April, 2022): 123, 119, 120. <https://doi.org/10.1080/13602004.2022.2064054>

with a period of political instability in the Bengal Sultanate: in 1420, the King of Bengal, Sultan Jalaluddin Mohammed Shah, faced an invasion by the forces of the Delhi Sultanate. According to historical accounts, the exiled Min Saw Mun offered strategic counsel and military support to the Sultan, playing a role in the successful defense of Bengal. Grateful for his aid, the Sultan promised to support Min Saw Mun in restoring his lost kingdom. With the backing of the Bengal Sultanate, Min Saw Mun restored to power in 1430. Upon his return, he founded the city of Mrauk-U (also known as Mrohaung, meaning “old city”), which would serve as the thriving capital of Arakan for over four centuries. Notably, Min Saw Mun adopted the Islamic title *Solaiman Shah*, a practice that was subsequently continued by many of his successors. The dual use of Muslim titles alongside traditional Arakanese Buddhist names became a common feature among later rulers of the Mrauk-U dynasty, who continued paying tribute to the Bengal sultans for several decades that followed.¹⁴

Further evidence of Islamic influence is found in the coinage of the period: Arakanese coins minted under Min Saw Mun and his successors in the Mrauk-U dynasty carried Persian inscriptions, and were stamped with the *kalima*, the Islamic declaration of faith.¹⁵ Min Saw Mun’s decision to seek refuge in Muslim Bengal in 1404 rather than neighboring Buddhist kingdoms provides further evidence of the region’s historical ties with Muslim communities. The influence of Islam in Mrauk-U is therefore undeniable, with sources indicating the presence of a Muslim population within both the capital and the wider kingdom. Mosques began to appear across the countryside, some of which remain standing today. Persian was adopted as the official language of the court and diplomatic affairs, further reinforcing the deep-rooted Muslim cultural influence in the Arakanese kingdom.¹⁶

According to Rohingya historical narratives, the third and most significant wave of Muslim migration into Arakan was driven by the Portuguese slave trade, which was eventually conducted in collaboration with the Mrauk-U kings. These Arakanese rulers established enduring alliances with Portuguese merchants and pirates, relying on them to supply enslaved individuals for local labor markets.¹⁷ Historical records indicate that the Arakanese king alone was responsible for capturing at

¹⁴ Galen, S. E. A. van, “Arakan and Bengal : the rise and decline of the Mrauk U kingdom (Burma) from the fifteenth to the seventeenth century AD.” *Universiteit Leiden*, (March 13, 2008): 34. <https://scholarlypublications.universiteitleiden.nl/handle/1887/12637>

¹⁵ Richard Forster, “Magh Marauders, Portuguese Pirates, White Elephants and Persian Poets: Arakan and Its Bay-of-Bengal Connectivities in the Early Modern Era.” *Center for Southeast Asian Studies, University of Hawai’i at Manoa*, (2011): 65 <https://scholarspace.manoa.hawaii.edu/items/21420d92-8ab4-42f5-984b-f231cb193d58>

¹⁶ Anthony Ware, Costas Laoutides, *op. cit.*, 82, 85, 86

¹⁷ Titas Chakraborty, “Dutch Slavery in South Asia.” In *Slavery and The Dutch State: Dutch Colonial Slavery and Its Afterlives*. Leiden University Press, (2025): 304. <https://www.jstor.org/stable/jj.27080106.39>

least 30,000 Bengali slaves during military incursions in 1623, followed by an additional 10,000 in 1624. While many of these captives were sold, a significant portion were retained and subjected to forced labor in and around the royal capital of Mrauk-U. To illustrate the scale of such forced migration, which took place from the sixteenth to the mid-eighteenth century, many Rohingya accounts frequently refer to the etymology of the Kaladan River. Flowing through eastern Mizoram State in India and western Rakhine State in Myanmar, the river's name is believed to mean "dwelling of foreigners". According to these narratives, the term *Kaladan* reflects the widespread resettlement of *kala*, a term historically used to describe dark-skinned Muslim foreigners who were brought into Arakan in large numbers during this period.¹⁸

This long history of migration and integration is further reflected in the linguistic identity of the Rohingya, which has become a central element in contemporary debates about their origins and belonging. As language is often used as a key indicator in assessing ethnic identity, it is therefore essential to briefly explore the linguistic dimension. The Rohingya speak an Indo-European language belonging to the southeastern branch of Bengali, commonly referred to as *Ruáingga* or Rohingya. While it is mutually intelligible with the dialect spoken in Bangladesh's southeastern Chittagong region, it is entirely distinct from Burmese (Bama saga), the language spoken by the majority population in Myanmar. This linguistic divergence, coupled with the Rohingya's Muslim faith in a predominantly Buddhist nation, has long contributed to widespread claims that they are "Bengali" outsiders.¹⁹ Rohingya advocates frequently cite early Western linguistic accounts to challenge such narratives and to assert the group's longstanding presence in Arakan. In 1799, the British physician and naturalist Francis Buchanan, who arrived in Bengali in 1794 and traveled extensively in the region, published a work titled *Comparative Vocabulary of Some of the Languages Spoken in the Burma Empire*. Drawing from his linguistic observations during a diplomatic mission to the Kingdom of Ava, Buchanan identified several distinct language groups in the region.²⁰ Notably, he wrote:

I shall now add three dialects, spoken in the Burma Empire, but evidently derived from the language of the Hindu nation. The first is that spoken by the

¹⁸ Anthony Ware, Costas Laoutides, *op. cit.*, 87, 88

¹⁹ Lindsey N. Kingston, Aroline E. Seibert Hanson, "Marginalized and Misunderstood: How Anti-Rohingya Language Policies Fuel Genocide." *Human Rights Review* 23 (Marh 21, 2022): 290. <https://doi.org/10.1007/s12142-022-00654-4>

²⁰ Anthony Ware, Costas Laoutides, *op. cit.*, 91

Mohammedans, who have long settled in Arakan, and who call themselves Rooinga, or natives of Arakan.²¹

For many Rohingya, Buchanan's reference serves as a relevant piece of historical evidence confirming the existence of a Rohingya community in Arakan prior to the Burman annexation in 1784, one that was linguistically and culturally distinct, identified by the author as "Rooinga". Further supporting this interpretation, the German linguist Johann Severin Vater included a reference to "Ruinga" in his 1815 work *Linguarum Totius Orbis Index Alphabeticus*, identifying it as both a distinct ethnic group and a separate language native to Arakan.²² Despite this early recognition, the Rohingya's linguistic identity has become a target of systematic erasure in modern Myanmar. As Kingston and Hanson observe, "the case of the Rohingya [...] highlights how language policies are weaponized to oppress unwanted minorities".²³

The final significant wave of Muslim migration from Bengal to Arakan occurred in the 17th century, during the reign of Mughal Emperor Shah Jahan, when his son Shah Shuja sought refuge in the region. In 1658, the illness of Emperor Shah Jahan sparked a violent succession crisis among his four sons – Dara Shikoh, Shah Shuja, Aurangzeb and Murad. At the time, Shah Shuja was serving as governor of Bengal, but was ultimately defeated by his brother Aurangzeb during the struggle for the imperial throne. Following his defeat, in 1660, Shah Shuja fled to Bengal and sought asylum at the Arakanese court in Mrauk-U, accompanied by his family and military entourage, further contributing to the growth of Muslim presence in the region.²⁴ According to several Rakhine and Burman historians, Shuja's men were recognized as the Kaman, a Muslim group granted *taing-yin-thar* (indigenous) status in Rakhine State following Myanmar's independence. This official recognition is presented by Rohingya advocates as a precedent that reinforces the legitimacy of Rohingya's claims to indigenous status, particularly in light of their even earlier historical presence in the region.²⁵

The year 1784 marked a decisive turning point in the history of Arakan, as it witnessed the invasion of the region by the Burmese kingdom under King Bodawpaya. The military campaign resulted in the near-total destruction of Mrauk-U, as the Burmese forces, comprising approximately

²¹ Francis Buchanan, "A Comparative Vocabulary of Some of the Languages Spoken in the Burma Empire." *Asiatic Researches*, 5 (1799): 237 <https://legal-tools.org/doc/mhff11/pdf>

²² Iqthyer Uddin Md Zahed, Bertram Ashby Jenkins, *op. cit.*, 127

²³ Lindsey N. Kingston, Aroline E. Seibert Hanson, *op. cit.*, 291

²⁴ Mohammad Mohibullah Siddiquee, "The Rohingyas of Arakan: History and Heritage." Chapter 1, "The Origin and the Development of the Rohingyas in Arakan." *Rohingya Khobor*: 6 <https://rohingyakhobor.com/?mdocs-file=3690>

²⁵ Anthony Ware, Costas Laoutides, *op. cit.*, 88

2,500 cavalry units and over 200 war elephants, overwhelmed the Arakanese defenses. Most Rohingya written histories claim that the Burman conquest initiated a significant deterioration in communal relations, since the occupying forces sought to expel Muslims and systematically erase any trace of Islamic identity, culture and history. This interpretation is confirmed by Ibrahim who argues that the primary objective of the Burman invasion was to ensure a homogenous, Buddhist-dominated Arakan as part of a broader strategy to secure Buddhist supremacy in Myanmar. As Tahir's puts it, "Arakan has always been a country with two nations within one geographic entity who managed to coexist before the 1784 Burman conquest".²⁶ The royal family of Arakan was forcibly relocated to Upper Burma, and the invasion led to mass atrocities: an estimated 40,000 men were killed, tens of thousands of Rohingya Muslims were enslaved and deported to Burma, and over 35,000 refugees fled to the Chattogram region of Bengal. This mass displacement is widely recognized as the first major exodus of Rohingya Muslims into Bengal, occurring in 1785. In response to the flow of refugees, the British-Indian administration appointed Lieutenant Hiram Cox to the Bengal frontier in 1790 to manage and assist the influx of displaced Arakanese Muslims. His humanitarian mission laid the foundation for the settlement that would later be known as Cox's Bazar.²⁷ Following their displacement, a group of dissatisfied Rohingya refugees who had settled in British-controlled Chittagong began launching cross-border raids against Burmese forces. These attacks prompted a retaliatory incursion by Bodawpaya's forces into British territory, violating colonial sovereignty and mounting tensions between the British administration and the Burmese king. Specifically, in 1811 a noteworthy development occurred when the Rohingya leader Chin Bya mobilized his forces and temporarily recaptured parts of Arakan. Yet, his subsequent request for British protection was ultimately rejected and his forces were eventually repelled and pushed back into Bengal by the Burmese military.²⁸

As a result of overlapping territorial claims in the region corresponding to the present-day India-Myanmar frontier, relations between the British colonial authorities and the Burmese court progressively deteriorated, ultimately culminating in the first Anglo-Burma War (1824–1826). Following the British victory, the two parties signed the Treaty of Yandabo on 24 February 1826, through which the Kingdom of Ava was officially ceded to the British and incorporated into British India. The British annexation marked the first formal delineation of Arakan's territorial boundaries.

²⁶ Anthony Ware, Costas Laoutides, *op. cit.*, 95-96

²⁷ Sarwar J. Minar, Abdul Halim, "The Rohingyas of Rakhine State: Social Evolution and History in the Light of Ethnic Nationalism." *Social Evolution & History* 19, no. 2 (September, 2020): 127. <https://doi.org/10.30884/seh/2020.02.06>

²⁸ "Burmese refugees in Bangladesh: Still no durable solution". *Human rights Watch* 12, no.3 (May, 2000) <https://www.hrw.org/reports/2000/burma/burm005-01.htm>

Indeed, Myanmar's current territorial boundaries are a direct outcome of British colonial rule: prior to the British conquest, no single indigenous kingdom exercised effective control over the entire area that today constitutes the modern Union of Myanmar. Moreover, the subsequent Anglo-Burmese Wars of 1852 and 1885 further consolidated British dominance in the region, culminating in the complete colonization of Burma. By 1886, the entire Burmese territory had been absorbed into the British Empire and administratively incorporated as a province of British India.²⁹

According to Ware and Laoutides, it was the start of the British colonial rule that significantly deepened the divide between Rakhine Buddhist and Rohingya Muslim identities.³⁰ Indeed, the contested nature of Rohingya identity is best understood by examining the period spanning from the British conquest of Burma in 1824 and World War II. When the British administrators began to rule Burma, they initiated an extensive flow of immigration from India, encouraging the settlement of Bengalis into Arakan to address labor shortages and promote agricultural development in the sparsely populated Arakan region. This policy led to the settlement of a substantial number of Bengali Muslims who were employed in low-wage, degrading occupations, often under conditions that local populations were unwilling to accept. However, these migrant communities often maintained strong cultural and religious ties to the Indian subcontinent and showed limited integration into Burmese society. Particularly, the practice of mixed marriages became a major source of social tension, as differing religious customs deepened cultural divides. This cultural divergence contributed to growing anxieties, especially as the demographic weight of Indian Muslims increased: in Arakan, the Indian population rose by 20.5% in 1891, with nearly half identifying as Muslim. By 1911, this figure had climbed to 23.5%. Nevertheless, Indian migrants were consistently perceived as foreigners and blamed for the worsening socio-economic conditions faced by the Burmese. These sentiments occasionally escalated into violence, resulting in the killing of numerous Arakanese Muslims and Indians, the destruction of homes and businesses, and the burning of 113 mosques.

Such hostilities were further amplified in the post-independence period, as Burmese nationalist movements gained momentum and anti-Muslim narratives became deeply embedded in the political discourse.³¹ Consequently, anti-Muslim and anti-Indian sentiments in Myanmar are not

²⁹ Mohammad Shahabuddin, "Post-colonial Boundaries, International Law, and the Making of the Rohingya Crisis in Myanmar." *Asian Journal of International Law*, 9 (2019): 353 <https://doi.org/10.1017/S2044251319000055>

³⁰ Anthony Ware, Costas Laoutides, *op. cit.*, 98

³¹ Grishma Ghelani, "Decolonization, Democracy and Displacement: Consequences of British Rule in Burma and the Repercussions on the Rohingya." *Syracuse University* (2019): 29. <https://surface.syr.edu/chronos/vol13/iss1/5>

recent phenomena, but rather have deep historical roots in the resentment caused by unregulated immigration from the Indian subcontinent during the colonial era.³² Moreover, these conflicts were exacerbated by the territorial and administrative divisions imposed by the British. The colonial administration established a Burman-dominated core in the central plains, while designating the surrounding highland and border regions, primarily inhabited by ethnic minorities, as separate administrative zones. Those peripheral zones, initially labeled the “Excluded Areas” due to their geographic isolation and limited colonial integration into colonial governance, were largely mountainous and sparsely governed. Over time, they became known as the “Scheduled Areas” and, by the end of colonial rule, they were officially referred to as the “Frontier Areas”, reinforcing the division between the Burman heartland and the ethnically diverse peripheries.³³

In particular, British authorities played a significant role in the ossification of rigid ethnic identities by relying on their typical divide-and-conquer strategy. In order to administer the population more efficiently, colonial officials and scholars conducted extensive ethnographic and demographic surveys across Burma, reducing complex and fluid identities into fixed and manageable categories. These simplified classifications were then formalized within the dual system of colonial administration and embedded into the broader imperial bureaucratic apparatus. Within this framework, all Muslims were grouped into one broad category, using religion as the primary tool to differentiate between social groups, with little regard for internal ethnic distinctions. This reductive approach led to the gradual marginalization and invisibilization of the Rohingya community. A telling example is provided by the survey carried out by the British official Charles Paton: he estimated the total population of Lower Burma at approximately 100,000; while he recorded that roughly 30,000 of these were Muslims, his classification was based exclusively on religious affiliation, failing to acknowledge that the Rohingya represented the largest Muslim group in Arakan. Further evidence of this institutional erasure is found in the absence of the term “Rohingya” from successive British censuses conducted in 1871, 1901 and 1911. Although these censuses listed six ethnic categories (Mohammedan, Burmese, Arakanese, Shan, Hill Tribes, and others), the Rohingya were not explicitly recognized as a distinct group.³⁴

³² International Crisis Group, “A History of Intercommunal Tensions.” (2013): 3
<https://www.jstor.org/stable/resrep31999.5>

³³ Kunal Mukherjee, “The Ethnic Minority Question and Rohingya Crisis in Contemporary Myanmar.” *Journal of Muslim Minority Affairs*: 4
https://www.research.lancs.ac.uk/portal/services/downloadRegister/256053623/Kunal_Mukherjee.pdf

³⁴ Anthony Ware, Costas Laoutides, *op. cit.*, 126

The plight of the Rohingya must be understood as part of the broader legacy of colonialism. Particularly, British administrative practices were deeply rooted in concepts of race and nationality, promoting the idea of a dominant, indigenous majority group leading the nation. As Tokin observes in his analysis of British census practices in Arakan, Muslim minority groups were either absorbed into the broader Burmese majority or classified as part of the “Indian race”. This colonial legacy had direct political consequences in the post-independence period, particularly with regard to the legal definition of ethnic belonging. Notably, in 1978, under the Burma Socialist Programme Party, the historian Dr Aye Kyaw turned to nineteenth-century British census data and proposed the year 1824, the date of Britain’s annexation of Lower Burma, as the legal benchmark for determining *taing-yin-thar* (indigenous nationality) status. This proposal was endorsed by jurist Dr. Maung Maung, and together they contributed to the drafting of legislation that recognized only those communities present in Burma in 1824 as official ethnic nationalities.³⁵ The choice of 1824 thus became a legal and symbolic threshold for ethnic recognition, effectively excluding the Rohingya from the category of “national races”.

In the early decades of the twentieth century, Burmese nationalism began to grow as a direct reaction to British colonial rule. During this period, a young Myanmar elite emerged, composed of individuals who had studied at Western universities and been exposed to liberal, nationalist, and democratic ideas. Upon their return to Burma, they grew increasingly dissatisfied with the absence of self-determination and sought to transform the country’s political and social landscape. This rising nationalist awareness led to the establishment of the Young Men’s Buddhist Association (YMBA) in 1906. Initially founded to preserve Myanmar’s cultural heritage, religious values, and social welfare, the organization gradually assumed a more overtly political role. By the end of World War I, the YMBA began advocating for political self-determination, drawing inspiration from the constitutional reforms implemented by the British in India.³⁶ The nationalist movement gained substantial momentum in 1920, when demands for constitutional reform reached their peak. In response, in 1928, the British government launched the Simon Commission to consult the Burmese population on the possibility of separating Burma from British India. Amid these developments, the Muslim League also emerged as a vocal political actor, advocating for fair representation in public offices, equal

³⁵ Patrick Hein, “The Re-ethnicisation of Politics in Myanmar and the Making of the Rohingya Ethnicity Paradox.” *Indian Council of World Affairs*, 74 (December 2018): 361-382 <https://doi.org/10.1177/0974928418802072>

³⁶ 3rd International Conference on Burma/Myanmar Studies “Myanmar/Burma in the changing Southeast Asian Context.” *Chiang Mai University Thailand*, 1 (March 5-7, 2021): 150 https://icbms3.burmaconference.com/download_pub.php?ct=YoEeC1MgsW4/OCRSwtSDa7SMzV5d2WjP&#page=158

access to government employment, and equitable treatment in the allocation of agricultural and business loans, particularly in the Arakan region.³⁷

The outcome of these political pressures was the adoption of the Government of Burma Act of 1935, which officially came into force on April 1, 1937. This legislation formally separated Burma from British India, granting it semi-autonomous status under the direct authority of the British Parliament. Although the new constitutional framework introduced a representative assembly, limited self-governance, and a degree of political autonomy, it fell far short of the aspirations held by the Burmese people and their political movements, which remained united in their demand for full independence.³⁸ While some political leaders were open to gradual reforms, the ultimate goal of the nationalist movement remained the achievement of complete sovereignty for Burma. As a result, throughout the 1930s, the political landscape was marked by continuous resistance to colonial rule. University students emerged as key actors in the struggle, particularly through Yangon University Students' Union and the All Burma Students' Union. Notably, in December 1938 and early 1939, student-led solidarity actions supported a major anti-capitalist and anti-colonial workers' strike led by Thakin Po Hla Gyi.³⁹ Resistance also manifested in the form of rural uprisings. Between 1930 and 1932, the peasant rebellion led by the Buddhist monk Saya San mobilized thousands of rural inhabitants against British authorities. The revolt was met with brutal suppression: approximately 9,000 people were arrested, around 3,000 killed or wounded, and nearly 350 rebels executed.⁴⁰

The resurgence of Burmese nationalism in early twentieth-century Myanmar was significantly influenced by Japan's victory over Russia in the Russo-Japanese War of 1905. This unprecedented triumph of an Asian nation over a European power sparked nationalist sentiments across Myanmar and other Southeast Asian countries under Western colonial rule. Japan came to be regarded as the leader and the protector of Asia, inspiring slogans such as "Japan the liberator of Asia" and "Asia for the Asians". These narratives resonated deeply with the Burmese population, fueling hopes for liberation from colonial oppression and foreign domination. From the Japanese perspective, Myanmar's geopolitical location, sharing borders with China, French Indochina, Thailand and British

³⁷ Aye Chan, "The Development of a Muslim Enclave in Arakan (Rakhine) State of Burma (Myanmar)." *SOAS Bulletin of Burma Research*, 3 (Autumn 2005): 404 <https://scispace.com/pdf/the-development-of-a-muslim-enclave-in-arakan-rakhine-state-1j3k2yni8y.pdf>

³⁸ Toe Toe Kyaw, "A Study on the Colonial Administration in Myanmar (1886 - 1945)." *Hinthada University Research Journal*, 5 (2014): 111 https://www.hu.edu.mm/research/pdf/vol_5/12%20Toe%20Toe%20Kyaw.pdf

³⁹ 3rd International Conference on Burma/Myanmar Studies, *op. cit.*, 152

⁴⁰ Kunal Mukherjee, *op. cit.*, 6

India, held considerable strategic value for Tokyo's military ambitions in Southeast Asia.⁴¹ Seizing the momentum created by Japan's advance, a group of Burmese nationalists led by Aung San sought external military support for their struggle for independence. In December 1941, the Burma Independence Army (BIA) was formed in Bangkok with Japanese backing. Known as the "Thirty Comrades," this core group of revolutionaries accompanied Japanese troops during their invasion of Myanmar in January 1942.⁴² Together, they engaged in coordinated military operations against the British colonial administration, ultimately leading to the collapse of British authority in the country.

The Japanese occupation of Myanmar had devastating consequences not only for the Burman majority but also for numerous ethnic minorities, most notably the Rohingya. As Japan advanced into Arakan in 1942, the Rohingya aligned themselves with the British and joined the Operation "V Force", a British-led guerrilla intelligence campaign against the Japanese. The British colonial strategy of favoring ethnic minorities over Burmans in recruitment and administrative roles, particularly within the military, fueled deep resentment among Burman nationalists. Many Burmans came to associate ethnic minorities with the structures of colonial oppression,⁴³ viewing the military as a tool of their subjugation and the preferential treatment granted to minority groups as a direct threat to Burman cultural and religious identity. As a result, the Rohingya were increasingly perceived with hostility, not only by the Japanese military but also by Burman nationalist groups collaborating with the occupying forces. Targeted violence and retaliatory attacks led to mass displacement: around 22,000 Rohingya were forced to flee to British Bengal, and eventually, nearly 40,000 crossed the border into the Chittagong region to escape the escalating violence in Arakan.⁴⁴

Japan invaded Myanmar with the declared promise of granting the country full independence, as announced by Japanese Prime Minister on January 28, 1943. However, this promise was quickly broken and widespread distrust had already taken root among the Myanmar population.⁴⁵ Burmese nationalists soon realized that they had merely exchanged one colonial power for another. Disillusioned, they quickly shifted from cooperation to resistance, marking the emergence of an organized anti-Japanese movement. Notably, despite previous hostilities, British officers and ethnic

⁴¹ Kyaw Swe Nyunt, "Independence Movement in Myanmar and World War II (1939 -1945)." *International Journal* (2018): 263 <https://meral.edu.mm/records/619?community=um>

⁴² Kunal Mukherjee, *op. cit.*, 6

⁴³ Aye Chan, *op. cit.*, 406

⁴⁴ K. M. Atikur Rahman, "Ethno-Political Conflict: The Rohingya Vulnerability in Myanmar." *International Journal of Humanities & Social Science Studies* 2 (July, 2015): 291 https://www.burmalibrary.org/sites/burmalibrary.org/files/obi/2015-07-30-Ethno-political_Conflict_The_Rohingya_Vu-en-red.pdf

⁴⁵ Kyaw Swe Nyunt, *op. cit.*, 267-268-269

minority troops agreed to collaborate with Burmese nationalist forces in order to expel the Japanese by 1945. In this context, Britain sought the support of the Muslim communities in Arakan by promising them the establishment of an autonomous Muslim National Area in northern Arakan in exchange for their military assistance against Japan. However, following the British reoccupation of Burma in 1945, this promise remained unfulfilled. In the eve of Burma's independence, Rohingya leaders, feeling betrayed by the British and increasingly marginalized, turned to Muhammad Ali Jinnah, leader of the All-India Muslim League and the founding father of Pakistan, "asking him to incorporate Northern Arakan into East Pakistan [present-day Bangladesh]". Jinnah, however, declined the request, prioritizing diplomatic relations with Burma's future independent government over the Rohingya's aspirations. Burmese nationalist elites subsequently exploited the Rohingya's appeals to Pakistan as a justification for questioning their loyalty and labeled Rohingya as "Bengali foreigners",⁴⁶ reinforcing their exclusion from the emerging national framework.

1.2 Institutionalizing exclusion: domestic framework and state policy

Following the end of WWII and nationalist resistance, Burma achieved independence in 1948 under the Independence Act of 1947, thereby becoming a "country not within His Majesty's dominions and not entitled to His Majesty's protection".⁴⁷ In June 1947, a mass gathering was held in Rangoon emphasizing Arakan's history as an independent kingdom for nearly 4,000 years and demanding the right to self-determination for its people. Yet, the newly independent state of Burma was constructed along the territorial lines established by British colonial rule, subsuming Arakan within its territory and effectively denying any alternative political future for the Rohingya or Arakanese people. Shahabuddin argues that this outcome reflects a broader pattern in which international law legitimized colonial borders, regardless of the realities on the ground. While the legal framework was ostensibly intended to safeguard the territorial integrity of emerging post-colonial states, it also entrenched the marginalization of vulnerable communities such as the Rohingya. Despite Arakan's distinct historical, cultural, and geographical identity, its people were denied both territorial autonomy and meaningful representation within the new Union of Burma. Moreover, at the time of independence, Burma lacked the political institutions necessary to mediate its deep ethnic heterogeneity. Concepts like democracy, pluralism and human rights were largely foreign to the country's political culture,

⁴⁶ Mohammad Shahabuddin, *op. cit.*, 357

⁴⁷ *ivi*, 355

which was instead shaped by exclusionary ethnic nationalism, violence, and exclusion. In this context, the British withdrawal was effectively a recipe for long-term instability.⁴⁸ After 1948, Burmese national identity became tightly bound to the military and Buddhism, further alienating ethnic and religious minorities. Rather than fostering national unity, this state model deepened societal fractures, creating a legacy that continues to fuel the Rohingya crisis to this day.

Indeed, formal independence did not mark the beginning of an inclusive national project. As early as 1946, General Aung San had already initiated efforts to engage Burma's numerous ethnic communities in the pursuit of a unified political vision. In March of that year, representatives of the Shan, Chin, Kachin and Karen peoples convened in Panglong for what was both a political dialogue and a symbolic celebration of cultural diversity. During this process, H.N.C Stevenson, the British director of the Frontier Areas, even proposed the creation of a "United Frontier Union" which would have united the Chin, Kachin, Shan, Karenni and Karen territories under a single federal umbrella.⁴⁹ That same year, the 1945 White Paper on Burma emphasized that no decisions affecting the Frontier Areas could be made without the consent of their respective peoples, thereby establishing an early standard for genuine consultation.⁵⁰ Building on this momentum, Aung San formally convened the Second Panglong Conference on February 6, 1947, in the Shan town of Panglong. The resulting Panglong Agreement, signed on February 12 by Shan, Kachin, Karenni and Karen leaders, guaranteed internal autonomy for the Frontier Areas and even reserved for each community the theoretical right to secede from the Union.⁵¹ With the Panglong Agreement in hand, Aung San and his Anti-Fascist People's Freedom League (AFPFL) successfully pressed the British to draft a new constitution, paving the way for Burma's full independence on January 4, 1948. However, six months before that date, on 19 July 1947, Aung San and four of his closest ministers were assassinated by political rivals. His death sent shockwaves through the nascent nation, leaving the emergent government deprived of its most visionary leader and severely damaging the spirit of unity that had been forged at Panglong.⁵²

After Aung San's assassination, leadership of the AFPFL passed to U Nu, who became Burma's first Prime Minister upon independence. Under his leadership, the country adopted a

⁴⁸ Armand Sadovschi, "Post-colonial Identity and Power Politics. The Case of Myanmar's Civil War." *National School of Political and Administrative Studies SNSPA* 19 (July 31, 2024): 260 <https://dp.univ-danubius.ro/index.php/EIRP/article/view/490>

⁴⁹ Matthew J. Walton, "Ethnicity, Conflict, and History in Burma: The Myths of Panglong." *Asian Survey* 48 (November/December, 2008): 895 <https://www.jstor.org/stable/10.1525/as.2008.48.6.889>

⁵¹ *ivi*, 896

⁵² Saw Eh Htoo, Tony Waters, "General Ne Win's Legacy of Burmanization in Myanmar: The Challenge to Peace in the Twenty-First Century". *Palgrave Macmillan* (2024): 24 <https://link.springer.com/book/10.1007/978-981-97-1270-0>

Westminster-style parliamentary system. U Nu was not new to the political arena: he had hosted the founding meeting of the Anti-Fascist Organization in his home in August 1944, served as Foreign Minister and head of the Information Department during the Japanese occupation, and held the position of President of the Constituent Assembly in 1947. These roles helped him cultivate a reputation as a compassionate Buddhist leader committed to social welfare, freedom of expression, and national unity.⁵³ Yet, by the time U Nu took office in 1948, his government was already facing significant challenges, including army rebellions, ethnic insurgencies, and political fragmentation. In the months prior to independence, ethnic leaders from the Christian Sgaw Karen (under the Karen National Association), as well as the Kachin, Chin, and Shan communities, had called for strong guarantees of internal autonomy within a federal union;⁵⁴ such demands were initially negotiated during the Panglong conferences but then remained unfulfilled after Aung San's death. At the same time, radicals in the Communist Party of Burma denounced U Nu's "fake independence" and mobilized worker-peasant militias in armed resistance. From these tensions emerged the Karen National Union, which, through its armed wing – the Karen National Defence Organisation – seized large parts of eastern Burma by early 1949. Simultaneously, the Communist Party of Burma gained control over much of the central dry zone. In response, U Nu pursued a policy of statist developmentalism, characterized by industrialization, nationalization and "decolonization-as-Burmanization". A particularly consequential step came in 1961 with the enactment of the State Religion Promotion Act, which proclaimed Buddhism as the state religion and displaced many Indian civil servants, thus deepening fears of exclusion among religious and ethnic minorities.⁵⁵ In 1958, with insurgent armies controlling much of the borderlands and the AFPFL fractured by internal divisions, U Nu voluntarily ceded power to General Ne Win as a temporary measure, hoping that a military government would restore order.⁵⁶ Although elections in June 1960 returned U Nu to office on promises of democratic socialism and Buddhist revival, the persistence of armed conflict and political instability ultimately convinced Ne Win that parliamentary democracy had failed to unify

⁵³ Louis J. Walinsky, "The Rise and Fall of U Nu." *Pacific Affairs* 28 (Autumn, 1965): 270
<https://www.jstor.org/stable/2754031>

⁵⁴ David Brenner, "Insurgency as a Social Process. Authority and Armed Groups in Myanmar's Changing Borderlands." *London School of Economics* (October 3, 2016): 98-99
https://etheses.lse.ac.uk/3487/1/Brenner_Insurgency_as_a_Social_Process.pdf

⁵⁵ Geoffrey Aung, Stephen Campbell, "The Myanmar radical tradition: revolution, reaction, and the changing imperial world order." *Dialect Anthrop* 48 (February 15, 2024): 204 <https://link.springer.com/article/10.1007/s10624-024-09716-0#citeas>

⁵⁶ Mohamad Faisol Keling et al., "A Historical Approach to Myanmar's Democratic Process." *Journal of Asia Pacific Studies* 1 (2010): 138 https://www.researchgate.net/publication/273576180_Journal_Prof_Nasir_1?enrichId=rgreq-0201bc207bb4957815fbacf494e94859-XXX&enrichSource=Y292ZXJQYWdlOzI3MzU3NjE4MDtBUzoyMDc0NDExNjI3MDY5NDVAMTQyNjQ2OTIzNlIwNg%3D%3D&el=1_x_2&_esc=publicationCoverPdf

the nation or alleviate poverty.⁵⁷ On March 2, 1962, Ne Win staged a military coup, abruptly ending Burma's experiment in civilian rule and inaugurating decades of military authoritarian dominance.

General Ne Win's political ascent began long before his 1962 coup d'état. As one of Aung San's "Thirty Comrades," he had been recruited by the Japanese in 1941 to lead the AFPFL against the British colonial forces.⁵⁸ In the early years of independence, Ne Win served as Commander-in-Chief of the armed forces under Prime Minister U Nu and was widely celebrated as the military hero who had rescued the nascent Burmese government from collapse. At U Nu's invitation, he served as interim Prime Minister for eighteen months, from 1958 to 1960, during which his insistence on the centrality of the military only deepened the army's prestige over civilian institutions, presaging the end of civilian parliamentary governance in Burma.⁵⁹ As a matter of fact, on March 2, 1962, Ne Win led a military coup d'état that immediately dismissed all existing institutions: the 1947 Constitution was abrogated, Parliament was dissolved, all political parties were banned except the Burma Socialist Programme Party, and the Supreme and High Courts were dismantled. Key political figures, including U Nu, were overthrown⁶⁰ and imprisoned without trial.⁶¹ Once in power, the Revolutionary Council, under Ne Win's personal command, imposed what it called the "Burmese Way to Socialism", grounded in three foundational principles: the imposition of Burmese Buddhism as the only cultural identity of the nation, the pursuit of economic autarchy, and the consolidation of military rule. Insisting that foreign countries' interference represented a threat for Burma's sovereignty, Ne Win adopted a rigid isolationist approach, closing off the country from the rest of the world.⁶² Equally central to his regime was the re-militarization of the state. Drawing on historical memories of pre-colonial Bamar kingdoms, where royal army (the Tatmadaw) enforced Burma's imperial glory, in 1962 Ne Win restored the Tatmadaw to its ancient role as guarantor of national security and unity, strengthening its Burmese-speaking core and the martial values.⁶³ The regime justified the need for a strong and centralized army as a necessary measure to prevent foreign aggression, particularly in the context of the ongoing American interventions in neighbouring countries such as Vietnam, Laos, and Cambodia. This rationale was also used to justify vigorous campaigns against ethnic militias along Burma's borderlands.⁶⁴ Administratively, the government expanded the five colonial-era ethnic states

⁵⁷ *ivi*, 139

⁵⁸ Saw Eh Htoo, Tony Waters, *op. cit.*, 24

⁵⁹ *ivi*, 25

⁶⁰ Richard Butwell, "Ne Win's Burma: At the End of the First Decade." *Asian Survey* 12 (June 29, 1972): 902
<https://www.jstor.org/stable/2643067>

⁶¹ Louis J. Walinsky, *op. cit.*, 269

⁶² Saw Eh Htoo, Tony Waters, *op. cit.*, 16

⁶³ *ivi*, 28

⁶⁴ *ivi*, 39

to seven, by creating Mon and Arakan States, and balanced them with seven Bamar-majority divisions in the central plains. Such structural arrangement institutionalized what Htoo describes as a “We-self vs. Others” geography, privileging the Bamar heartland as the locus of legitimate national identity.⁶⁵ Under Ne Win, nationalism and Buddhism were deliberately forged: by elevating Buddhism to the status of official religion and subordinating the *sangha* (Buddhist monastic order) to military control, the regime increasingly portrayed other religions, particularly, Islam, Christianity and Hinduism, as “foreign” and incompatible with Burmese national identity.⁶⁶

As a result, xenophobia and racialized nationalism became central instruments of state power, where regime propaganda consistently portrayed ethnic and religious minorities as internal enemies aligned with hostile external forces. For instance, the 1967 Sino-Burmese riots, sparked by China’s Cultural Revolution, were strategically exploited by the Prime Minister to portray himself as the defender of national sovereignty against foreign instability. Similarly, during the March 1988 student uprising, the regime emphasized Muslim participation as proof of an outsider conspiracy.⁶⁷ While the latter episode will be discussed in greater detail in the following sections, its invocation in state propaganda exemplifies how the regime instrumentalized moments of national crisis to deepen ethnic divisions. In this context, Htoo’s adaptation of Rudyard Kipling’s *White Man’s Burden* offers a particularly illuminating analytical lens. He argues that just as Kipling urged Americans in 1899 to civilize colonial subjects, Ne win’s military government used the same paternalistic logic by claiming a civilizing mission toward ethnic and religious minorities, depicted as “half-devil, half-child”.⁶⁸ This discourse of superiority served to legitimize the regime’s assimilationist and exclusionary policies. Expanding on this perspective, Mya offers a broader historical framework that divides post-independence Burma into two distinct eras. The first, the *pyidawtha* period (1948–1958), was characterized by parliamentary democracy and democratic socialism under U Nu’s leadership, marked by efforts to promote social welfare and build a “country of peace and prosperity”. In contrast, the *pyidaweha* era (1962–1988) corresponds to Ne Win’s authoritarian regime, during which the

⁶⁵ Saw Eh Htoo, “New Ne Win Echoes: Burmanization policies and peacebuilding in Myanmar.” *Burma Studies Group* (June, 2022): 55 https://burmastudiesgroup.com/wp-content/uploads/2022/06/sawehhtoo_newinechoes-burmanization.pdf

⁶⁶ *ivi*, 64

⁶⁷ Mya Maung, “The Burma Road from the Union of Burma to Myanmar.” *Asian Survey* 30 (June, 1990): 611 <https://www.jstor.org/stable/2644909>

⁶⁸ Saw Eh Htoo, Tony Waters, *op. cit.*, 19

imposition of a rigid socialist model led to a “stagnated country”.⁶⁹ Notably, in 1987, Myanmar was ranked as the “least developed country” by the United Nations.⁷⁰

Htoo and Waters contend that Ne Win’s policies are “at the heart of why peace is so difficult to achieve seventy-five years after the authoritarian British left, and formal independence was achieved”.⁷¹ Under Ne Win, this vision translated into a systematic campaign of forced assimilation that profoundly undermined Burma’s pluralistic foundations and paved the way for the exclusion of the Rohingya. In his public speeches, Ne Win repeatedly invoked the myth of a single Burmese root, insisting that only a fully “Burmanized spirit” could sustain a united socialist state. To that end, the Buddhist-Bamar identity was elevated as the sole criterion for full citizenship.⁷² The regime weaponized historical narratives to redraw the boundaries of national belonging. In 1965, it issued new ethnic classifications for Rakhine State, grouping the Kaman, Mro, Thet, and Maramagi under a single “Rakhine” label while erasing the Rohingya entirely. Such listings, which shifted from 144 recognized ethnic groups in 1973 to 135 in 1982, reflected political intent rather than linguistic or cultural reality, as explicitly confirmed by the “Revolutionary Council’s official Policy on Ethnicity in Burma”.⁷³ Ne Win further asserted that the Rohingya’s presence in Rakhine State was merely a legacy of British-era colonial population transfers. Accordingly, they were rebranded as “Chittagonians” or “Indians”, regardless of how many generations their families had lived in Burma.⁷⁴

By contrast, during U Nu’s parliamentary era, the AFPFL had formally recognized the Rohingya as nationals of Burma in 1954. In May 1961, Prime Minister U Nu declared that “the people living in Maungdaw and Buthidaung regions are our nationals, brethren. They are called Rohingyas. They are at par in status of nationality with Kachin, Kyah, Karen, Mon, Rakhine and Shan. They are one of the ethnic races of Burma”.⁷⁵ To institutionalize this recognition, the Mayu Frontier Administration Area was established to ensure Rohingya representation. Rohingya leaders were invited to national ceremonies, including Union Day, and Rohingya language was aired by the Burma Broadcasting Services.⁷⁶ These inclusive policies, however, were later reversed under General Ne

⁶⁹ Mya Maung, *op. cit.*, 604

⁷⁰ For the Least developed Countries (LDCs) timeline, see <https://www.un.org/development/desa/dpad/least-developed-country-category/creation-of-the-ldc-category-and-timeline-of-changes-to-ldc-membership-and-criteria.html>

⁷¹ Saw Eh Htoo, Tony Waters, *op. cit.*, 21

⁷² Sae Eh Htoo, *op. cit.*, 58

⁷³ *ivi*, 60

⁷⁴ Saw Eh Htoo, Tony Waters, *op. cit.*, 110

⁷⁵ Radio speech by Prime Minister U Nu on 25 September 1954 at 8 pm and public speech by Prime Minister and Defense Minister U Ba Swe at Maungdaw and Buthidaung respectively on 3 and 4 November, 1959

⁷⁶ Md. Mahbubul Haque, *op.cit.*, 25-26

Win's rule, whose regime initiated a deliberate, long-term strategy aimed at rendering the Rohingya stateless.⁷⁷ Central to this exclusionary campaign was the promulgation of the 1982 Citizenship Law which legally enshrined their *de jure* exclusion. The following section provides a detailed analysis of this law, its core provisions, its implementation and the profound legal consequences it imposed on Burma's Muslim minority.

To fully grasp the impact of the 1982 Citizenship Law on the legal status of the Rohingya, it is essential to first outline Myanmar's earlier legal framework, namely the citizenship criteria established in the 1947 Constitution⁷⁸ and the Union Citizenship Act (UCA) of 1948.⁷⁹ The 1947 Constitution, which came into force on January 4, 1948, enshrined in its preamble Myanmar's commitment to equal rights, social justice, and political fairness for every citizen. Section 11 granted citizenship to individuals meeting any of the following four criteria: (i) membership to an "indigenous race"; (ii) descent from a grandparent of an indigenous race; (iii) birth to two Burmese citizen parents; or (iv) birth in British-ruled Burma before 1942.⁸⁰ The 1948 Union Citizenship Act narrowed the definition of "indigenous races": according to Section 3(1) of the Act, citizenship by descent was limited to members of eight explicitly named races (Arakanese, Burmese, Chin, Kachin, Karen, Kayah, Mon, and Shan), as well as to "such racial group as has settled in any of the territories included within the Union as their permanent home from a period anterior to 1823 A.D."⁸¹ Critically, neither the 1947 Constitution nor the 1948 UCA explicitly recognized the Rohingya as an indigenous race.⁸² While the Rohingya have long maintained that they are deserving of the same constitutional status of other recognized minorities, opponents counter that their language align more closely with Chittagong dialects and that their ancestors migrated to Burma during the British colonial era. As a result, by defining "indigenous race" without reference to the Rohingya, both the 1947 Constitution and the 1948 UCA legally undermined their claim to full citizenship,⁸³ laying the groundwork for their eventual exclusion under the 1982 Citizenship Law.

⁷⁷ *ivi*, 28

⁷⁸ For the 1947 Constitution, see <https://www.myanmar-law-library.org/law-library/laws-and-regulations/constitutions/1947-constitution.html>

⁷⁹ For the 1948 Union Citizenship act, see <https://it.scribd.com/document/117952531/The-Union-Citizenship-Act-1948>

⁸⁰ Section 11 of the 1947 Constitution

⁸¹ Section 3.1 of the 1948 Union Citizenship Act

⁸² Archana Parashar, Jobair Alam, "The National Laws of Myanmar: Making of Statelessness for the Rohingya." *International Migration* 57 (November 08, 2018): 98 <https://doi.org/10.1111/imig.12532>

⁸³ *ivi*, 99

On January 3, 1974,⁸⁴ Ne Win's government promulgated a new Constitution that reframed Burma as a socialist state. Most significantly, Article 145 of the new text replaced the four eligibility criteria for citizenship outlined in the 1947 Constitution with a single, more restrictive requirement: citizenship was to be granted only to individuals "born of parents both of whom are nationals of the Socialist Republic of the Union of Burma",⁸⁵ with the sole exception of those already "vested with citizenship according to existing laws"⁸⁶ at the time the Constitution entered into force. This change marked a fundamental departure from earlier provisions. By eliminating the grandparent clause and the pre-1942 birth criterion that had previously enabled many Rohingya to qualify for citizenship, the 1974 Constitution effectively narrowed access to nationality. The new requirement for proof of both parents' Burmese citizenship erased any possibility for third-generation descendants, including numerous Rohingya families, to obtain nationality.⁸⁷

On October 8, 1982, the Revolutionary Council formally repealed the Union Citizenship Act of 1948 and enacted a new Citizenship Law, cementing a radical departure from Burma's earlier nationality framework. When presenting this legislation, General Ne Win declared that "racially, only pure-blooded nationals will be called citizens," relegating all others "guests or mixed blood" to second-class status without full rights.⁸⁸ This exclusionary vision was codified through the establishment of three distinct categories of citizenship: full, associate, and naturalized citizenship.⁸⁹ Full citizenship is conferred exclusively to individuals belonging to one of the officially recognized "national races" and, in accordance with the *jus sanguinis* principle enshrined in Section 7, extends automatically to any child born to two Burmese national parents, regardless of birthplace.⁹⁰ Chapter II.3 of the Law provides that "[n]ationals such as the Kachin, Kayah, Karen, Chin, Burman, Mon, *Rakhine* or Shan and ethnic groups as have settled in any of the territories included within the State as their permanent home from a period prior to 1185 B.E., 1823 A.D. are Burma citizens".⁹¹ By excluding the Rohingya from the list of officially recognized national races, the law categorically prohibits them from acquiring full citizenship and reinforces the narrative that they constitute a "made-up" ethnic group.⁹² Moreover, a critical revision in the 1982 Citizenship Law was the

⁸⁴ For the 1974 Constitution, see https://www.myanmar-law-library.org/IMG/pdf/constitution_de_1974.pdf

⁸⁵ Ibid, 145(a)

⁸⁶ Ibid, 145(b)

⁸⁷ Archana Parashar, Jobair Alam, *op. cit.*, 100-101

⁸⁸ Speech of General Ne Win presenting the 1982 Citizenship Law, 8 October 1982

https://www.burmalibrary.org/docs6/Ne_Win%27s_speech_Oct-1982-Citizenship_Law.pdf

⁸⁹ For the 1982 Burma Citizenship Law, see <https://www.refworld.org/legal/legislation/natlegbod/1982/en/49622>

⁹⁰ Ibid, Chapter II.7

⁹¹ Ibid., Chapter II.3 (emphasis added)

⁹² Archana Parashar, Jobair Alam, *op. cit.*, 101

replacement of the term “Arakanese”, used in the 1948 Union Citizenship Act, with “Rakhine”. Under the 1948 Act, “Arakanese” encompassed all inhabitants of the Arakan region, including both ethnic Rakhine Buddhists and Muslim Rohingya, thereby implicitly safeguarding Rohingya identity. Whereas the 1982 use of “Rakhine” effectively narrowed full-citizenship eligibility to Buddhist Rakhine only. Rohingya advocates thus view this change as a deliberate effort by Rakhines to remove their community from Burma’s national framework.⁹³

Associate citizenship is enshrined in Chapter III.23 of the Law, providing that “[a]pplicants for citizenship under the Union Citizenship Act, 1948 conforming to the stipulations and qualifications may be determined as associate citizens by the Central Body”.⁹⁴ Associate citizens (*eh-naing-ngan-tha*)⁹⁵ comprise applicants who do not belong to the eight official groups and whose claims under the 1948 framework remained undecided when the 1982 law took effect. Associate citizens, whose status is regulated under Sections 23-41, is assessed by a Central Body and remains inherently limited. Associate citizens remain ineligible for full citizenship, even through marriage to a full citizen, and only their third-generation descendants may qualify for full nationality.⁹⁶

Section 42 of Chapter IV designs “naturalized citizenship” stating that “[p]ersons who have entered and resided in the State prior to 4th January, 1948, and their children born within the state may, if they have not yet applied under the Union Citizenship Act, 1948, apply for naturalized citizenship to the central Body, furnishing conclusive evidence”.⁹⁷ Naturalized citizens (*naing-ngan-tha-pyu-khwint-ya-thu*)⁹⁸ are therefore individuals who can demonstrate both entry into and continuous residence in Burma before 4 January 1948, and who satisfy the additional criteria outlined in Sections 43 to 45, namely language proficiency, adult age, and record of good character.⁹⁹

Neither associate nor naturalized applicants may hold dual nationality: they must be free of any other citizenship at the time of application and, once granted Burmese nationality, they are prohibited from acquiring a second nationality thereafter.¹⁰⁰ The law also extends citizenship to

⁹³ Md. Mahbubul Haque, *op. cit.*, 460

⁹⁴ Chapter III.23 of the 1982 Burma Citizenship Law

⁹⁵ José-María Arraiza, “Re-imagining Myanmar citizenship in times of transition.” *Institute on Statelessness and Inclusion* (June, 2017): 2 https://files.institutesi.org/WP2017_01.pdf

⁹⁶ Su Yin Htun, “Legal Aspects of the Right to Nationality Pursuant to Myanmar Citizenship Law.” *Journal of Southeast Asian Human Rights* 3 (December 2, 2019): 281

https://www.researchgate.net/publication/338231920_Legal_Aspects_of_the_Right_to_Nationality_Pursuant_to_Myanmar_Citizenship_Law

⁹⁷ Chapter IV.42 of the 1982 Burma Citizenship Law

⁹⁸ José-María Arraiza, *op. cit.*, 2

⁹⁹ Chapter IV.43-45 of the 1982 Burma Citizenship Law

¹⁰⁰ Su Yin Htun, *op. cit.*, 281

children with one full-citizen parent and one associate or naturalized parent and permits third-generation descendants of associate or naturalized citizens to attain full citizenship.¹⁰¹ To administer these provisions, the law further established a government-controlled Central Body endowed with extensive discretionary authority to adjudicate citizenship claims and to revoke status without the need for judicial oversight.¹⁰² This body oversaw a nationwide citizenship verification campaign that introduced a system of colour-coded identity cards: pink for full citizens, green for naturalized, and blue for associates. In practice, however, registration officers routinely denied pink cards to Muslims in border townships, labeling them “Bengalis,” and downgraded green-card holders to temporary white cards, excluding the vast majority of Rohingya from all citizenship categories.¹⁰³

Although the 1982 Citizenship Law does not explicitly enumerate Myanmar’s 135 official “national races”, nor does it expressly revoke Rohingya citizenship, its stringent eligibility rules have effectively rendered western Myanmar’s Muslim communities stateless. Notably, the law operates *de facto* to exclude the Rohingya, who are broadly categorized by state authorities as South Asian Muslims. Consequently, many analysts argue that, in practice, the selective and uneven application of the 1982 CL has deprived the Rohingya of their Burmese nationality.¹⁰⁴ For example, to qualify as an associate citizen, an individual not only had to meet the criteria set out in the 1948 Union Citizenship Act, but also was required to have submitted a formal application under that law prior to its repeal. Yet, most Rohingya were neither informed of these procedural requirements nor assisted by any state-run programs. As a result, the vast majority failed to apply in time and remain ineligible for associate status. Naturalized citizenship proved equally unrealistic, as very few Rohingya are in possession of the essential documentation to demonstrate their entry before 4 January 1948.¹⁰⁵ Therefore, no member of the Rohingya community can actually claim any of the three citizenship classes. As Pashar and Alam argue, this restrictive framework has served and still continues to serve as the legal basis for broader discriminatory practices that treat Rohingya as non-citizens. By denying them formal nationality, the government has aligned itself with hardline Buddhist nationalist majorities, who have been accused of ethnic cleansing, crimes against humanity, and even genocide.

¹⁰¹ José-María Arraiza, *op. cit.*, 2

¹⁰² Chapter IV.67,71 of the 1982 Burma Citizenship Law

¹⁰³ Nick Cheesman, “Problems with Facts about Rohingya Statelessness.” E-International Relations (December 8, 2015): 2 <https://www.e-ir.info/2015/12/08/problems-with-facts-about-rohingya-statelessness/>

¹⁰⁴ *Ibid*

¹⁰⁵ Archana Parashar, Jobair Alam, *op. cit.*, 101

This exclusion has also facilitated the systematic marginalization of the Rohingya from the social, political and religious life of a state increasingly defined by Buddhist ethno-nationalist identity.¹⁰⁶

1.3 Waves of violence and forced displacement

These legal exclusions did not remain confined to the realm of formal status. On the contrary, they served as a foundation for the intensification of physical persecution and mass displacement, beginning with the first large-scale military operations against the Rohingya in 1978 with the launch of Operations Nagamin and Dragon King, which targeted Bangladeshi illegal settlers in border regions such as Rakhine, Kachin and Shan. In practice, these campaigns disproportionately targeted Rohingya Muslims, resulting in the forced displacement of over 220,000 individuals across the frontier into Bangladesh. Under significant international pressure, Myanmar and Bangladesh subsequently negotiated a repatriation agreement to facilitate the return of all refugees.

Roughly a decade later, the same patterns of exclusion and state violence erupted on a far broader scale. The years 1988–1990 marked a critical juncture in Myanmar’s modern history, as long-standing grievances under Ne Win’s twenty-five years of one-party rule erupted into mass mobilization and were followed by a promise of democratic transition. By early 1988, Burma had been transformed into a repressive police state, where dissent was systematically silenced.¹⁰⁷ Decades of economic mismanagement had further deepened poverty and alienated vast sectors of society, setting the stage for large-scale protests. In March 1988, tensions escalated after police killed a university student in Yangon, followed by the tragic discovery that forty-one political detainees had suffocated inside an army transport truck. Initially censored, these events triggered widespread demonstrations in Yangon and Mandalay. The regime’s violent response severely damaged its legitimacy and ultimately forced Ne Win’s resignation on July 26, 1988. However, power was simply transferred to a new military junta: the State Law and Order Restoration Council (SLORC), led by senior General Sein Lwin, whose principal aim was to preserve military supremacy.¹⁰⁸ By August, the unrest had reached its peak: on August 8, 1988 (a date now memorialized as “8-8-88”), hundreds of thousands of citizens, including students, monks, government workers, teachers and even some segments of the armed forces, filled the streets. Protesters converged on Sule Pagoda and other central

¹⁰⁶ *ivi*, 102

¹⁰⁷ Saw Eh Htoo, Tony Waters, *op. cit.*, 155

¹⁰⁸ Maung Aung Myoe, “A Historical Overview of Political Transition in Myanmar Since 1988.” *Asia Research Institute* (August, 2007): 5 https://ari.nus.edu.sg/wp-content/uploads/2018/10/wps07_095.pdf

landmarks in what became Asia's largest "people power" demonstration,¹⁰⁹ so significant that "the crisis that the Tatmadaw confronted with in 1988 was the worst to have developed over the past fifty years".¹¹⁰ The regime responded with lethal force: security troops opened fire on unarmed crowds, and within five days, estimates suggest that more than 3,000 individuals were killed, with countless others wounded or detained arbitrarily.¹¹¹ The massacre reverberated worldwide, leading observers to declare that it marked "the end" of any genuine hope for democratic change in Myanmar.¹¹²

Amid international pressure following the 1988 massacre, SLORC promised a "free and fair" multi-party election, which was conducted on 27 May 1990 with a voter turnout of 72.59 percent. The National League for Democracy (NLD), led by Aung San's daughter Aung San Suu Kyi, secured a decisive victory, winning nearly 60 percent of the popular vote and a clear majority of parliamentary seats. Nevertheless, the military junta swiftly nullified the results, deeming the election non-binding and declaring its intent to destroy the NLD: security forces assaulted NLD offices, arrested numerous party members and supporters, and placed Aung San Suu Kyi under house arrest, where she would remain until 2010.¹¹³ Through Martial Law Order 2/88, the regime proscribed gatherings of more than five individuals, while Notification 8/88 outlawed any public criticism of the military, effectively criminalizing dissent and entrenching authoritarian rule.¹¹⁴ Although the United States and its allies imposed economic sanctions in response to the electoral annulment and escalating human rights abuses, these measures only deepened Myanmar's international isolation as the junta doubled down on its centralized military dominance.

While the military was consolidating authoritarian rule in the political center, it simultaneously escalated its campaign of ethnic repression in the periphery, particularly in the Rakhine State, where "race and religion" policy targeted the Rohingya with renewed force, aiming to bolster support among the Buddhist Burman majority and deepen division among ethnic minorities. From late 1991 to mid-1992, a massive military buildup along the Bangladesh border, facilitated in part by a \$900 million arms deal with China, precipitated the second great exodus of Rohingya

¹⁰⁹ Saw Eh Htoo, Tony Waters, *op. cit.*, 157

¹¹⁰ Maung Aung Myoe, *op. cit.*, 12

¹¹¹ Megan Clymer, "The role of students in the 8888 people's uprising in Burma." *Assistance Association for Political Prisoners of Burma* (March, 2014): 4 https://aappb.org/wp-content/uploads/2014/03/The_Role_of_Students_in_the_8888_Peoples_Uprising_in_Burma.pdf

¹¹² Benjamin Zawacki, "No moving backwards for Myanmar." *Amnesty International* (August 8, 2008) <https://www.amnesty.org/en/latest/news/2008/08/no-moving-backwards-myanmar-20080808/>

¹¹³ Saw Eh Htoo, Tony Waters, *op. cit.*, 161

¹¹⁴ "Union of Myanmar (Burma): A long-term human rights crisis." *Amnesty International* (January 1, 1992): 1 <https://www.amnesty.org/en/documents/asa16/003/1992/en/>

Muslims. Dozens of Tatmadaw battalions, equipped with jet fighters and heavy weaponry, conducted operations that included land confiscations, forced relocations and systematic abuses. Reports documented extrajudicial killings, rape and torture committed against the civilian population.¹¹⁵ By April 1992, the government of Bangladesh had registered more than 200,000 Rohingya refugees entering the country; by July, the total exceeded 260,000, of whom more than 95 percent were Muslims originating from Rakhine State, thus surpassing the earlier 1978 displacement. The refugee influx sparked acute tensions in Cox's Bazar and surrounding areas, where local communities struggled to cope with rising crime and inflation. Meanwhile, Rohingya political fronts, namely the Rohingya Solidarity Organization and the Arakan Rohingya Islamic Front, became increasingly militarized. Simultaneously, forced repatriation efforts led by the UNHCR and formalized in the November 1993 Memorandum of Understanding, were fundamentally undermined when Myanmar authorities denied UNHCR personnel access to Rakhine State. This refusal prevented any independent verification of the returning refugees' safety; consequently, returnees faced renewed forced labor, arbitrary detention and severe violence, prompting many to flee again in Bangladesh. The UN Special Rapporteur on the situation of human rights in Myanmar has since concluded that the policy of forced relocation was a principal driver behind the grave human rights violations inflicted upon Rakhine's Muslim population. Verification procedures by Burmese authorities remained opaque, and strict access restrictions severely hindered effective international monitoring.¹¹⁶

Even as the regime continued to repress ethnic minorities and centralize power, it sought to rebrand itself through a tightly controlled process of constitutional reform and pursued a road map toward what it termed "disciplined democracy." In 1993, a national convention was gathered to draft a new constitution, and in 2003, Prime Minister Khin Nyunt formally announced a seven-point plan culminating in a national referendum, the adoption of a constitution and general elections. In April 2008, just weeks before a devastating storm, the 54-member drafting committee released a 194-page constitutional draft, leaving citizens barely one month to examine its provisions. Despite the catastrophic aftermath of Cyclone Nargis which struck the Irrawaddy Delta on 2 May 2008 and claimed an estimated 130,000 lives, the military junta moved forward with its constitutional referendum. Public participation was severely constrained by the humanitarian crisis, logistical

¹¹⁵ Imtiaz Ahmed, "The Rohingyas: From Stateless to Refugee." *University of Dhaka* (December, 2015): 7 https://www.netipr.org/policy/downloads/20100101_FromStatelessToRefugees_ImtiazAhmed.pdf

¹¹⁶ Tessa Piper, "Myanmar: Muslims from Rakhine State: Exit and Return." *UNHCR* (December 1, 1993) <https://www.refworld.org/reference/countryrep/writenet/1993/en/94252>

breakdowns and lack of meaningful debate. Nonetheless, the elections reported a nationwide voter turnout of 98 percent, with 92.48 percent of ballots cast in favor of the new charter.¹¹⁷

In 1997, the SLORC underwent a formal transformation, emerging as the State Peace and Development Council (SPDC), a symbolic and deliberate move aimed at reinforcing the continuity of military authority across Myanmar. Since its establishment, the Tatmadaw has regarded itself not merely as a strict ruling elite, but as the essential custodian of national unity, sovereignty, and social cohesion, principles that were later enshrined in the 2008 constitution's preamble. Although the SPDC officially initiated a comprehensive constitutional drafting process, its underlying purpose was to entrench military supremacy within a nominally civilian political framework. Accordingly, the 2008 constitution codified the Tatmadaw's self-appointed role as the nation's guardian: the text reserved 25 percent of parliamentary seats for military appointees, placed the ministries of Defense, Home Affairs and Border Affairs under exclusive military control, and granted the Tatmadaw full autonomy from civilian oversight or judicial review for any actions taken since 1988.¹¹⁸

Under the auspices of the new constitution, the November 2010 general elections marked the beginning of a carefully managed political transition. Yet, pro-democracy groups, including the NLD, were banned from participation, resulting in an electoral contest overwhelmingly dominated by the Union Solidarity and Development Party (USDP), a military-backed entity. Official data reported a 77 percent voter turnout and USDP secured approximately 57 percent of the vote, translating into a decisive parliamentary majority and paving the way for General Thein Sein to assume the presidency on February 4, 2011. Thein Sein's government embarked on a cautious program of liberalization, which included elections held in 2012 to fill 45 vacant parliamentary seats. For the first time, previously excluded parties were permitted to contest. The NLD participated and secured a strong victory, capturing 37 of the available seats and enabling Aung San Suu Kyi's election to the lower house as leader of the parliamentary opposition.¹¹⁹ Despite signaling a shift toward genuine political competition, the 2010 and 2012 polls remained marked by significant shortcomings. Ethnic minorities, particularly the Rohingya, were largely disenfranchised, international observers were denied access, and restrictions on media coverage and candidate movement persisted.¹²⁰

¹¹⁷ Sampa Kundu, "Pangs of Democratic Transition." *Institute of Peace and Conflict Studies* (2012): 7
<http://www.jstor.com/stable/resrep09337>

¹¹⁸ Morten B. Pedersen, "Myanmar's democratic opening the process and prospect of reform". *UNSW Sydney* (December, 2014): 23, 25 <https://www.researchgate.net/publication/291768136>

¹¹⁹ Saw Eh Htoo, Tony Waters, *op. cit.*, 165

¹²⁰ Sampa Kundu, *op. cit.*, 8

Following the nominal transfer of power and the cautious opening of Myanmar's political space, Rakhine State descended into a new cycle of communal violence in 2012, which would dramatically exacerbate the Rohingya crisis. According to Human Rights Watch, the 2012 attacks "were organized, incited, and committed by local Arakanese political party operatives, the Buddhist monkhood, and ordinary Arakanese, at times directly supported by the state security forces".¹²¹ In June, entire villages were razed, more than 4,000 houses were destroyed, and civilians were targeted in indiscriminate killings, sexual assaults, and arbitrary arrests. By mid-July, over 100,000 Rohingya had been eradicated from their homes and confined to IDP camps. A second wave of violence spread in October, extending into central Rakhine. This phase left at least eighty people dead and displaced a further 22,000, with Rohingya Muslims accounting for over 80 percent of victims.¹²² As Howe points out, these atrocities were not spontaneous outbursts of communal tension but part of a broader securitization strategy. In the aftermath, the Burmese military and police forces were widely accused not only of failing to intervene but of active complicity in the violence. Consequently, the government's narrative swiftly shifted from concerns over land and immigration to a counter-terrorism framing, despite the absence of any credible links between Rohingya civilians and transnational jihadist networks. Howe further observes that "linking isolated episodes of Rohingya anti-government violence with international jihadist networks has provided an ideological justification for the military's continued infiltration into Rakhine State". Through anti-terrorism rhetoric, the regime sought simultaneously to legitimize further security operations while portraying itself as the indispensable protector of the ethnic Bamar majority. In July 2012, President Thein Sein even proposed the mass resettlement of up to 800,000 Rohingya to third countries, reinforcing a policy of exclusion that would culminate in systematic discrimination and disenfranchisement.¹²³

These policies ultimately culminated in an international humanitarian catastrophe of historic proportions: the Rohingya crisis stands as one of the most acute instances of government-endorsed exclusion and forced displacement in recent history. By the end of 2017, nearly 68.5 million people worldwide had been displaced by conflict and persecution, with Myanmar accounting for the largest share of forced migrants in Southeast Asia.¹²⁴ The most recent exodus of Rohingya unfolded in two

¹²¹ "All You Can Do is Pray. Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State" *Human Rights Watch* (April, 2013): 4 https://www.hrw.org/reports/burma0413_FullForWeb.pdf

¹²² Jacques Leider, *op. cit.*, 17

¹²³ Adam E. Howe, "Discourses of Exclusion: The Societal Securitization of Burma's Rohingya (2012–2018)". *Journal of Asian Security and International Affairs* (2018): 254, 255, 258
<https://journals.sagepub.com/doi/epub/10.1177/2347797018799000>

¹²⁴ Meheebub Sahana, Md. Anisujjaman "Forced Migration and the Expatriation of the Rohingya: A Demographic Assessment of Their Historical Exclusions and Statelessness." *Journal of Muslim Minority Affairs* 39 (January, 2019):
<https://www.researchgate.net/publication/332253865>

major phases. In 2015, approximately 88,000 Rohingya fled by sea, only to encounter human traffickers and slavery networks before reaching Thailand, Bangladesh or Malaysia.¹²⁵ Two years later, a far larger movement occurred overland. A military clearance operation launched in late 2016 forced an estimated 74,000 Rohingya into Bangladesh by February 2017. This was a prelude to an even greater crisis: between August and September 2017, more than 500,000 additional Rohingya were forced across the border, and by January 2018, Bangladeshi camps were sheltering 672,700 newly arrived refugees, underscoring the unprecedented scale of the crisis.¹²⁶ The immediate trigger of the crackdown was the coordinated 25 August 2017 attacks carried out by the Arakan Rohingya Salvation Army (ARSA) on more than thirty security bases, which reportedly killed around one hundred members of Myanmar's police and military forces. Declared a terrorist organization and blamed for the violence, ARSA provided the Tatmadaw with a pretext for an extensive campaign of collective punishment.¹²⁷ An estimated 30,000–35,000 troops were deployed into Rakhine State, where military operations were marked by widespread rape, extrajudicial killings and the destruction of entire villages under the banner of rooting out “terrorists”.¹²⁸

The analysis conducted throughout this chapter has demonstrated that Rohingya's marginalization is the outcome of a historically constructed process of exclusion, reinforced through selective historical narratives, ethnic categorization and legal frameworks. While the Rohingya have maintained a long-standing presence in Rakhine State and developed a distinct cultural, linguistic and religious identity, successive Myanmar governments have sought to erase their legitimacy through measures such as the 1982 Citizenship Law and the denial of official ethnic recognition. These strategies have operated not only to strip the Rohingya of their citizenship and legal status, but also to delegitimize their very existence within national imagination. As such, the Rohingya case represents a paradigmatic example of how law, history and political power can be manipulated to legitimize ethnic cleansing and deny accountability.

¹²⁵ Adam E. Howe, *op. cit.*, 259

¹²⁶ Jacques Leider, *op. cit.*, 20

¹²⁷ Elliott Prasse-Freeman, “The Rohingya crisis.” *Anthropology today* 22 (December, 2017): 1
https://rai.onlinelibrary.wiley.com/doi/epdf/10.1111/1467-8322.12389?saml_referrer

¹²⁸ Haradhan Mohajan, *op. cit.*, 18

CHAPTER 2: International law and the quest for accountability in Myanmar

This chapter examines the capacity of domestic and international mechanisms to ensure accountability for the crimes committed against the Rohingya population. Building on the historical framework set out in Chapter 1, it argues that Myanmar's long-standing policies have resulted in systematic violations of the core principles of international law, including those enshrined in the legal architecture designed to protect vulnerable groups. Although Myanmar has refused to ratify numerous key human rights treaties, it nonetheless remains bound by obligations under customary international law, including the prohibition of genocide and crimes against humanity. Over several decades, persistent indifference, defiance and rejection of international criticism have entrenched a culture of impunity which enabled the military to continue targeting Rohingya with disregard for international norms.¹ The country's human rights record, consistently among the worst in the world, reflects the consequences of this pattern: in 2010, the United Nations Development Programme ranked Myanmar 132nd out of 169 countries.² While Freedom House classified it as "the worst of the worst" for its human rights performance,³ Minority Rights Group listed it among the five states where ethnic minorities face the gravest threats.⁴

Against this backdrop, the chapter contends that Myanmar's domestic mechanisms have proven incapable and unwilling to deliver justice. Meanwhile, international responses, ranging from judicial proceedings to UN mechanisms, have been constrained by political paralysis, weak enforcement and systematic limitations. In line with the thesis of this research, the analysis demonstrates that the Rohingya crisis exposes the profound inability of existing legal frameworks to protect vulnerable minorities and ensure accountability in the face of mass atrocity crimes. In support of this argument, the chapter also draws a comparative parallel with the 1994 Rwandan genocide,

¹ Syed S Mahmood, Emily Wroe *et al.*, "The Rohingya people of Myanmar: health, human rights, and identity." *The Lancet* 389, (May 6-12, 2017): 1847 <https://www.sciencedirect.com/science/article/pii/S0140673616006462>

² United Nations Development Programme (UNDP), "Sustainable Microfinance to Improve the Livelihoods of the Poor (January 2011): 2 https://info.undp.org/docs/pdc/Documents/MMR/00051335_UNDP%20Myanmar%20Proposal%20-%20Sustainable%20Microfinance%20to%20Improve%20the%20Livelihoods%20of%20the%20Poor.pdf

³ Aili Piano, Arch Puddington *et. al.*, "Freedom in the world 2006: the annual survey of political rights and civil liberties." *Freedom House* (2006): 11 https://freedomhouse.org/sites/default/files/2020-02/Freedom_in_the_World_2006_complete_book.pdf

⁴ *Minority Rights Group International*, "Peoples under Threat 2020." (2020): 7 <https://minorityrights.org/app/uploads/2024/01/mrg-brief-put2020.pdf>

examining how the international community's delayed and inadequate response in that context continues to echo in the case of Myanmar. Structural limitations and geopolitical dynamics that undermined international action in Rwanda remain disturbingly relevant today, nearly thirty years after.

2.1 The crime of genocide and its application to Myanmar

The term genocide was first coined in 1943 by Raphael Lemkin, a Jewish-Polish lawyer who had personally witnessed the atrocities of the Holocaust. Lemkin defined it not merely as the immediate physical destruction of a nation, but as a “coordinated plan of different actions aimed at the destruction of essential foundations of the life of the national groups, with the aim of annihilating the groups themselves”.⁵ Such actions, he explained, could involve the disintegration of political and social institutions, the suppression of culture, language, national identity, religion, and economic existence, as well as the destruction of personal security, liberty, health, dignity, and, ultimately, the lives of individuals belonging to the targeted group.⁶ Genocide was codified for the first time under international law by the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948 (the Genocide Convention), which is regarded as the first comprehensive attempt to define and criminalize this act. The Convention, ratified to date by almost 150 States, including Myanmar which became a party in 1956, establishes obligations *erga omnes* to prevent and punish genocide, and enshrines its prohibition as a *jus cogens* norm, that is, a peremptory norm of general international law from which no derogation is permitted.⁷

Article II of the Genocide Convention, mirrored in Article 6 of the Rome Statute of the International Criminal Court (ICC),⁸ defines genocide as “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

⁵ Mir Masudul Alam, “The UN Convention on Genocide and recent persecution of the Rohingyas: A review.” *The Jahangirnagar Review* 32 (July 24, 2023): 499 <https://juojs.sothik.com/index.php/tjrpc/article/view/276>

⁶ Ibid

⁷ Kudret Bülbül et al., “Rohingya Refugee Crisis in Myanmar.” Chapter 2, “Genocide, Forced Migration, and Forced Labor: A Case Study on Rohingya People Under International Law.” *Palgrave Macmillan* (2022): 23 <https://link.springer.com/book/10.1007/978-981-16-6464-9>

⁸ For the Rome Statute, see <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf>

- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.”⁹

The jurisprudence of the International Criminal Tribunal for Rwanda (ICTR), notably in *Prosecutor v. Akayesu*, has confirmed that for genocide to be established, “it is necessary that one of the acts listed under Article 2(2) of the Statute [or Article 2 of the Genocide Convention] be committed, [and] that the particular act be committed against a specifically targeted group, it being a national, ethnical, racial or religious group”.¹⁰ Specific intent, in this sense, “goes beyond the mere performance of the act”¹¹ and requires proof of a targeted aim against the group’s existence. The material acts of genocide may take various forms. Killing members of the group constitutes the most immediate form, but equally prohibited are acts causing serious bodily harm, defined by the ICTR, as “serious injury to health, disfigurement, or grave injury to internal or external organs or senses”.¹² Serious mental harm is also included, referring to more than temporary deterioration of mental or psychological faculties, and is assessed on a case-by-case basis.¹³ Furthermore, the prohibition extends to the creation of conditions of life that, while not immediately lethal, are deliberately calculated to lead to the group’s physical destruction. The ICC’s Elements of Crimes clarify that such acts must occur “in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction”.¹⁴ This reflects the understanding, already implicit in Lemkin’s original conception, that genocide may be a process unfolding over time, through sustained and systematic measures aimed at the annihilation of a protected group’s existence in its physical, cultural, and social dimensions. As a *jus cogens* prohibition, the crime of genocide occupies the highest rank in the hierarchy of international norms. Together with crimes against humanity, war crimes, and torture, it is recognized as an offence of the “most serious concern to the international community as a whole”, as reflected in Article 5 of the Rome Statute.¹⁵ This status entails obligations on all States to prevent and punish genocide, regardless of where it occurs, and underscores its absolute impermissibility under any circumstances.

⁹ Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide, (9 December 1948, 78 UNTS 277) (entered into force 12 January 1951) (“Genocide Convention”)

¹⁰ Mahnoor Khan, “The Broken Promise of “Never Again”: Myanmar’s Genocide Analyzed Under the U.N. Genocide Convention and the International Criminal Tribunal for Rwanda’s Interpretation of the Convention.” *Cornell International Law Journal* 53 (2020): 805 <https://publications.lawschool.cornell.edu/cilj/wp-content/uploads/sites/7/2021/11/Khan-Final-1.pdf>

¹¹ *Ibid*

¹² Kudret Bülbül et al, *op. cit.*, 26

¹³ *Ibid*

¹⁴ For the Elements of Crimes (ICC), see <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf>

¹⁵ Article 5 of the Rome Statute

The atrocities committed against the Rohingya population in Myanmar since at least 2016–2017 bear strong legal grounds to be classified as genocide under the 1948 Genocide Convention. Following the attacks by the Arakan Rohingya Salvation Army (ARSA) on 25 August 2017, the Myanmar military launched so-called “clearance operations” in northern Rakhine State. These operations resulted in the killing of thousands, the destruction of at least 354 villages,¹⁶ and the forced displacement of over 723,000 people into Bangladesh, 40% of whom were children under the age of twelve.¹⁷ The exodus, considered as the most rapid and intense refugee crisis since the 1994 Rwandan genocide, culminated in the establishment of Cox’s Bazar as the largest refugee settlement in the world.¹⁸ The United Nations Secretary-General’s 2018 report to the Security Council characterized these actions as “among the gravest violations of humanity”,¹⁹ while the UN High Commissioner for Human Rights, Zeid Ra’ad Al Hussein, described them as “a textbook example of ethnic cleansing”²⁰.

The question of whether genocide was committed in Myanmar was comprehensively examined by the United Nations Independent International Fact-Finding Mission on Myanmar (IIFMM) in its 2018 report.²¹ Pursuant to Human Rights Council resolution 34/22,²² the Mission was urgently dispatched to establish the facts and circumstances of alleged human rights violations since 2011, and its findings provide a detailed legal and factual basis for determining the commission of genocide, crimes against humanity, and war crimes. However, the Myanmar government has thoroughly rejected the legitimacy of such investigative mechanisms. As explicitly stated by the Ministry of Foreign Affairs, “the Human Rights Council, which does not have prosecutorial power with no authority to establish such mechanism, creates IIMM beyond its mandate. Since IIMM was

¹⁶ Mohammad Pizuar Hossain, “Stages of the Rohingya Genocide: A Theoretical and Empirical Study.” *Holocaust and Genocide Studies* 35 (Fall, 2021): 224 <https://academic.oup.com/hgs/article-abstract/35/2/211/6330491?redirectedFrom=fulltext>

¹⁷ Mir Masudul Alam, *op. cit.*, 496

¹⁸ *Ibid*

¹⁹ *ivi*, 498

²⁰ United Nations, “UN Human Rights Chief Points to ‘Textbook Example of Ethnic Cleansing’ in Myanmar,” *UN News* (September 11, 2017) <https://news.un.org/en/story/2017/09/564622-un-human-rights-chief-points-textbook-example-ethnic-cleansing-myanmar>

²¹ For the Report of the Independent International Fact-Finding Mission on Myanmar, UN Doc. A/HRC/39/CRP.2 (18 September 2018) (“IIFMM 2018 Report”), see

https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_64.pdf

²² Human Rights Council resolution 34/22, Situation of human rights in Myanmar, A/HRC/RES/34/22 (April 3, 2017), available from <https://docs.un.org/en/A/HRC/RES/34/22>

originated from politicized country-specific Human Rights Council resolution, Myanmar never recognizes and accepts the mandate of IIMM since its inception”.²³

In particular, the IIFFMM concluded that “there is sufficient information to warrant the investigation and prosecution of senior officials in the Tatmadaw chain of command, so that a competent court can determine their liability for genocide in relation to the situation in Rakhine State”.²⁴ It further found that crimes against humanity had been committed in Kachin, Rakhine, and Shan States, “as part of a widespread and systematic attack on a civilian population”, and that much of this conduct also fulfilled the legal elements of war crimes, including murder, torture, rape, sexual slavery, the targeting of civilians, forced displacement, and executions without due process.²⁵ The IIFFMM identified six senior military leaders, including Commander-in-Chief Senior General Min Aung Hlaing, as responsible for crimes under international law.²⁶ Min Aung Hlaing publicly referred to the Rohingya issue as an “unfinished job”,²⁷ signaling an organized and ongoing policy aimed at their destruction.

Evidence of genocidal intent emerges from both the scale and nature of the violence and from explicit statements by state and military officials. Authorities and commanders repeatedly used dehumanizing language such as “you don’t belong here” and “we’re going to kill all of you,” while state propaganda portrayed the Rohingya as “Bengalis” or “illegal immigrants” threatening to “Islamize” Myanmar. This “othering” process was reinforced through decades of structural discrimination, including denial of citizenship, severe restrictions on movement, marriage, reproduction, and systematic exclusion from public life.²⁸ Furthermore, the Rohingya clearly qualify as a protected group under the Genocide Convention. They can be classified as an ethnic group, given their shared language, cultural traditions, and historical ties to Rakhine State; as a racial group, due to the perception within Myanmar society that they constitute a different “race” from the majority Bamar population; and as a religious group, as a Muslim minority in a predominantly Buddhist country. In line with international jurisprudence, it is the perception of the perpetrators that is decisive: Myanmar’s persistent denial of the Rohingya’s identity and its portrayal of them as outsiders

²³ Ministry of Foreign Affairs of Myanmar, Myanmar highlights misconducts of country-specific human rights mechanisms (October 17, 2023) <https://www.mofa.gov.mm/en/myanmar-highlights-misconducts-of-country-specific-human-rights-mechanisms/>

²⁴ IIFFM 2018 Report, para. 87

²⁵ IIFFM 2018 Report, para. 88, 89

²⁶ IIFFM 2018 Report, para. 92

²⁷ Kudret Bülbül *et al*, *op. cit.*, 31

²⁸ *ivi*, 28,29

affirm their status as a targeted protected group.²⁹ As the FFM on Myanmar concluded, “[t]he Rohingya are in a situation of severe, systematic, and institutionalized oppression from birth to death. Their extreme vulnerability is a consequence of State policies and practices implemented over decades, steadily marginalizing the Rohingya and eroding their enjoyment of human rights”.³⁰

The acts committed fall squarely within the categories listed in Article II of the Genocide Convention: killing members of the group; causing serious bodily or mental harm; deliberately inflicting conditions of life calculated to bring about their physical destruction; and imposing measures intended to prevent births. These violations manifested through mass executions and the targeted killing of men and boys between the ages of 17 and 45, alongside widespread sexual violence. In one of the most comprehensive accounts, the Office of the United Nations High Commissioner for Human Rights dispatched a four-member team to Bangladesh from 8 to 23 January 2017, at the request of the High Commissioner, to interview Rohingya refugees who had fled northern Rakhine State in the aftermath of the 9 October 2016 attacks.³¹ Of the 204 individuals interviewed, 65% reported killings, 56% reported disappearances, 64% recounted beatings, and 43% disclosed incidents of rape. Survivors also described torture, the burning of entire villages, the deliberate destruction of food stocks and sources of livelihood, and the systematic denial of medical care.³² Policies such as the “two-child limit” imposed on Rohingya families, the enforcement of forced contraception, and severe restrictions on intermarriage further illustrate the deliberate intent to prevent births within the group.³³

While direct evidence of genocidal intent is limited, the totality of the acts supports the inference that Myanmar authorities acted with the specific intent to destroy, in whole or in part, the Rohingya population. As noted by the UN Special Adviser on the Prevention of Genocide, Adama Dieng, the “intent of the perpetrators was to cleanse northern Rakhine state of their existence, possibly even to destroy the Rohingya as such, which, if proven, would constitute the crime of genocide”.³⁴

²⁹ Allard K. Lowenstein, “Persecution of the Rohingya Muslims: is genocide occurring in Myanmar’s Rakhine State? A legal analysis.” *Fortify Rights* (October, 2015): 43

https://www.fortifyrights.org/downloads/Yale_Persecution_of_the_Rohingya_October_2015.pdf

³⁰ Elena Sarver *et al.*, “Genocide of the Rohingya.” *University of Michigan Press* (2023): 200

<https://www.jstor.org/stable/10.3998/mpub.11953892.14?seq=4>

³¹ Report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) mission to Bangladesh, “Interviews with Rohingyas fleeing from Myanmar since 9 October 2016”, (February 3, 2017)

<https://www.refworld.org/reference/countryrep/ohchr/2017/en/115386>

³² OHCHR Report, 9,25,28

³³ Mahnoor Khan, *op. cit.*, 834

³⁴ Statement by Adama Dieng, United Nations Special Adviser on the Prevention of Genocide, on his visit to Bangladesh to assess the situation of Rohingya refugees from Myanmar, United Nations, (13 March 2018)

Similarly, the UN Special Rapporteur on Human Rights in Myanmar, Yanghee Lee, concluded that “the crimes committed in Myanmar bear the hallmarks of genocide”.³⁵

Following the extensive documentation of atrocities committed against the Rohingya population, the question of Myanmar’s international responsibility under the Genocide Convention reached the International Court of Justice (ICJ) in *The Gambia v. Myanmar*. Acting with the political backing of the Organization of Islamic Cooperation (OIC), The Gambia initiated proceedings on November 11, 2019, alleging violations of multiple provisions of the Genocide Convention through “acts adopted, taken and condoned by the Government of Myanmar against members of the Rohingya group”.³⁶ This action marked a significant moment in the international legal response to the crisis: a small West African State with no direct territorial or national link to the victims asserted jurisdiction on the basis that the prohibition of genocide constitutes a *jus cogens* norm, and that the obligations enshrined in the Convention are *erga omnes partes*.³⁷ The Gambian Minister of Justice, Abubacarr Marie Tambaou, was personally motivated after visiting Rohingya refugee camps in Cox’s Bazar, where the scale of displacement, the accounts of mass killings, and the patterns of dehumanization “resembled those at the sites of the Rwandan genocide”.³⁸

Myanmar contested both the admissibility of the case and the Court’s jurisdiction. It argued that no legal dispute existed between the parties, asserting that The Gambia was acting merely as a “proxy” of the OIC. It further contended that The Gambia lacked standing, as it was not directly affected by the alleged breaches to the Convention. Myanmar also invoked its reservations to Articles VI and VIII of the Genocide Convention to exclude the Court’s jurisdiction. Specifically, it contended that its reservation to Article VI, concerning the trial of individuals before national or international criminal tribunals, granted exclusive jurisdiction to its domestic courts. As for Article VIII, which allows for recourse to UN organs to prevent and suppress genocide, Myanmar argued that it was

<https://www.un.org/sg/en/content/sg/note-correspondents/2018-03-12/note-correspondents-statement-adama-dieng- united-nations-special-adviser-the-prevention-of-genocide-his-visit-bangladesh-assess-the-situation-of-rohingya>

³⁵ Statement by Ms. Yanghee Lee, Special Rapporteur on the situation of human rights in Myanmar at the 37th session of the Human Rights Council, United Nations Human Rights Office of the High Commissioner, (12 March 2018)

<https://www.ohchr.org/en/statements-and-speeches/2018/03/statement-ms-yanghee-lee-special-rapporteur-situation- human-rights>

³⁶ International Court of Justice. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*The Gambia v. Myanmar*), Application Instituting Proceedings, (November 11, 2019)

³⁷ Md. Rizwanul Islam, Naimul Muquim, “The Gambia v. Myanmar at the I.C.J.: Good Samaritans Testing State Responsibility for Atrocities on the Rohingya.” *California Western International Law Journal* (2020): 86

<https://scholarlycommons.law.cwsl.edu/cgi/viewcontent.cgi?article=1573&context=cwilj>

³⁸ Mohammad Pizar Hossain, *op. cit.*, 829

irrelevant in the context of inter-State contentious proceedings.³⁹ In February 2022, the Court examined and ultimately rejected Myanmar’s objections. It reaffirmed that Article IX grants the ICJ autonomous jurisdiction over disputes relating to the application of the Genocide Convention, independently of Myanmar’s reservations to Articles VI and VIII. The Court further emphasized that the obligations enshrined in the Convention are owed *erga omnes partes*, thereby allowing any State party to bring a claim against another, regardless of special interest or direct injury. Lastly, the ICJ determined that a genuine legal dispute did exist between The Gambia and Myanmar, regarding the latter’s compliance with the Convention, thus satisfying the preconditions for the exercise of its jurisdiction.⁴⁰

In support of its case, The Gambia relied extensively on the IIFFMM’s legal and factual determinations, which provided an evidentiary framework for The Gambia’s argument that Myanmar had failed in its duty not only to refrain from committing genocide, but also to prevent and punish it,⁴¹ as mandated by Article I of the Convention.⁴² Alongside its application on the merits, The Gambia requested the indication of provisional measures, asking the Court, *inter alia*, to order Myanmar to “take all measures within its power to prevent all acts that amount to or contribute to the crime of genocide” and to ensure “that any military, paramilitary or irregular armed units [...] do not commit any act of genocide” against the Rohingya.⁴³

On 23 January 2020, the Court unanimously indicated provisional measures. It found the rights invoked by The Gambia to be plausible (specifically, the Rohingya’s right to protection from acts of genocide and The Gambia’s right to seek Myanmar’s compliance with the Convention) and recognized the urgency of the situation given the group’s extreme vulnerability. The order required Myanmar to protect the Rohingya from genocidal acts, prevent the destruction of evidence, and submit periodic reports on implementation.⁴⁴ This decision was subsequently reinforced by the United Nations Human Rights Council in Resolution 58/20, which explicitly urged Myanmar to “to take all measures within its power to prevent the commission of all acts within the scope of Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide” in accordance with the

³⁹ *Human Rights Watch*, “Developments in Gambia’s Case Against Myanmar at the International Court of Justice.” (February 14, 2022) <https://www.hrw.org/news/2022/02/14/developments-gambias-case-against-myanmar-international-court-justice#whatarethe>

⁴⁰ *Human Rights Watch*, “World Court Rejects Myanmar Objections to Genocide Case.” (July 22, 2022) <https://www.hrw.org/news/2022/07/22/world-court-rejects-myanmar-objections-genocide-case>

⁴¹ Md. Rizwanul Islam, Naimul Muquim, *op. cit.*, 91

⁴² Article 1 of the Genocide Convention

⁴³ ICJ, Application of the Genocide Convention (The Gambia v. Myanmar), (November 11, 2019)

⁴⁴ International Court of Justice (ICJ), The Gambia v. Myanmar, Order on Provisional Measures (January 23, 2020)

ICJ's order.⁴⁵ While the ICJ's jurisdiction is limited to disputes between States and cannot directly impose criminal liability on individuals, the case of *The Gambia v. Myanmar* is nevertheless of historic significance in establishing that any State party to the Genocide Convention may act to enforce its provisions in the face of credible allegations of genocide.⁴⁶

2.2 Statelessness and the Rohingya refugee crisis

The systematic denial of nationality to the Rohingya under Myanmar's 1982 Citizenship Law represents one of the most entrenched legal mechanisms of their exclusion. Although the determination of citizenship falls primarily within the sovereign competence of States, international law intervenes when such denial results in statelessness or constitutes discrimination. Under Article 15 of the Universal Declaration of Human Rights, "everyone has the right to a nationality" and "no one shall be arbitrarily deprived of his nationality",⁴⁷ a principle further echoed in Article 18 of the ASEAN Human Rights Declaration. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) affirms the obligation of States to guarantee equality in the enjoyment of rights "without distinction as to race, colour, or national or ethnic origin".⁴⁸ Although Myanmar has not ratified the ICERD or the International Covenant on Civil and Political Rights, it nonetheless remains bound by non-discrimination obligations under treaties to which it is party, including the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and the Convention on the Rights of Persons with Disabilities.⁴⁹ Each of these prohibits discrimination in the enjoyment of rights based on race, ethnicity, religion, or other status.

International law on statelessness is set out in the 1954 Convention Relating to the Status of Stateless Persons which defines a stateless person as "a person who is not considered as a national by

⁴⁵ United Nations Human Rights Council. Resolution 58/20, Situation of Human Rights in Myanmar, A/HRC/RES/58/20 (April 3, 2025), available from <https://digitallibrary.un.org/record/4082030?v=pdf>

⁴⁶ Camilla Siazon, "The Rohingya Crisis and the Meaning of Genocide." *Council on Foreign Relations* (May 8, 2018) <https://www.cfr.org/interview/rohingya-crisis-and-meaning-genocide>

⁴⁷ Article 15 of the Universal Declaration of Rights (December 10, 1948)

⁴⁸ Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, (December 21, 1965)

⁴⁹ Joint Submission to the UN Universal Periodic Review, 37th Session of the Working Group, "The 1982 Citizenship Law and Right to Citizenship of Minorities and Freedom of Movement," para. 8 <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=8396&file=EnglishTranslation>

any State under the operation of its law”⁵⁰ and prohibits discrimination against stateless persons on the basis of race, religion, or country of origin⁵¹. It also obliges States to provide them with equal rights to freedom of religion, association, employment, and education.⁵² The 1961 Convention on the Reduction of Statelessness reinforces these guarantees by requiring States to grant nationality to persons born in their territory who would otherwise be stateless, and prohibits deprivation of nationality when such deprivation would result in statelessness, especially when motivated by racial, ethnic, religious, or political grounds.⁵³ Under international human rights law, States must ensure the rights of all individuals within their territory or jurisdiction without discrimination, regardless of their nationality or legal status. Even where distinctions between citizens and non-citizens are permitted, they must pursue a legitimate aim and be necessary and proportionate to that aim.⁵⁴

Myanmar’s 1982 Citizenship Law, which facilitates arbitrary and discriminatory deprivation of citizenship through vague and politicized criteria, thus fails to meet these international standards and has rendered the Rohingya effectively stateless under both treaty-based and customary human rights obligations.⁵⁵ While there is no established consensus that deprivation of nationality alone constitutes a violation of *jus cogens* norms, customary international law increasingly recognizes a duty to avoid statelessness and to prevent its discriminatory application.⁵⁶ This normative was further consolidated by the 1995 initiative of the UNHCR Executive Committee, which adopted *the Conclusion on Prevention and Reduction of Statelessness and Protection of Stateless Persons* (commonly referred to as the “Global Mandate”). Through this Conclusion, UNHCR’s role was formally expanded to include the promotion of compliance with the 1954 and 1961 Statelessness Conventions and to support States in their implementation. The initiative emphasized key priorities such as the identification and protection of stateless persons, the provision of technical assistance to States in reforming nationality laws, and the promotion of universal accession to and implementation of the principles enshrined in the two Conventions.⁵⁷

⁵⁰ Article 1 of the Convention Relating to the Status of Stateless Persons, (September 28, 1954, 360 UNTS 117) (“1954 Statelessness Convention”)

⁵¹ Article 2 of the 1954 Statelessness Convention

⁵² Article 4, 15, 17, 22 of the 1954 Convention

⁵³ Article 1, 8(1), 9 of the Convention on the Reduction of Statelessness, (August 30, 1961, 989 UNTS 175) (entered into force December 13, 1975)

⁵⁴ “A Survivor-centered Approach to Justice and Care for the Rohingya.” *Physicians for Human Rights* (December 2020): 2 https://phr.org/wp-content/uploads/2020/10/PHR_LegalBrief_AccesstoJusticefortheRohingya_Dec2020.pdf

⁵⁵ *Ibid*

⁵⁶ Md. Rizwanul Islam, Naimul Muquim, *op. cit* 117

⁵⁷ Shehmin Awan, “The statelessness problem of the Rohingya Muslims.” *Washington University Global Studies Law Review* 19 (2020): 91 https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1711&context=law_globalstudies

The systemic denial of nationality is not merely an isolated violation but operates as a central pillar in what has increasingly been recognized as a broader, institutionalized system of racial segregation and oppression amounting to apartheid. As defined under Article 7(1)(j) of the Rome Statute, apartheid constitutes a crime against humanity “when committed as part of a widespread or systematic attack directed against any civilian population”.⁵⁸ Moreover, the International Convention on the Suppression and Punishment of the Crime of Apartheid defines the policies representing apartheid as “inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them”.⁵⁹ Although Myanmar is not a party to the key international treaties prohibiting and criminalizing apartheid, its prohibition has attained the status of a peremptory norm of general international law (*jus cogens*). As such, the country remains legally bound under customary international law to prevent, prohibit and punish acts that constitute or resemble the crime of apartheid.⁶⁰

By examining the inhumane acts committed against the Rohingya, Amnesty International reached the conclusion that “the crime of apartheid has been, and continues to be, committed in Rakhine State”.⁶¹ These include the deliberate denial of nationality and basic human rights, the systematic restriction of movement, segregation into displacement camps, the arbitrary imposition of living conditions calculated to cause suffering. Rohingya are confined to specific villages or camps under curfews and checkpoints, facing severe limitations on their access to healthcare, education, employment, and humanitarian aid. Movement restrictions have created structural barriers to accessing life-saving medical treatment and food, leading to critical levels of malnutrition, particularly among children. In some hospitals, separate compartments are designated for Muslims, reinforcing segregation even within essential services.⁶² These practices, grounded in decades of state-sanctioned discrimination, mirror the inhuman acts enumerated in Article II of the Apartheid Convention and satisfy the elements of “other inhumane acts” under Article 7(2)(h) of the Rome Statute.

⁵⁸ Article 7(1)(j) of the Rome Statute

⁵⁹ Article 2 of the International Convention on the Suppression and Punishment of the Crime of Apartheid (November 30, 1973 1015 U.N.T.S. 243) (entered into force July 18, 1976) (“Apartheid Convention)

⁶⁰ *Amnesty International*, “Caged without a roof: Apartheid in Myanmar’s Rakhine State.” (November, 2017): 90 <https://www.amnesty.org/en/documents/asa16/7484/2017/en/>

⁶¹ *ivi*, 91

⁶² *ivi*, 92,93

The structural exclusion and systemic repression endured by Rohingya within Myanmar have culminated in one of the most acute and protracted refugee emergencies of the twenty-first century.⁶³ It is in the refugee camps of Bangladesh, particularly Cox’s Bazar, that the consequences of the legal and political injustices are most tragically manifest. Following successive waves of persecution and mass displacement, over one million Rohingya now live in Bangladesh, primarily in the Cox’s Bazar district, forming the world’s largest refugee settlement.⁶⁴ This crisis is characterized not only by the scale of forced migration, but also by the legal limbo and systemic vulnerability in which the Rohingya continue to exist. Although Bangladesh is not a party to the 1951 Convention Relating to the Status of Refugees or its 1967 Protocol, it has hosted Rohingya refugees for decades, beginning with the first major influx in the late 1970s. However, its policy stance has gradually hardened, especially following the exodus of over 700,000 Rohingyas caused by the 2017 “clearance operations” in Myanmar’s Rakhine State.⁶⁵ Even though the Government of Bangladesh allowed entry to those fleeing mass atrocities, it has consistently refused to recognize the Rohingya as refugees, instead classifying them as “illegal migrants”⁶⁶ or “Myanmar nationals”;⁶⁷ as a consequence, three quarters of Rohingya who fled Myanmar lack legal protection under international refugee law.⁶⁸

As of 2017, Bangladesh already hosted more than 250,000 Rohingya. Yet only about 31,000 of them lived in the two officially recognized refugee camps (Nayapara and Kutupalong) where the UNHCR and the World Food Programme are authorized to operate; consequently, the vast majority, accounting for over 90% of the refugee population, resided in unregistered and informal settlements.⁶⁹ Following the mass influx triggered by the 2017 military operations, the numbers rose dramatically, and the Kutupalong–Balukhali “mega-camp” in Cox’s Bazar now houses over 600,000 Rohingya on a mere 13 square kilometers of land, making it one of the most densely populated refugee areas globally. Living conditions are extremely precarious: makeshift shelters made of bamboo and tarpaulin provide inadequate protection against the heavy monsoon rains, flooding, and cyclones that

⁶³ United Nations High Commissioner for Refugees (UNHCR), Rohingya Emergency (updated April 2025)

<https://www.unhcr.org/emergencies/rohingya-emergency>

⁶⁴ Médecins Sans Frontières (MSF), Rohingya Refugee Crisis (updated August 21, 2024)

<https://www.doctorswithoutborders.org/what-we-do/focus/rohingya-refugee-crisis>

⁶⁵ Abhishek Bhatia, Ayesha Mahmud et al., “The Rohingya in Cox’s Bazar: When the Stateless Seek HHR_final_logo_alone.indd 1 10/19/15 10:53 AM Refuge.” *Health and Human Rights Journal* (December 20, 2018):

106 <https://pmc.ncbi.nlm.nih.gov/articles/PMC6293360/pdf/hhr-20-105.pdf>

⁶⁶ *ivi*, 107

⁶⁷ Jacques Leider, *op. cit.*, 20

⁶⁸ Syed S Mahmood, Emily Wroe *et al.*, *op. cit.*, 1844

⁶⁹ *Ibid*

regularly afflict the Bay of Bengal coast. Most camps lack adequate sanitation, access to potable water, and essential health services.⁷⁰ 98% of residents lack access to separate toilet facilities, and medical services fall dramatically below international standards, particularly for women, who often must wait long periods to access care.⁷¹ Save the Children and other humanitarian organizations have noted that more than three out of four Rohingya children are not enrolled in any form of schooling,⁷² while women and children together account for 75% of the entire refugee population. Notably, UNHCR has underscored the aggravated vulnerability of women and children, who are at heightened risk of gender-based violence, human trafficking, and exploitation.⁷³

Although Bangladesh is not a party to the 1951 Convention, international law nonetheless imposes relevant obligations. While the Convention guarantees that “[t]he Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin”,⁷⁴ its binding force does not extend to non-signatory States. Nevertheless, under Article 56 of the Charter of the United Nations, all UN Member States are obligated to cooperate with the United Nations and its specialized agencies, including UNHCR.⁷⁵ This obligation arguably extends to the duty to uphold the core principles of refugee protection, most notably the prohibition of *refoulement*, even in the absence of treaty ratification, reflecting the widely accepted understanding that certain fundamental humanitarian norms constitute *erga omnes* obligations binding on all States.⁷⁶ Similarly, under Common Article 3 of the 1949 Geneva Conventions,⁷⁷ which applies to non-international armed conflicts, Myanmar bears obligations to treat wounded and displaced civilians, in this case the Rohingya, humanely and without discrimination, including in the provision of medical care and humanitarian access.⁷⁸

In this regard, one of the most controversial aspects of Bangladesh’s response has been the conclusion of bilateral repatriation agreements with Myanmar, which have repeatedly failed to meet the legal criteria for safe, voluntary, and dignified return. The bilateral agreement concluded in 1992

⁷⁰ Ishrat Hossain, “After Humanitarianism: Bangladesh’s Evolving Rohingya Policy.” *GIGA Focus* (October, 2020): 3 https://pure.giga-hamburg.de/ws/files/21817212/gf_asien_2006.pdf

⁷¹ Ramat Ullah, Md Mostafa Faisal, “Challenges in A Host Country: A Study on Rohingya Refugees in Bangladesh.” *Middle East Journal of Refugee Studies* (2022): 14 <https://dergipark.org.tr/en/download/article-file/2181252>

⁷² Save the Children, Rohingya Crisis <https://www.savethechildren.net/what-we-do/emergencies/rohingya-crisis>

⁷³ UNHCR, Rohingya Emergency

⁷⁴ Article 3 of the Convention relating to the Status of Refugees, (July 28, 1951, 189 UNTS 137) (entered into force April 22, 1954) (“1951 Refugee Convention”)

⁷⁵ Article 56 of the Charter of the United Nations (June 26, 1945, 1 UNTS XVI) (entered into force October 24, 1945)

⁷⁶ Shehmin Awan, *op. cit.*, 88

⁷⁷ Geneva Conventions of 12 August 1949, Common Article 3, 75 UNTS 31 (GC I), 85 UNTS 85 (GC II), 112 UNTS 331 (GC III), and 75 UNTS 287 (GC IV)

⁷⁸ Physicians for Human Rights, *op. cit.*, 3

between Bangladesh and Myanmar led to the repatriation of over 235,000 Rohingya between 1992 and 2005, many of whom were returned involuntarily;⁷⁹ this process constituted a clear violation of the principle of *non-refoulement*, as enshrined in the 1951 Refugee Convention and recognized under customary international law. A new repatriation agreement signed in November 2017 and finalized in January 2018 envisioned the return of 1,500 refugees per week, aiming to repatriate the entire population of 781,000 Rohingya within two years.⁸⁰ However, the agreement lacked necessary safeguards and was heavily criticized by the UN's Special Rapporteur on Myanmar who stated that the conditions in northern Rakhine State were unsuitable for safe return. This concern was echoed by the United Nations General Assembly, which urged Myanmar to “continue to work with Bangladesh, in line with the the bilateral instruments on repatriation signed by Bangladesh and Myanmar, in order to expedite the creation of a conducive environment for the voluntary, safe, dignified and sustainable return” of the Rohingya, with the meaningful involvement of the international community, including the UN and its agencies.⁸¹ Subsequent repatriation attempts, notably in November 2018 and again in August 2019, failed when thousands of Rohingya refugees refused to return, citing the ongoing discriminatory legal framework in Myanmar and credible risks of renewed persecution.⁸²

Despite the urgency of humanitarian needs, the Bangladeshi government continues to maintain restrictive policies regarding Rohingya mobility, employment, and education. Refugees are banned from working outside the camps and face severe limitations on their freedom of movement, resulting in widespread poverty and dependency on humanitarian aid. The lack of legal status further undermines any potential for local integration or socioeconomic development.⁸³ In the absence of long-term durable solutions, the Rohingya remain a stateless and marginalized population, subject to the volatility of host-community tensions and the diminishing availability of international aid.⁸⁴

The situation is further complicated by political and security considerations. With over 130 NGOs operating in Cox's Bazar, including 69 international organizations and 12 UN agencies, the Bangladeshi government has grown increasingly concerned about sovereignty, camp governance, and potential radicalization within refugee populations. Intercommunal tensions, gang violence, and allegations of criminal activity, including drug trafficking, have increased the securitization of the

⁷⁹ Syed S Mahmood, Emily Wroe *et al.*, *op. cit.*, 1844

⁸⁰ Shehmin Awan, *op. cit.*, 96

⁸¹ United Nations General Assembly (UNGA) resolution 75/238, Situation of human rights of Rohingya Muslims and other minorities in Myanmar, A/RES/75/238 (January 4, 2021), available from <https://docs.un.org/en/A/RES/75/238>

⁸² Ishrat Hossain, *op. cit.*, 3

⁸³ Ramat Ullah, Md Mostafa Faisal, *op. cit.*, 14

⁸⁴ Ishrat Hossain, *op. cit.*, 3

camps. Reports indicate that over 200 Rohingya have been killed in clashes with law enforcement or in internal disputes since 2020.⁸⁵ In response, Bangladesh has pursued a strategy of dispersal and control, most notably through the controversial plan to relocate approximately one-tenth of the refugee population to Bhashan Char, a remote island defined as “Floating Island” in the Bay of Bengal.⁸⁶ Although the government claims that the island offers improved infrastructure and livelihood opportunities, multiple UN agencies and human rights groups have raised serious concerns regarding its habitability, accessibility, and voluntary relocation. Rohingya leaders have described Bhashan Char as “a prison,” citing the lack of consultation and the absence of legal safeguards.⁸⁷

As underscored by Adama Dieng, then United Nations Special Adviser on the Prevention of Genocide, following his visit to Bangladesh in March 2018, “what I have heard and witnessed in Cox’s Bazar is a human tragedy with the fingerprints of the Myanmar government and of the international community”.⁸⁸ His words capture the gravity of the humanitarian condition and the broader responsibility that transcends national borders, pointing directly to the failures of the international community.

2.3 The international community’s responses and limitations

Since gaining independence in 1948, Myanmar has been governed by successive regimes marked by recurring cycles of conflict, authoritarian repression, and human rights violations. Throughout these decades of instability, the international community has consistently struggled to formulate and implement responses capable of producing meaningful or lasting outcomes. Despite periodic interventions by both global and regional actors, the structural causes of Myanmar’s internal conflicts have remained largely unaddressed. As the state continues to fracture under the weight of deep-rooted ethnic divisions, the international community has yet to articulate a cohesive and effective strategy capable of fostering peace, ensuring accountability, and promoting inclusive nation-building.⁸⁹ Within this protracted context of crisis, criticism has increasingly been directed at the very institutions

⁸⁵ Ibid

⁸⁶ *ivi*, 4

⁸⁷ *ivi*, 7

⁸⁸ Adama Dieng, Statement on Rohingya Refugees in Bangladesh, (March 12, 2018)

⁸⁹ Martin Smith, Jason Gelbort, “The Nationwide Ceasefire Agreement in Myanmar: Promoting Ethnic Peace or Strengthening State Control?.” Transnational Institute (April, 2023): 85

https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/2023-04-20-TNI_The-Nationwide-Ceasefire-Agreement-in-Myanmar-en.pdf

and actors entrusted with the protection of human rights and the preservation of international norms. As expressed by the United Nations Special Rapporteur on the situation of human rights in Myanmar, Tom Andrews, “but just when many in Myanmar wondered if conditions could get any *worse*, they are now becoming *exponentially worse*. And this is NOT because of the military junta, it is because of us, the international community”.⁹⁰

The United Nations has maintained a presence in Myanmar since the 1950s. Even during the most repressive phases of military rule, the Organization continued to operate, albeit under constrained mandates. Between 1993 and 2012, its activities were primarily confined to humanitarian assistance, often carried out directly with local communities. During the same period, Myanmar consistently remained on the agenda of the UN General Assembly (UNGA) from 1993 onwards, and of the Commission on Human Rights (now the Human Rights Council) since 1992. Two crucial moments, however, marked a more pronounced UN presence in the country: the first followed the devastating impact of Cyclone Nargis in 2008, which triggered large-scale humanitarian response, particularly through the Office for the Coordination of Humanitarian Affairs and the World Food Programme. The second occurred during Myanmar’s tentative political opening beginning in 2010, which led to a significant expansion of development cooperation and, by 2013, the establishment of a comprehensive UN country programme. In fact, by 2014, the United Nations Country Team comprised eighteen agencies, reflecting the growing complexity of international involvement.⁹¹ This growing engagement was further reinforced by Myanmar’s gradual economic liberalization and its rich endowment of natural resources, which attracted increased levels of foreign investment.⁹²

Among the various human rights concerns raised in Myanmar, the entrenched discrimination against the Rohingya Muslim population in Rakhine State emerged as a particularly urgent priority. The gravity of the situation drew sustained attention from UN bodies, numerous member states, civil society organizations, and international media.⁹³ Following the violent military crackdown of August 2017, the General Assembly once again placed the situation of human rights in Myanmar at the

⁹⁰ Statement by UN Special Rapporteur on the situation of Human Rights in Myanmar Tom Andrews. Office of the High Commissioner for Human Rights, Geneva Press Conference (March 17, 2025) <https://www.ohchr.org/sites/default/files/documents/countries/myanmar/statements/statement-sr-myanmar-17-03-2025.pdf>

⁹¹ Gert Rosenthal, “A BRIEF AND INDEPENDENT INQUIRY INTO THE INVOLVEMENT OF THE UNITED NATIONS IN MYANMAR FROM 2010 TO 2018.” *United Nations Digital Library* (May 29, 2019): 10 <https://digitallibrary.un.org/record/3809543?v=pdf>

⁹² *ivi*, 15

⁹³ Jatswan S. Sidhu, Syeeda Naushin Parnini, “International Responses to Human Rights Violations in Myanmar: The Case of the Rohingya.” *Journal of International Studies* 7 (January 6, 2020): 124 <https://e-journal.uum.edu.my/index.php/jis/article/view/7920/966>

forefront of its agenda, thus elevating the Rohingya crisis to a matter of pressing international concern. It is worth recalling, however, that the UN's formal engagement with Myanmar's human rights situation dates back to 1991, when the UNGA adopted its first resolution urging the military junta to improve its human rights record. Since then, the Assembly has continued to issue annual resolutions calling for remedial action. In parallel, in March 1992 the Commission on Human Rights established the mandate of a Special Rapporteur on the situation of human rights in Myanmar. Tasked with monitoring developments and reporting directly to the UN, the Special Rapporteur has since become a central figure in documenting abuses and promoting accountability.⁹⁴

Building upon this historical overview, the following section will turn to a more critical examination of the international community's engagement with the Rohingya crisis. The analysis will focus on structural weaknesses, political obstacles, and institutional deficiencies that have compromised the effectiveness of international responses. These limitations stem not only from internal shortcomings of the United Nations system itself, but also from the broader geopolitical dynamics that have conditioned and, at times, constrained its interventions in Myanmar.

A first difficulty emerges from Myanmar's domestic political configuration. The hybrid system of governance established after 2010, comprised of both military and civilian elements, created an opaque institutional framework in which diverging policy positions frequently produced internal tensions. For the United Nations and its agencies, this meant navigating a fragmented landscape, at times forced to engage simultaneously with two distinct authorities whose interests were not aligned. Such circumstances risked exacerbating internal divisions and inevitably reduced the coherence and effectiveness of international engagement. This institutional challenge was compounded by Myanmar's enduring nationalist sentiment and its historical mistrust of external actors, rooted in the colonial legacy. The resulting "trust deficit" offered national authorities tools to obstruct or manipulate the activities of international organizations, whether by restricting access, imposing bureaucratic obstacles, or harassing personnel on the ground.⁹⁵

The international community's response was further complicated by the narratives employed by the Myanmar authorities themselves. Following the ARSA attacks, the government indiscriminately labeled Rohingya population as a terrorist threat, thereby justifying disproportionate military retaliation. This narrative not only violated fundamental rights such as the right to life and

⁹⁴ *ivi*, 130

⁹⁵ Gert Rosenthal, *op. cit.*, 14

due process, but also delegitimized international oversight, presenting state-led persecution as a matter of counterterrorism.⁹⁶

These domestic dynamics intersect with broader transformations within the international system. In recent years, the decline of multilateralism and the increasing politicization of human rights have eroded the UN's authority. The Organization has been accused of redirecting its focus towards less divisive themes, such as climate change and sustainable development, often at the expense of more politically sensitive human rights concerns. As former UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein observed, "to [run for another term], in the current geopolitical context, might involve bending a knee in supplication... lessening the independence and integrity of my voice."⁹⁷

Global politics has further exacerbated these limitations. The persistent divide between Western states and Eastern powers, notably China and Russia, has repeatedly hindered consensus on urgent crises. Such divisions are most visible within the UN Security Council, where strategic interests have consistently taken precedence over collective responsibility.⁹⁸ In the case of Myanmar, the use or threat of vetoes has blocked decisive action, leading to a paralysis that raises fundamental questions about the Council's credibility in upholding international peace and security. In situations such as Myanmar, the Council's passivity has enabled ongoing atrocities to unfold with impunity.

Financial and operational constraints add another layer of difficulty. The UN's peacekeeping budget, which had risen to \$3.2 billion by 2010, is frequently undermined by the irregular payment of dues, with more than half of Member States delaying or withholding their contributions.⁹⁹ The consequences of this fiscal unpredictability are not abstract. Special Rapporteur Tom Andrews recently warned that "the World Food Programme announced that one million people will be cut off from life-saving food assistance in Myanmar because of a lack of funding".¹⁰⁰

At the procedural level, the UN's mechanisms for addressing human rights violations are notoriously slow and complex. The 1503 procedure, for example, is a multi-stage process beginning

⁹⁶ Md Syful Islam, Md Muhibbullah *et al.*, "Challenges in protecting Rohingya refugees: Pathways for international intervention." *International Journal of Social Sciences and Education Research* 10 (March 2024): 18

<https://dergipark.org.tr/en/download/article-file/3739194>

⁹⁷ Damian Lilly, "The UN's Response to the Human Rights Crisis after the Coup in Myanmar: Destined to Fail?" *International Peace Institute* (June 2021): 8 <https://www.ipinst.org/wp-content/uploads/2021/06/The-UNs-Response-Coup-in-Myanmar-Final.pdf>

⁹⁸ Md Syful Islam, Md Muhibbullah *et al.*, *op. cit.*, 18

⁹⁹ *ivi*, 17

¹⁰⁰ Statement on Myanmar, OHCHR (March 17, 2025)

with the reception of a complaint in Geneva, followed by a 12-week response window for the implicated state. The case is then examined by the Working Group on Communications and, if deemed serious, escalated to the Working Group on Situations. Only in rare cases, when the violations are considered substantial, is the issue eventually brought before the Human Rights Council in a confidential session held once a year. Such procedures are ill-suited to the urgency and scale of atrocities like those in Myanmar and underscore the UN's lack of a standing peacekeeping force capable of rapid deployment.¹⁰¹

Finally, the normative framework of international law itself is characterized by structural limitations. Resolutions adopted by bodies such as the General Assembly or the Human Rights Council often constitute “soft law”, lacking binding legal force. While these instruments can influence the development of customary international law through *opinio juris*, their enforcement mechanisms remain weak. Compliance remains voluntary, and states retain the discretion to withdraw from treaties, exploit legal gaps, or ignore compliance. In the case of Myanmar, this weakness has been particularly evident, as repeated condemnations have failed to translate into tangible accountability or deterrence.¹⁰²

2.3.1 The United Nations and the issue of resolution effectiveness

The United Nations Security Council's engagement with Myanmar, especially in relation to the Rohingya crisis, stands as one of the clearest illustrations of the Council's structural paralysis and political dysfunction. Although the situation in Myanmar was formally placed on its agenda in 2006, the Council has never adopted a binding resolution on Myanmar,¹⁰³ largely because it has refrained from invoking Chapter VII of the UN Charter, notwithstanding clear evidence that the crisis constituted a threat to international peace and security. Chapter VII expressly empowers the Council to impose binding measures, including sanctions, arms embargoes, or the establishment of tribunals,¹⁰⁴ yet none of these tools were employed. Instead, the Council confined itself to weak political language, thereby abdicating its legal mandate under the Charter.

¹⁰¹ Md Syful Islam, Md Muhibbullah *et al.*, *op. cit.*, 18

¹⁰² *Ibid*

¹⁰³ Damian Lilly, *op. cit.*, 9

¹⁰⁴ For Chapter VII of the United Nations Charter, see <https://www.un.org/en/about-us/un-charter/chapter-7>

In particular, the most acute obstruction has consistently come from China and Russia. During the Council's meeting of 28 September 2017, Myanmar's National Security Advisor, U Thaung Tan, attempted to deny the scale of atrocities, asserting that the international community had been "emotionally charged".¹⁰⁵ Chinese diplomats defended Myanmar by making clear in private consultations that they were prepared to veto any binding resolution on the country. Beijing maintained that ASEAN and the majority of Asia-Pacific countries did not regard the crisis as a threat to regional peace and security, thereby justifying its opposition to the Security Council action on the grounds that primary responsibility should rest with regional organizations.¹⁰⁶

A Presidential Statement was adopted unanimously on 6 November 2017, where the UNSC stressed "the primary responsibility of the Government of Myanmar to protect its population including through respect for the rule of law and the respect, promotion and protection of human rights".¹⁰⁷ However, unlike a resolution, a Presidential Statement is not legally binding under the Charter. It is a political declaration reflecting what has been described as the "calculus of lowest common denominator diplomacy" among Council members.¹⁰⁸ By stopping at this level of action and refusing to escalate to a resolution, the Council sent a clear message that the protection of civilians and the prevention of mass atrocities in Myanmar would remain subordinated to strategic interests. As Nartey has observed, the outcome reveals a deeper structural failure: the institutional framework created to safeguard international human rights is not fit for its intended purpose and requires fundamental revalidation. The very organ entrusted with the maintenance of peace and the protection of human dignity proved unable to prevent mass atrocity crimes; in Nartey's words, the killing of the Rohingya "should not have happened under the watch of the UNSC".¹⁰⁹

The veto power, enshrined in Article 27 of the UN Charter, was conceived at San Francisco in 1945 as a safeguard to ensure unity among the great powers. Yet, its abuse in contemporary crises has undermined the very object and purpose of the Council's mandate.

¹⁰⁵ Simon Adams, "If Not Now, When?: The Responsibility to Protect, the Fate of the Rohingya, and the Future of Human Rights." *Global Centre for the Responsibility to Protect* (January 20, 2019): 10

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3319491

¹⁰⁶ Asiye Gün Günes Güllal, Taylan Seyirci *et al.*, "Humanitarian crisis in Myanmar: Another failure for 'responsibility to protect'." *Journal of Public Affairs* 22 (December 2022): 3

https://onlinelibrary.wiley.com/doi/epdf/10.1002/pa.2778?saml_referrer

¹⁰⁷ United Nations Security Council (UNSC), Statement by the President of the Security Council, S/PRST/2017/22 (November 6, 2017), available from <https://docs.un.org/en/S/PRST/2017/22>

¹⁰⁸ Simon Adams, *op. cit.*, 10

¹⁰⁹ Emmanuel K Nartey, "The Rohingya Crisis: A Critical Analysis of the United Nations Security Council and International Human Rights Law." *Athens Journal of Law* 8 (October 2022): 464
<https://www.athensjournals.gr/law/2022-8-4-6-Nartey.pdf>

Historically, the largest share of vetoes has been cast by Russia and by the United States, with China in recent years relying on it with growing frequency.¹¹⁰ In the case of Myanmar, both Moscow and Beijing have repeatedly threatened or employed the veto to block any reference to sanctions, arms embargoes, or referrals to the International Criminal Court, thus paralyzing the Council at moments when action was most urgent. The “institutional dogmatism” created by such vetoes has not only derailed the UN’s ability to protect Rohingya but has also eroded its credibility. In his critique to the UNSC, Nartey further contends that the body is “polluted with individual agendas and less focused on human rights protection and upholding the principles of equality and justice”.¹¹¹ Accordingly, he argues that, paradoxically, in cases of mass atrocity crimes, it may be necessary to restrict or limit the Council’s decision-making authority.¹¹²

The broader implications of veto abuse have long been recognized. In 1950, the General Assembly adopted the Uniting for Peace resolution as a corrective mechanism to bypass Security Council paralysis. The International Court of Justice, in its *Certain Expenses* advisory opinion of 1962,¹¹³ affirmed that while the Security Council holds the primary responsibility for peace and security, its authority is not exclusive, and the General Assembly may act in parallel.¹¹⁴ Yet, in practice, the Assembly’s resolutions are recommendatory and not binding. In the case of Myanmar, although the Assembly consistently adopted resolutions condemning human rights abuses, these could not compel compliance, leaving the Council’s veto-induced inaction determinative.

Attention has also turned to the potential role of the Secretary-General under Article 99 of the Charter,¹¹⁵ which authorizes the office to bring to the Council’s attention any matter that may threaten the maintenance of international peace and security and thereby “push for a robust preventive action on the part of the Security Council”.¹¹⁶ Many observers have argued that Myanmar constituted precisely such a case. Nevertheless, successive Secretaries-General have refrained from formally invoking Article 99, fearing political backlash from permanent members and questioning the utility of such a step in the face of certain vetoes. In Myanmar’s case, António Guterres limited himself to

¹¹⁰ Ved P. Nanda, “Power Shift: The UN Security Council Has Lost Its Clout.” *Case Western Reserve Journal of International Law* 55 (2023): 294,295

<https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=2655&context=jil>

¹¹¹ Emmanuel K Nartey, *op. cit.*, 463

¹¹² *ivi*, 464

¹¹³ International Court of Justice, *Certain Expenses of the United Nations* (Article 17, paragraph 2, of the Charter), Advisory Opinion of 20 July 1962, I.C.J. Reports 1962, 151.

¹¹⁴ Ved P. Nanda, *op. cit.*, 298

¹¹⁵ Article 99 of the UN Charter: “The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security”.

¹¹⁶ Gert Rosenthal, *op. cit.*, 18

addressing the Council in a letter dated 2 September 2017, in which he stressed that “the international community has a responsibility to undertake concerted efforts to prevent further escalation of the crisis” in Rakhine State and urged the Security Council “to press for restraint and calm to avoid a humanitarian catastrophe, full respect for human rights and international humanitarian law”.¹¹⁷ Yet, the Council delayed two weeks before convening a formal meeting and then required thirty-eight additional days merely to issue the November 2017 Presidential Statement already discussed above.¹¹⁸

The implications go far beyond Myanmar. As Lilly has observed, “consensus within the Security Council is probably at its lowest point since the Cold War”.¹¹⁹ The Council’s inability to act decisively, particularly when veto-wielding members are allies of the countries committing atrocities, demonstrates that its procedures and voting system are no longer fit for addressing mass atrocity crimes. In the specific case of Myanmar, the consequences were catastrophic. As Adams has explained, “history will definitely record that while over 700,000 Rohingya were being systematically displaced from Myanmar over a four-month period at the end of 2017 [...] the Security Council failed to pass a single resolution to halt these atrocities or to hold the perpetrators accountable”.¹²⁰

The inability of the Security Council to adopt any binding resolution on Myanmar shifted the spotlight towards other UN organs, particularly the General Assembly and the Human Rights Council (HRC). Yet, while both bodies have demonstrated greater activism than the Security Council, their interventions remain constrained by their institutional mandates, the non-binding character of their decisions, and the persistent political divisions among Member States.

UNGA engagement has been especially significant in circumstances where the Security Council failed to exercise its primary responsibility for the maintenance of international peace and security. Indeed, calls have been made for the Assembly to convene an emergency special session under the framework of the landmark Uniting for Peace resolution which allowed the Assembly to act when the Council was paralyzed by lack of unanimity.¹²¹ While some commentators argue that this mechanism is triggered only by a formal exercise of veto, others maintain that the mere inability

¹¹⁷ United Nations Security Council (UNSC), Letter dated 2 September 2017 from the Secretary-General addressed to the President of the Security Council, S/2017/753 (September 2, 2017), available from <https://digitallibrary.un.org/record/1302531?v=pdf>

¹¹⁸ Gert Rosenthal, *op. cit.*, 18

¹¹⁹ Damian Lilly, *op. cit.*, 10

¹²⁰ Simon Adams, *op. cit.*, 17

¹²¹ Damian Lilly, *op. cit.*, 10

of the Council to negotiate substantive action due to divisions among permanent members suffices to invoke GA competence. In the Myanmar case, the persistent unwillingness of the Sino-Russian bloc to consider sanctions, arms embargoes, or referrals to accountability mechanisms clearly exemplifies such a standstill. Although the UNGA, acting under the Uniting for Peace framework, may recommend collective measures deemed necessary to maintain or restore international peace and security, its authority remains inherently restricted: its recommendations are non-binding and it cannot adopt coercive or enforcement measures, which remain the prerogative of the Council.¹²² Moreover, Article 12 of the UN Charter provides that the GA shall not exercise its functions on matters that the Security Council is “exercising” at the same time, unless requested to do so by the Council.¹²³ Nonetheless, the International Court of Justice has clarified that the GA and the Council may in practice address the same situation in parallel, as long as their functions are complementary rather than overlapping.¹²⁴ This interpretative flexibility has allowed the GA to maintain a degree of engagement on Myanmar despite the Council’s inertia.

Over the years, the General Assembly has adopted a series of resolutions condemning the conduct of Myanmar’s authorities and calling for concrete measures. Resolution A/RES/65/241, adopted in 2011, explicitly condemned “the continuing discrimination, human rights violations, violence, displacement and economic deprivation” affecting the Rohingya ethnic minority in Northern Rakhine State.¹²⁵ At the height of the Rohingya exodus in December 2017, the GA adopted resolution A/RES/72/248 calling for the cessation of military operations against Rohingya, accountability for perpetrators, unhindered humanitarian access, the safe and voluntary return of displaced persons, and the restoration of citizenship rights.¹²⁶ The resolution was strongly opposed by Myanmar’s representative, who led other dissenting delegations (including Belarus, Cambodia, China, the Lao People’s Democratic Republic, the Philippines, the Russian Federation, Syria, Viet Nam, and Zimbabwe) arguing that the resolution was politically motivated and designed to exert undue pressure on the country.¹²⁷

¹²² Malina Greta Meret Gepp, “The Road Not Taken: Failure to Protect from Atrocity Crimes in Myanmar.” *Groningen Journal of International Law* 9 (September 28, 2021): 93 <https://doi.org/10.21827/GroJIL.9.1.78-100>

¹²³ Article 12 of the UN Charter: “While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests”.

¹²⁴ ICJ, *Certain Expenses of the United Nations*, Advisory Opinion, 151

¹²⁵ United Nations General Assembly (UNGA), resolution 64/241, *Situation of human rights of Rohingya in Myanmar*, A/RES/65/241 (March 21, 2011), available from <https://docs.un.org/en/A/RES/65/241>

¹²⁶ United Nations General Assembly (UNGA), resolution 72/248, *Situation of human rights in Myanmar*, A/RES/72/248 (January 23, 2018), available from <https://docs.un.org/en/A/RES/72/248>

¹²⁷ Gert Rosenthal, *op. cit.*, 10

A further significant step was taken with the adoption of resolution A/RES/74/246 on 27 December 2019, in which the General Assembly intensified its scrutiny of Myanmar's conduct. The text not only condemned in the strongest terms the continuing abuses against the Rohingya but also set out detailed obligations that the Government of Myanmar was urged to undertake. In particular, the Assembly reiterated its urgent call upon the authorities to combat the incitement of hatred against Rohingya Muslims, to dismantle the camps for internally displaced persons in Rakhine State, and to eliminate statelessness affecting ethnic and religious minorities by reviewing the 1982 Citizenship Law, which has led to deprivation of human rights. The resolution drew greater attention to the regional implications of Myanmar's conduct by stressing the precarious humanitarian situation of Rohingya refugees abroad. In this respect, the Assembly "reiterates its deep concern at the continued plight of Rohingya Muslim refugees and forcibly displaced persons living in Bangladesh and in other countries",¹²⁸ thereby acknowledging the cross-border dimension of the crisis and its destabilizing potential for international peace and security.

Alongside the General Assembly, the Human Rights Council has played an even more proactive role in addressing the crisis in Myanmar. Operating under majority voting rules, the Council has consistently adopted resolutions referring explicitly to the human rights situation of the Rohingya Muslims, highlighting the deteriorating situation in Rakhine State.¹²⁹ Following the escalation of violence in 2017, the HRC established the Independent International Fact-Finding Mission on Myanmar; in direct response to this, the Council adopted resolution 39/2 on 27 September 2018, welcoming the Mission's work, deploring Myanmar's refusal to cooperate, and urging authorities to grant unrestricted access.¹³⁰ While devoid of binding legal effect, this resolution played a pivotal role in consolidating the Mission's conclusions within the UN framework and thereby strengthening international pressure on Myanmar.¹³¹ Building on this momentum, the Council endorsed the European Union and Organisation of Islamic Cooperation's joint proposal to establish the Independent Investigative Mechanism for Myanmar (IIMM). This mechanism was mandated to collect and analyze evidence of the most serious international crimes committed in Myanmar since 2011, with the aim of facilitating future prosecutions before competent courts. Notably, China, along

¹²⁸ United Nations General Assembly (UNGA), resolution 74/246, Situation of human rights of Rohingya Muslims and other minorities in Myanmar, A/RES/74/246 (December 27, 2019), available from <https://docs.un.org/en/A/RES/74/246>

¹²⁹ United Nations Human Rights Council, Resolution on the Situation of Human Rights of Rohingya Muslims and Other Minorities in Myanmar, A/HRC/RES/29/21, 22 July 2015; A/HRC/RES/S-27/1, 5 December 2017

¹³⁰ United Nations Human Rights Council, Resolution 39/2, Situation of human rights of Rohingya Muslims and other minorities in Myanmar, A/HRC/RES/39/2 (September 27, 2018), available from <https://documents.un.org/doc/undoc/gen/g18/293/69/pdf/g1829369.pdf>

¹³¹ Gert Rosenthal, *op. cit.*, 19

with Burundi and the Philippines, voted against the resolution, reaffirming its diplomatic support for Myanmar's authorities.¹³²

The work of the Human Rights Council has been complemented by that of the High Commissioner for Human Rights. In his report of March 2025, Volker Türk underscored that “displaced people in Rakhine State are almost completely cut off from international assistance”¹³³ and warned that the humanitarian crisis was reaching unprecedented proportions. In November 2024, the United Nations Development Programme cautioned that Rakhine State “could face acute famine imminently, leaving over two million people at risk of starvation”,¹³⁴ while the World Food Programme announced drastic funding shortfalls, reducing monthly food rations for Rohingya refugees in Bangladesh from USD 12.50 to USD 6 per person.¹³⁵ Beyond this acute humanitarian emergency, the High Commissioner further noted that “many governments have failed to meet their human rights obligations to Rohingya refugees arriving on their shores and at their borders”,¹³⁶ thereby linking the crisis in Myanmar to the broader failure of the international community to uphold binding obligations under international law.

These findings were consolidated by the Council's more recent action in resolution A/HRC/RES/58/20, which urged Myanmar, in accordance with the International Court of Justice's order of 23 January 2020, to adopt all measures within its power to prevent acts falling under Article II of the Genocide Convention.¹³⁷ While this demonstrated the Council's effort to anchor its resolutions in binding international law, the absence of enforcement mechanisms continues to severely limit their practical effect.

Finally, the HRC has also served as a crucial platform for advocacy, especially through its interactive dialogues. During the 58th session in March 2025, the European Union stressed the need to strengthen accountability mechanisms, affirming that “it is crucial that accountability is ensured for all human rights violations and abuses committed, mainly by the Myanmar military”.¹³⁸ In the

¹³² Asiye Gün Günes Gülal, Taylan Seyirci *et al.*, *op. cit.*, 5

¹³³ United Nations Human Rights Council, Situation of human rights in Myanmar. Report of the United Nations High Commissioner for Human Rights, A/HRC/58/64, para 37 (March 10, 2025), available from <https://docs.un.org/en/A/HRC/58/64>

¹³⁴ UNHRC, A/HRC/58/64, para 38

¹³⁵ UNHRC, A/HRC/58/64, para 42

¹³⁶ UNHRC, A/HRC/58/64, para 44

¹³⁷ UNHRC, Resolution 58/20, (April 2, 2025)

¹³⁸ United Nations Human Rights Council, EU Statement at the Interactive dialogue with the Special Rapporteur on the situation of human rights in Myanmar (March 19, 2025), available from https://www.eeas.europa.eu/delegations/un-geneva/eu-statement-hrc58-interactive-dialogue-special-rapporteur-situation-human-rights-myanmar_en

same session, the Special Rapporteur Tom Andrews delivered an appeal to the Council and its Member States, urging them to speak out against what he described as an unfolding disaster. He further emphasized the institutional responsibility of the HRC itself, warning: “It is time to speak, to act; if not the Human Rights Council, who? If not now, when?”¹³⁹

Despite these advances, both the General Assembly and the Human Rights Council face structural limitations. Their resolutions and mechanisms, while politically significant and legally relevant in terms of evidence-gathering and norm-setting, remain non-binding and dependent on the cooperation of Member States. Myanmar, often backed by China and Russia, has persistently rejected GA and HRC resolutions, dismissing them as interference in domestic affairs.¹⁴⁰ In this context, its representatives have claimed that such initiatives exert “undue political pressure”¹⁴¹ on the country, while reiterating the narrative that the crisis was driven by transborder migration and poverty rather than state-led persecution.¹⁴² In practice, therefore, the impact of these bodies has been largely limited to generating international pressure and sustaining global attention on the plight of the Rohingya, without securing compliance from the perpetrators.

Ultimately, the involvement of the General Assembly and the Human Rights Council demonstrates both the potential and the limits of alternative UN organs in situations of Security Council paralysis. While they have kept the Myanmar crisis on the international agenda and developed mechanisms such as the IIMM that may prove vital for future accountability processes, their inability to compel compliance highlights the structural gap in the UN system when permanent members of the Security Council prioritize geopolitical alliances over the protection of fundamental human rights.

2.3.2 The issue of international justice and accountability mechanisms

Ensuring justice and accountability for the Rohingya has emerged as a critical concern within the international community. As the evidentiary threshold for the commission of genocide and other grave breaches of international law has been met, the obligation to prosecute such crimes has evolved

¹³⁹ United Nations Human Rights Council, ID with Special Rapporteur on the situation of human rights in Myanmar, UN Web TV (March 20, 2025), available from <https://webtv.un.org/en/asset/k1f/k1fy1r32a6>

¹⁴⁰ Gert Rosenthal, *op. cit.*, 17

¹⁴¹ Ved P. Nanda, *op. cit.*, 306

¹⁴² Asiye Gün Günes Güllal, Taylan Seyirci *et al.*, *op. cit.*, 6

into a binding legal duty. In accordance with the 1948 Genocide Convention, to which Myanmar is a State party, all States are under an *erga omnes* obligation to prevent and punish genocide. This duty is neither discretionary nor contingent on territorial jurisdiction; rather, it arises whenever such crimes occur and mandates the adoption of effective measures, including recourse to international adjudicatory mechanisms.¹⁴³

However, the prospect of accountability through Myanmar's domestic legal system remains effectively precluded. As Sarver observed, "until structural barriers to accountability in Myanmar are confronted, justice is not available to the Rohingya".¹⁴⁴ Indeed, the country's judiciary lacks the necessary legislative framework to adjudicate international crimes such as genocide and crimes against humanity. Structural barriers, most notably the constitutional immunities afforded to the military under the 2008 Constitution and the entrenched lack of civilian oversight, have rendered the country's legal system incompatible with the pursuit of accountability.¹⁴⁵ The 2018 Report of the Independent International Fact-Finding Mission stated unequivocally that "impunity is deeply entrenched in the State's political and legal system, effectively placing the Tatmadaw above the law".¹⁴⁶ In such a legal context, Myanmar's courts are not only structurally unable, but also politically unwilling to initiate credible proceedings of atrocity crimes.

Successive civilian governments have variously denied wrongdoing, failed to initiate genuine investigations, and refrained from imposing individual criminal responsibility.¹⁴⁷ Domestic mechanisms have been established, notably the Independent Commission of Enquiry (ICOE). The ICOE was an *ad hoc* body set up by the Government of Myanmar in 2018 in response to mounting international pressure, particularly concerning the situation in Rakhine State.¹⁴⁸ However, these mechanisms have been deemed by the IFFMM as not meeting the threshold of an "impartial, independent, effective, and thorough human rights investigation".¹⁴⁹ Moreover, observers have accused Naypyidaw of exploiting the Commission as a political tool to "brush atrocities against the

¹⁴³ Elena Sarver *et al.*, *op. cit.*, 203,204

¹⁴⁴ *ivi*, 204

¹⁴⁵ *Ibid*

¹⁴⁶ IFFM 2018 Report, para. 97

¹⁴⁷ Elena Sarver *et al.*, *op. cit.*, 205

¹⁴⁸ Independent Commission of Enquiry (ICOE), Executive Summary of the Final Report. The Republic of the Union of Myanmar President Office (January 21, 2020), available from <https://www.networkmyanmar.org/ESW/Files/ICOE-Executive-Summary.pdf>

¹⁴⁹ IFFM 2018 Report, para. 96

Rohingya under the carpet”.¹⁵⁰ As long as the military retains *de facto* control, and in the absence of far-reaching legal and constitutional reforms, the prospects for domestic justice will remain illusory. As clearly stated in the 2018 Mission Report, “even though the primary responsibility for investigating and prosecuting crimes under international law lies with the Government of Myanmar, it has demonstrated that it is *unable* and *unwilling*”.¹⁵¹ This reinforces the necessity of international proceedings in the face of Myanmar’s systemic impunity.

Consequently, the pursuit of accountability must be situated within the framework of international justice. As the Fact-Finding Mission noted, “the international community also bears responsibility and must take a united stand both to condemn the violations and to assist Myanmar in addressing the root causes of its recurrent problems. This begins by ensuring that the perpetrators of crimes are held to account, and by giving hope to victims of a future without the fear and insecurity that have to date characterized their existence”.¹⁵² It is within this legal and political framework that the present section turns to a detailed examination of the principal avenues through which international justice and accountability have been pursued in response to the Rohingya crisis.

The International Criminal Court (ICC), established by the 1998 Rome Statute, holds jurisdiction over the most serious crimes under international law, including genocide, crimes against humanity, war crimes, and aggression.¹⁵³ Pursuant to Article 5 of the Statute, such jurisdiction may be activated through three main avenues: a referral by a State Party; a referral by the United Nations Security Council acting under Chapter VII of the UN Charter; or the Prosecutor’s *proprio motu* initiative, provided that a reasonable basis exists and the Pre-Trial Chamber grants authorization, in accordance with Article 15.¹⁵⁴ In all scenarios, the principle of complementarity applies, whereby the Court may act only when national jurisdictions are unwilling or unable genuinely to prosecute.¹⁵⁵ Moreover, pursuant to Article 12 of the Rome Statute, the Court may exercise jurisdiction if the crime

¹⁵⁰ *Amnesty International*, “Myanmar: Shameful anniversary highlights lack of accountability for atrocities against Rohingya.” (August 23, 2018) <https://www.amnesty.org/en/latest/news/2018/08/myanmar-shameful-anniversary-highlights-lack-of-accountability-for-atrocities-against-rohingya/>

¹⁵¹ IFFM 2018 Report, para. 98 (emphasis added)

¹⁵² IFFM 2018 Report, para. 101

¹⁵³ Article 5 of the Rome Statute

¹⁵⁴ Alexa Levy, “Rohingya in Myanmar: The United Nations' Failure to Enforce Violations of Crimes against Humanity and Genocide.” *George Washington International Law Review* 51, (2019): 330 https://heinonline.org/HOL/Page?public=true&handle=hein.journals/gwlr51&div=13&start_page=321&collection=journals&set_as_cursor=0&men_tab=srchresults

¹⁵⁵ Ewa Salkiewicz-Munnerlyn, “THREE DIFFERENT ACTIONS AGAINST MYANMAR FOR GENOCIDAL ACTS AND CRIMES AGAINST HUMANITY INCLUDING DEPORTATION.” *Allerhand Law Review* 2, (2019): 365 <https://bibliotekanauki.pl/articles/498844.pdf>

was committed on the territory of a State Party or by its nationals.¹⁵⁶ Alternatively, non-State Parties may accept *ad hoc* jurisdiction under Article 12(3),¹⁵⁷ or the Security Council may extend the Court's reach to situations involving non-Parties. However, the ICC lacks its own enforcement apparatus¹⁵⁸ and remains entirely reliant on Member States for the execution of arrest warrants, indictments and subsequent trials, rendering it vulnerable to the shifting political interests of its State Parties.¹⁵⁹

Myanmar is not a State Party to the Rome Statute and has consistently rejected the ICC jurisdiction. Nonetheless, the Court determined that it retains jurisdiction over crimes committed in part on the territory of Bangladesh, which is a State Party.¹⁶⁰ On 6 September 2018, Pre-Trial Chamber I acknowledged jurisdiction over the alleged deportation of the Rohingya from Myanmar to Bangladesh,¹⁶¹ thereby enabling the Office of the Prosecutor to formally advance the proceedings. Shortly thereafter, on 18 September 2018, Prosecutor Fatou Bensouda announced the opening of a preliminary examination which would encompass “a number of alleged coercive acts having resulted in the forced displacement of the Rohingya people, including deprivation of fundamental rights, killing, sexual violence, enforced disappearance, destruction and looting”.¹⁶² This ruling was reaffirmed on 14 November 2019, when Pre-Trial Chamber III, pursuant to Article 15, authorized the Prosecutor to open a formal investigation into crimes including deportation, persecution, and other inhumane acts.¹⁶³ As stated by the Chamber, “[t]he alleged deportation of civilians across the Myanmar–Bangladesh border, which involved victims crossing that border, clearly establishes a territorial link on the basis of the *actus reus* of this crime”.¹⁶⁴ The Chamber also stressed that “[t]he territoriality of criminal law [...] is not an absolute principle of international law and by no means

¹⁵⁶ Article 12 of the Rome Statute

¹⁵⁷ *Ibid*

¹⁵⁸ Ana Hametaj, “The Rohingya Plight at the ICC: Overcoming Current Challenges.” *Coalition for the International Criminal Court*, (October 8, 2019) <https://www.coalitionfortheicc.org/news/20191008/rohingya-plight-icc-overcoming-current-challenges>

¹⁵⁹ Dlubak Aleksandra, “Problems Surrounding Arrest Warrants Issued by the International Criminal Court: A Decade of Judicial Practice.” *Polish Yearbook of International Law* 32 (2012): 213
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2407579

¹⁶⁰ Elena Sarver *et al.*, *op. cit.*, 205,206

¹⁶¹ Report of the independent international fact-finding mission on Myanmar, UN Doc. A/HRC/42/50 (8 August 2019 201) (“IIFFM 2019 Report”), available from <https://documents.un.org/doc/undoc/gen/g19/236/74/pdf/g1923674.pdf>

¹⁶² International Criminal Court, Statement of ICC Prosecutor Fatou Bensouda on Opening a Preliminary Examination Concerning the Alleged Deportation of the Rohingya People from Myanmar to Bangladesh (September 18, 2018), available from <https://www.icc-cpi.int/news/statement-icc-prosecutor-fatou-bensouda-opening-preliminary-examination-concerning-alleged#:~:text=Having%20received%20confirmation%20from%20the,the%20next%20phase%20of%20the>

¹⁶³ International Criminal Court, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar (ICC-01/19-27) (November 14, 2019), available from <https://www.icc-cpi.int/court-record/icc-01/19-27>

¹⁶⁴ Ewa Salkiewicz-Munnerlyn, *op. cit.*, 367

coincides with territorial sovereignty”.¹⁶⁵ While this ruling constituted a landmark decision, it also highlighted the Court’s jurisdictional constraints. Specifically, the ICC authority remains limited to crimes with a cross-border component, namely the acts perpetrated on the territory of Bangladesh. As a result, serious violations committed exclusively within Myanmar, including acts of rape, sexual violence, and mass killings, fall outside the Court’s prosecutorial reach.¹⁶⁶ Thus, as the IIFFM 2019 Report observed, “while the Office may examine a broad range of crimes committed against the Rohingya, it will only be able to specifically prosecute crimes that involve the crossing of an international border”.¹⁶⁷

A critical milestone was reached in November 2024, when the office of the Prosecutor formally requested an arrest warrant for Min Aung Hlaing. The application stated that “there are reasonable grounds to believe that Senior General and Acting President Min Aung Hlaing, Commander-in-Chief of the Myanmar Defence Services, bears criminal responsibility for the crimes against humanity of deportation and persecution of the Rohingya, committed in Myanmar, and in part in Bangladesh [...] between 25 August 2017 and 31 December 2017 by the armed forces of Myanmar, the Tatmadaw, supported by the national police, the border guard police, as well as non-Rohingya civilians”.¹⁶⁸ This marked the first time the Court formally targeted the highest levels of Myanmar’s military leadership. Additional arrest warrants targeting other senior military officials are reportedly under preparation. If granted, ICC Member States would have a legal obligation to execute such warrants should the suspects enter their jurisdiction. However, Myanmar’s status as a non-State Party exempts it from any binding obligation to comply with the Court’s requests. In an official press release issued by the Ministry of the Office of the State Counsellor in August 2018,¹⁶⁹ the Government rejected the Court’s authority, expressing concern “with the lack of fairness and transparency of the ICC proceedings”,¹⁷⁰ and alleging procedural irregularities, bad faith (*mala fides*), and disregard for Myanmar’s sovereignty.

¹⁶⁵ Pre-Trial Chamber I, Decision on the Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Rome Statute, ICC-RoC46(3)-01/18 (September 6, 2018), para. 66, available from https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2018_04203.PDF

¹⁶⁶ Elena Sarver *et al.*, *op. cit.*, 206

¹⁶⁷ IIFFM 2019 Report, para. 105

¹⁶⁸ International Criminal Court, Statement of ICC Prosecutor Karim A.A. Khan KC: Application for an arrest warrant in the situation in Bangladesh/Myanmar (November 27, 2024), available from <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-application-arrest-warrant-situation-bangladesh>

¹⁶⁹ For the Government of the Republic of the Union of Myanmar, Ministry of the Office of the State Counsellor Press Release (August 9, 2018), see <https://reliefweb.int/report/myanmar/government-republic-union-myanmar-ministry-office-state-counsellor-press-release>

¹⁷⁰ *ivi*, para. 10

The ICC's structural dependency on State cooperation has significantly undermined its operational effectiveness in this case.¹⁷¹ Article 87(5)(a) of the Rome Statute allows the Court to invite non-Party States, like Myanmar, to cooperate through *ad hoc* agreements or other appropriate bases,¹⁷² but such cooperation remains rare in practice. As underscored by Dlubak, "whereas the obligation to cooperate is the ICC's strongest point, its lack of enforcement powers undermines it significantly".¹⁷³ This institutional fragility is further compounded by the absence of a Security Council referral, which would enable the Court with comprehensive jurisdiction over all crimes committed in Myanmar against the Rohingya population, irrespective of territorial constraints.¹⁷⁴ In fact, pursuant to Article 13(b) of the Rome Statute and acting under Chapter VII of the UN Charter, the Council holds authority to refer situations involving international crimes to the ICC, including those arising in non-State Parties such as Myanmar. Furthermore, the Fact-Finding Mission unequivocally called for such an action, stating: "The Security Council should ensure accountability for crimes under international law committed in Myanmar, preferably by referring the situation to the International Criminal Court".¹⁷⁵ However, persistent vetoes by permanent members, most notably China and Russia, have systematically obstructed any such initiative, thereby shielding any prospect of holding Myanmar accountable.

In light of the jurisdictional limitations faced by the International Criminal Court in addressing the full spectrum of international crimes committed against the Rohingya, the pursuit of accountability has expanded beyond traditional multilateral frameworks. While the ICC has advanced proceedings concerning crimes committed partially on Bangladeshi territory, its mandate does not extend to crimes committed exclusively within Myanmar's borders. This structural gap has generated renewed interest in alternative legal pathways, most notably the exercise of universal jurisdiction by national courts. Universal jurisdiction constitutes a fundamental principle of international criminal law whereby states may prosecute individuals for serious crimes under international law, regardless of where such crimes were committed or the nationality of the perpetrators and victims.¹⁷⁶ Universal

¹⁷¹ *Amnesty International*, "Myanmar: Four years after coup, world must demand accountability for atrocity crimes." (January 31, 2025) <https://www.amnesty.org/en/latest/news/2025/01/myanmar-four-years-after-coup-world-must-demand-accountability-for-atrocity-crimes/>

¹⁷² Article 87(5)(a) of the Rome Statute

¹⁷³ Dlubak Aleksandra, *op. cit.*, 213

¹⁷⁴ *ivi*, 222

¹⁷⁵ IFFM 2018 Report, para. 105

¹⁷⁶ Winona Xu, "Argentinian Arrest Warrant for Min Aung Hlaing." *Verfassungsblog* (February 2025): 1 https://intrechtdok.de/servlets/MCRFileNodeServlet/mir_derivate_00019170/Argentinian_Arrest_Warrant_for_Min_Aung_Hlaing.pdf

jurisdiction is, thus, a critical mechanism when domestic accountability is unattainable and international avenues, such as the ICC, prove insufficient or obstructed.

Within this framework, Argentina has emerged as a prominent jurisdictional actor, applying universal jurisdiction to address international crimes committed in Myanmar. In November 2019, the Burmese Rohingya Organisation UK (BROUK), supported by Argentine human rights organizations such as the Mothers of the Plaza de Mayo and the Fundación Servicio Paz y Justicia, filed a criminal complaint before a federal court in Buenos Aires. The complaint targeted high-ranking Myanmar officials, including both military and civilian leaders, for their alleged role in the commission of genocide and crimes against humanity against the Rohingya population.¹⁷⁷ The initial complaint was dismissed by the Federal Criminal Court due to the parallel proceedings before the ICC. However, this decision was overturned on appeal in 2021, when the court acknowledged that the ICC's jurisdiction was limited to crimes involving a cross-border element, and therefore could not adequately address violations committed entirely within Myanmar. In June 2023, Argentine prosecutors heard in-person, trauma-informed testimonies from seven Rohingya witnesses, including six women who had survived rape, forced sterilization, and other forms of sexual violence. Their accounts, supported by Legal Action Worldwide and BROUK, contributed decisively to the formulation of charges.¹⁷⁸ On 28 June 2024, federal prosecutor Guillermo F. Marijuán formally requested arrest warrants for 25 current and former Myanmar officials, including Senior General Min Aung Hlaing, Deputy Commander-in-Chief Soe Win, and former Western Commander Maung Maung Soe. These individuals were accused of orchestrating or directly perpetrating acts of genocide and crimes against humanity committed between 2012 and 2018.¹⁷⁹ On 13 February 2025, the Federal Criminal Court in Buenos Aires issued arrest warrants, marking the first time a national judiciary has issued such orders explicitly for the crime of genocide committed by the Myanmar military.¹⁸⁰ In line with these developments, Argentina is expected to seek the issuance of Interpol Red Notices for the named individuals. If granted, these notices would allow other states to arrest the suspects should they enter their jurisdiction, potentially leading to extradition to Argentina for preliminary hearings.

¹⁷⁷ Elena Sarver *et al.*, *op. cit.*, 206

¹⁷⁸ *Legal Action Worldwide*, “Argentina Court issues arrest warrants for genocide and crimes against humanity committed against the Rohingya community” (February 14, 2025) <https://legalactionworldwide.org/accountability-rule-of-law/argentina-court-issues-arrest-warrants-for-genocide-and-crimes-against-humanity-committed-against-the-rohingya-community/>

¹⁷⁹ Winona Xu, *op. cit.*, 3

¹⁸⁰ *Legal Action Worldwide*, “Argentina Court issues arrest warrants for genocide and crimes against humanity committed against the Rohingya community.”

Although enforcement remains contingent upon political will and international cooperation, the legal implications of these warrants are significant. They place concrete constraints on the international mobility of the accused and convey a powerful message that impunity cannot persist unchallenged.¹⁸¹

The Argentine proceedings must also be viewed in the broader geopolitical context. The arrest warrant against Min Aung Hlaing coincides with the ICC Prosecutor's own request for his indictment and with the upcoming hearings in the *Gambia v. Myanmar* case before the ICJ.¹⁸² Collectively, these initiatives represent a pivotal juncture in the global response to the Rohingya crisis, one that could redefine the outline of international justice in contexts where formal multilateral mechanisms face paralysis.

2.4 The Rwandan genocide and its relevance to Myanmar

The 1994 genocide in Rwanda offers a striking historical precedent for assessing the international community's response to atrocity crimes. While rooted in distinct regional, historical, and political contexts, the two cases of Rwanda and Myanmar share patterns of structural dehumanization, discriminatory state practices, and the use of ethnicity as a tool of exclusion and repression. In both situations, an ethnic minority was progressively framed by the ruling majority not only as alien and illegitimate, but also as an existential threat to the nation itself.¹⁸³

The Rwandan genocide was the culmination of decades of ethnic engineering and political manipulation. Successive colonial administrations, first under Germany and later Belgium, institutionalized racial divisions through "divide-and-rule" strategies that systematically privileged the Tutsi minority over the Hutu majority, sowing the seeds of resentment and instability.¹⁸⁴ This pattern of ethnic classification echoes the British administration's role in Myanmar, where similar categories were institutionalized. Following Rwanda's independence in 1962, political power shifted to the Hutu majority. In 1973, General Juvénal Habyarimana seized control through a military coup and established an authoritarian regime that would remain in power for the next twenty-one years.

¹⁸¹ Winona Xu, *op. cit.*, 3

¹⁸² Elena Sarver *et al.*, *op. cit.*, 206

¹⁸³ Ken Maclean, "Genocide by Attrition: The role of Identity Documents in the Holocaust and the Genocides of Rwanda and Myanmar." *Fortify Rights* (June 2022): 49
<https://www.fortifyrights.org/downloads/Genocide%20by%20Attrition%20-%20Fortify%20Rights%20Report.pdf>

¹⁸⁴ Yam Prasad Chaulagain, "The Rwandan Genocide: Could it Have Been Prevented?." *E-International Relations* (August 3, 2011): 3 <https://www.e-ir.info/pdf/11779>

Habyarimana's rule systematically excluded Tutsi from political life and denied the repatriation of Tutsi exiles. In October 1990, the Rwandan Patriotic Front (RPF), composed mostly of exiled Tutsi, launched an armed incursion from Uganda, demanding power-sharing.¹⁸⁵ Although peace accords were eventually signed in Arusha in 1993, radical Hutu elements viewed Tutsi political re-entry as an existential threat and began preparing for mass extermination. On 6 April 1994, the assassination of President Habyarimana in a plane crash triggered the final stage of an already orchestrated plan of genocide. Within 100 days, an estimated 800,000 Tutsi and moderate Hutu were murdered by militias, armed forces, and civilians in a "concerted, planned, systematic, and methodical way".¹⁸⁶

The genocide was facilitated by a propaganda machine that relentlessly dehumanized the Tutsi population, labeling them as "cockroaches",¹⁸⁷ mirroring Myanmar's portrayal of the Rohingya as "detestable human fleas"¹⁸⁸ and "illegal Bengalis".¹⁸⁹ As Fortify Rights observes, "despite important contextual differences, Rohingya are experiencing a genocide in Myanmar that resembles what the Tutsi endured before the 1994 Rwandan genocide".¹⁹⁰ Both minorities were framed as alien invaders whose mere presence was deemed incompatible with national sovereignty. The use of identification documents in both contexts exemplifies how bureaucratic tools can be weaponized for ethnic persecution. In Rwanda, identity cards were essential to identifying Tutsi civilians for execution, while in Myanmar, the Rohingya are systematically stripped of legal status and subjected to discriminatory registration processes that facilitate mass disenfranchisement and displacement. In both cases, the state constructed a narrative of invasion that serves to legitimize policies of forced exclusion and, ultimately, mass violence. Moreover, in both Rwanda and Myanmar, isolated incidents of insurgent violence by minority actors, such as the RPF in Rwanda and ARSA in Rakhine, were strategically instrumentalized by state authorities to justify blanket military reprisals. In Rwanda, Hutu extremists equated all Tutsi with RPF rebels, using this pretext to carry out ethnic cleansing. In

¹⁸⁵ Christina M. Carroll, "An Assessment of the Role and Effectiveness of the International Criminal Tribunal for Rwanda and the Rwandan National Justice System in Dealing with the Mass Atrocities of 1994." *Boston University International Law Journal* 18 (2000): 168

https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/builj18&id=172&men_tab=srchresults

¹⁸⁶ George S. Yacoubian Jr., "The Efficacy of International Criminal Justice: Evaluating the Aftermath of the Rwandan Genocide." *World Affairs* 186 (1999): 187

<https://heinonline.org/HOL/Page?handle=hein.journals/wrldaf161&div=26&id=&page=&collection=journals>

¹⁸⁷ Pal Ahluwalia, Miller Toby, "The Rohingya crisis: another failure of the international system." *Social Identities* 24 (2018) <https://www.tandfonline.com/doi/epdf/10.1080/13504630.2018.1449728?needAccess=true>

¹⁸⁸ *Ibid*

¹⁸⁹ *Ibid*

¹⁹⁰ Ken Maclean, *op. cit.*, 48

Myanmar, the military similarly framed limited attacks by ARSA as Islamic terroristic threats to national security.¹⁹¹

These rhetorical and institutional parallels underscore how the logic of genocide relies on a systematic process of othering, often embedded in state discourse and policy long before the eruption of mass killings. Ken MacLean, Professor at the Strassler Center for Holocaust and Genocide Studies of Clark University, noted that the dynamics observed during the Rwandan genocide reveal alarming parallels with the systematic erasure of Rohingya identity currently being perpetrated by the Myanmar junta.¹⁹² Understanding these parallels is thus crucial not only to analyzing the patterns of atrocity, but also to evaluating the international community's responsibility to prevent recurrence.

The international community's response to the Rwandan genocide has come to symbolize one of the most profound failures of the post-Cold War international order. As Amnesty International recalled, "in 1994, the world was shamed when it turned a blind eye to the desperate cries for help coming from Rwanda".¹⁹³ Despite the presence of early warning signs and extensive documentation of escalating violence, the United Nations and its Member States failed to take timely and decisive action to prevent or halt the atrocities. General Roméo Dallaire, commander of the United Nations Assistance Mission for Rwanda (UNAMIR) established in 1993, had repeatedly warned the UN Department of Peacekeeping Operations of the imminent risk of mass violence against Tutsis.¹⁹⁴ He emphasized the urgent need for the mission to be deployed with at least 4,500 professionally trained troops to effectively prevent large-scale atrocities.¹⁹⁵ Nonetheless, on 21 April 1994, rather than strengthening its mandate, the Security Council adopted resolution 912 and reduced the UNAMIR force to a symbolic contingent of 270 troops.¹⁹⁶ As General Dallaire later remarked, the United Nations "did a Pontius Pilate",¹⁹⁷ abandoning Rwanda to its fate. He further criticized the international community stating that it "didn't give one damn for Rwandans because Rwanda was a country of no strategic importance".¹⁹⁸ The decisions of key Security Council members, most notably

¹⁹¹ *ivi*, 49

¹⁹² Fortify Rights, "U.N. Member States: Hold Myanmar Military Accountable for Ongoing Crimes." (June 8, 2022) <https://www.fortifyrights.org/mya-inv-2022-06-08/>

¹⁹³ *Amnesty International*, "The world still failing to act despite Rwanda genocide shame." (April 7, 2014)

<https://www.amnesty.org/en/latest/press-release/2014/04/world-still-failing-act-despite-rwanda-genocide-shame/>

¹⁹⁴ Gregory H. Stanton, "The Rwandan Genocide: Why Early Warning Failed." *Journal of African Conflicts and Peace Studies* 1 (September 2009): 6,7 <https://digitalcommons.usf.edu/cgi/viewcontent.cgi?article=1015&context=jacaps>

¹⁹⁵ *ivi*, 15

¹⁹⁶ United Nations Security Council (UNSC), Resolution 912, S/RES/912 (April 21, 1994), available from <https://digitallibrary.un.org/record/197526?v=pdf>

¹⁹⁷ Yam Prasad Chaulagain, *op. cit.*, 5

¹⁹⁸ *ivi*, 4

the United States and the United Kingdom, were shaped by cost considerations rather than by a principled commitment to civilian protection. In the words of New Zealand's Ambassador Colin Keating, who was President of the Security Council at the time, "it was becoming increasingly difficult to explain credibly why in the face of the most horrific killings the Council could remain formally silent".¹⁹⁹ A similar dynamic of geopolitical calculation has played out in the case of Myanmar, where China and Russia's repeated use of the veto has obstructed Security Council efforts to authorize coercive measures or to refer the situation to the International Criminal Court.

The Security Council ultimately acknowledged the scale of atrocities, determining that the situation "continues to constitute a threat to international peace and security",²⁰⁰ thereby providing the legal and political basis for international judicial intervention. Acting under Chapter VII of the UN Charter, on 8 November 1994, the Council adopted Resolution 955 through which the International Criminal Tribunal for Rwanda (ICTR) was established.²⁰¹ Although belated, this measure represented a formal acknowledgment of the gravity of the crimes committed and the imperative of ensuring accountability through international mechanisms. By contrast, in the case of Myanmar, the UNSC has persistently failed to reach consensus on any binding resolution referring the situation to the International Criminal Court, despite explicit calls from the Independent International Fact-Finding Mission on Myanmar. The ICTR was tasked with the mandate of "prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda" between 1 January and 31 December 1994.²⁰² The establishment of an *ad hoc* Tribunal marked a significant step in the evolution of international criminal justice, reflecting a collective commitment to end impunity in the aftermath of mass atrocities. As Rwanda's Ambassador to the UN, Manzi Bakuramutsa, clearly stated, "it is impossible to build a state of law and arrive at true national reconciliation if we do not eradicate the culture of impunity which has characterized our society".²⁰³ Such recognition stands in sharp contrast to the situation in Myanmar, where successive governments have consistently denied wrongdoing, obstructed investigations, and actively shielded perpetrators from accountability.

¹⁹⁹ Simon Adams, *op. cit.*, 16,17

²⁰⁰ United Nations Security Council (UNSC), Resolution 955, S/RES/955 (November 8, 1994), available from <https://digitallibrary.un.org/record/198038?v=pdf#files>

²⁰¹ Todd Howland, William Calathes, "The U.N.'s International Criminal Tribunal, Is It Justice or Jingoism for Rwanda? A Call for Transformation." *Virginia Journal of International Law* 39 (1998): 141

https://heinonline.org/HOL/Page?handle=hein.journals/vajint39&div=11&g_sent=1&casa_token=&collection=journals

²⁰² UNSC, Resolution 955 (1994)

²⁰³ Christina M. Carroll, *op. cit.*, 171

The ICTR still encountered significant structural and operational challenges. Despite a multi-million-dollar budget and strong rhetorical support, the tribunal proved remarkably slow in delivering justice: only four trials were completed in its early years, and the overall pace of proceedings remained stagnant. The tribunal struggled with inadequate staffing, logistical inefficiencies, and persistent allegations of corruption and mismanagement.²⁰⁴ A particularly salient lesson to emerge from the Rwandan experience concerns the challenge of enforcement. Like the International Criminal Court today, the ICTR lacked an independent enforcement mechanism and relied entirely on state cooperation to execute arrest warrants and facilitate the transfer suspects. While several countries, including Belgium, Kenya, South Africa and France, did extend cooperation, many warrants were often delayed, ignored, or subject to political negotiation.²⁰⁵ This reflects a structural weakness that persists in the current international legal order: without a permanent enforcement mechanism, international justice remains at the mercy of state consent and political will. Such limitations are even more acute when alleged perpetrators retain power, as is currently the case of Myanmar, rendering cooperation both unlikely and diplomatically wary.

As a matter of fact, the ICTR's perceived lack of impartiality became a central point of discussion; the Tribunal indeed faced sustained criticism for its failure to prosecute members of the RPF, despite credible evidence of war crimes committed during and after the 1994 genocide.²⁰⁶ Human Rights Watch observed that "pressure from the Rwandan government, combined with a reluctance to offend the government and jeopardize its cooperation with the ICTR, resulted in the ICTR focusing exclusively on genocide-related crimes",²⁰⁷ thereby neglecting its broader mandate under international humanitarian law. This selective approach to accountability led some commentators to conclude that the ICTR embodied a form of "victor's justice", according to which legal mechanisms tend to target disproportionately defeated regimes while protecting victors.²⁰⁸ In this context, Waldorf notably contended that "international justice is inherently political".²⁰⁹

²⁰⁴ *ivi*, 181

²⁰⁵ *ivi*, 183

²⁰⁶ Dominique Emmanuel Uwizeyimana, "The Challenges of Ensuring that Justice is Done and is Seen to be Done in Post-Ethnic Conflicts: The Case of Rwanda 1." *University of Johannesburg* (December 2015): 117
https://www.researchgate.net/publication/295858443_The_Challenges_of_Ensuring_that_Justice_is_Done_and_is_Seen_to_be_Done_in_Post-Ethnic_Conflicts_The_Case_of_Rwanda_1

²⁰⁷ *ivi*, 118

²⁰⁸ *ivi*, 119,121

²⁰⁹ Lars Waldorf, "'A Mere Pretense of Justice': Complementarity, Sham Trials, and Victor's Justice at the Rwanda Tribunal." *Fordham International Law Journal* 33 (2011): 1263
<https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2203&context=ilj&sei-redir=1>

Nevertheless, the ICTR also yielded notable achievements; as of 2019, it issued 93 indictments.²¹⁰ In its landmark ruling in *Prosecutor v. Akayesu*, the ICTR delivered the first judgment by an international court convicting an individual, in this case former mayor Jean-Paul Akayesu, of genocide and crimes against humanity. Issued in 1998, the verdict was also groundbreaking in its legal recognition that rape and sexual violence could constitute acts of genocide, thereby establishing a precedent with lasting influence on the evolution of international criminal jurisprudence.²¹¹ As positively noted by Carroll, “the establishment of accountability by a legitimate judicial body is an important step toward the creation of a culture of trust and respect for law and order.”²¹²

In concert with the international efforts undertaken through the ICTR, Rwanda also pursued extensive domestic prosecutions in response to the 1994 genocide. Confronted with over 125,000 detainees accused of participation in the atrocities, the Rwandan judicial system embarked on an unprecedented program of national trials beginning in December 1996.²¹³ Domestic courts, with the traditional court system called *Gacaca*, managed to indict more than 20,000 individuals and hold nearly 2,000 formal trials²¹⁴ in the initial phase, demonstrating a remarkable level of commitment to accountability, and sharply contrasting with Myanmar’s judiciary that has consistently been described as “unwilling and unable”²¹⁵ to prosecute crimes committed against the Rohingya. Yet, the overwhelming volume of cases and the state’s limited resources placed immense strain on the Rwandan national system. Trials were often rushed, detainees were kept in overcrowded and unsanitary conditions, and many lacked adequate legal representation. As Wippman observed, “it’s not at all clear that Rwanda’s response to mass atrocities is appealing from a human rights standpoint”.²¹⁶ This delicate tension between efficiency and fairness is particularly instructive when compared to the absolute void of domestic justice in Myanmar, where the military-dominated system has served more as a shield for perpetrators than as a vehicle for justice.

This comparative case study thus offers critical insights into the structural limitations of international justice and accountability in responding and preventing mass atrocities. At the heart of

²¹⁰ United Nations International Criminal Tribunal for Rwanda (UNICTR), “Key Figures of Cases” (last update: October 2019) <https://unictr.irmct.org/en/cases/key-figures-cases>

²¹¹ United Nations, “The Justice and Reconciliation Process in Rwanda”, *Department of Public Information* (March 2014) <https://www.un.org/en/preventgenocide/rwanda/assets/pdf/Backgrounder%20Justice%202014.pdf>

²¹² Christina M. Carroll, *op. cit.*, 179

²¹³ George S. Yacoubian Jr., *op. cit.*, 189

²¹⁴ David Wippman, “Atrocities, Deterrence, and the Limits of International Justice.” *Fordham International Law Journal* 23 (1999): 482 <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1676&context=ilj>

²¹⁵ IFFM 2018 Report, para. 98

²¹⁶ David Wippman, *op. cit.*, 482

the divergence between Rwanda and Myanmar lies the posture adopted by the respective governments. In Kigali, the authorities formally acknowledged the genocide and endorsed domestic judicial processes to pursue accountability, to the point that, according to Yacoubian, domestic trials have advanced more decisively than the ICTR in achieving justice.²¹⁷ By contrast, the Burmese government has denied the occurrence of genocide, obstructed independent investigations, and criminalized the Rohingya themselves through discriminatory legislation, thus entrenching a culture of impunity and precluding any possibility of transitional justice or national reconciliation. Even in Rwanda, where trials were conducted at scale, justice was politicized and applied unevenly. In Naypyidaw, the situation is even more dire: not only has justice been entirely absent, but the very institutions responsible for its delivery enabled ongoing violations. Finally, the Rwandan precedent also casts doubts on the deterrent power of international justice. Despite landmark convictions and the symbolic legacy of the ICTR, the international community failed to prevent the recurrence of future crimes, most visibly in Myanmar. The systemic dehumanization, legal disenfranchisement, and targeted violence against the Rohingya unfolded with full awareness of Rwanda's lesson, yet without meaningful intervention. As Wippman already foresaw in 1990, "whatever contribution the ICC may make to the deterrence of future atrocities is likely to be modest at best".²¹⁸ Furthermore, Stanton noted in the wake of Rwanda that "the world still lacks the international institutions and the political will to stop genocide".²¹⁹ That statement, made decades ago, tragically applies with equal force today.

2.5 Conclusions

The analysis developed throughout this chapter demonstrates that the international community's capacity to ensure justice for the Rohingya remains severely constrained by legal, institutional, and political obstacles. Crucially, international accountability efforts have not been accompanied by a meaningful engagement with the Rohingya themselves. While courts such as the ICC and ICJ pursue proceedings in their name, Rohingya communities remain almost entirely excluded from the design and understanding of such processes.²²⁰ A 2022 empirical study involving 444 Rohingya refugees revealed widespread confusion about the nature of these international mechanisms: participants

²¹⁷ George S. Yacoubian Jr., *op. cit.*, 191

²¹⁸ David Wippman, *op. cit.*, 485

²¹⁹ Gregory H. Stanton, *op. cit.*, 22

²²⁰ Rebecca Hamilton, "What Kind of Court Is This?": Perceptions of International Justice Among Rohingya Refugees." *American University Washington College of Law* (June 2024): 193
https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=3280&context=facsch_lawrev

frequently referred to “our case” without any clear awareness that multiple parallel proceedings were ongoing. As one refugee put it: “If the voices from our protests reached to the [ICC/ICJ] our case would have been solved today. Our case isn’t being solved there because our voices are not actually reaching there”.²²¹ Justice, therefore, cannot be narrowly conceived as the mere identification and punishment of perpetrators. It must be restorative, inclusive, and forward-looking. For the Rohingya people, “justice is not simply a question of accountability for past crimes, but an ongoing reality as they continue to live the consequences of Myanmar’s ethnic cleansing campaign, stuck in a limbo in the refugee camps”.²²² This includes, above all, justice for women and girls, whose stories have too often been instrumentalized as rhetorical symbols but rarely addressed in practice. Sexual and gender-based violence perpetrated against Rohingya women demands not only legal recognition but also the active incorporation of gendered experiences in every stage of the justice process. Their participation must be ensured as victims and, above all, agents in the design of reparative and policy measures. In this context, the decision by Canada and the Netherlands to intervene in *The Gambia v. Myanmar* with a focus on sexual and gender-based violence signals a potentially significant shift toward a more inclusive approach.²²³

Nonetheless, while international recognition of the crimes has been substantial, this alone does not equate to justice. Prosecution of crimes *ex post facto* cannot compensate for the continued structural impunity and entrenched patterns of discrimination that remain unaddressed²²⁴. Moreover, the failures of the broader international system cannot be ignored. The UN Security Council, despite overwhelming evidence of atrocity crimes, has consistently failed to refer the situation in Myanmar to the ICC. This ongoing paralysis, largely due to geopolitical rivalries and veto politics, exposes the broader incapacity of multilateral diplomacy to confront atrocity crimes when major powers block collective action. Simultaneously, material support to Rohingya refugees has steadily declined. The WFP has been forced to cut rations in Cox’s Bazar due to the declining contributions of UN Member States, while some governments are now endorsing premature repatriation plans, despite the absence of any guarantees for safety or rights upon return. In this context, the words of a UN expert resonate with particular urgency: Rohingya’s children “cannot eat political rhetoric or UN resolutions that go nowhere”.²²⁵ Ultimately, the Rohingya crisis highlights the consequences of global inertia; in the

²²¹ *ivi*, 199

²²² *ivi*, 200

²²³ Elena Sarver *et al.*, *op. cit.*, 206,207

²²⁴ *Ibid*

²²⁵ United Nations Human Rights Office of the High Commissioner, “UN expert demands accountability for the Rohingya and an end to ‘paralysis of indifference’.” (August 23, 2023) <https://www.ohchr.org/en/press-releases/2023/08/un-expert-demands-accountability-rohingya-and-end-paralysis-indifference>

absence of credible accountability and structural remedies, there is a real risk that the atrocities of the past may be repeated. The international community stands once again at a crossroads: the choice of States “to either step up or step away from this horror could literally be a matter of life and death for countless Rohingya”.²²⁶

²²⁶ United Nations Human Rights Office of the High Commissioner, “Myanmar: Urgent international action crucial to save lives of thousands of Rohingya in Rakhine State says UN expert.” (May 23, 2024) <https://www.ohchr.org/en/press-releases/2024/05/myanmar-urgent-international-action-crucial-save-lives-thousands-rohingya>

CHAPTER 3: International sanctions, effectiveness and limits to their enforcement

On 1 February 2021, Myanmar's fragile democratic transition was abruptly interrupted when the Tatmadaw launched a coup d'état that effectively restored full military rule. The operation was carefully timed, taking place only hours before the newly elected parliament was due to convene following the November 2020 elections. In the early morning, the armed forces detained *de facto* civilian leader Aung San Suu Kyi, President Win Myint, and other senior figures of the National League for Democracy (NLD). Later that same day, the military consolidated legislative, executive, and judicial authority under its command. Although Myanmar had already experienced coups, this episode was unprecedented in the extent to which the Tatmadaw sought to portray its actions as constitutional. By appointing former general Vice President Myint Swe as interim president,¹ the military created a pretext to invoke Articles 417² and 418(a)³ of the 2008 Constitution, declaring a state of emergency and transferring power to Commander-in-Chief Min Aung Hlaing. While this maneuver did not conform to the actual constitutional requirements for presidential replacement, it nonetheless served as the legal façade through which the military sought to legitimize its seizure of power.⁴

The stated justification for the coup lay in the allegations of widespread electoral fraud during the November 2020 elections, in which the NLD won a decisive victory, securing approximately 83% of the elected seats in parliament. Conversely, the military-backed Union Solidarity and Development Party (USDP) performed poorly, winning only about 7% of the contested seats.⁵ Dissatisfied with the

¹ International Crisis Group, "Responding to the Myanmar Coup." (February 16, 2021): 3
<https://www.jstor.org/stable/resrep31538>

² Article 417 of the Myanmar 2008 Constitution: "If there arises or if there is sufficient reason for a state of emergency to arise that may disintegrate the Union or disintegrate national solidarity or that may cause the loss of sovereignty, due to acts or attempts to take over the sovereignty of the Union by insurgency, violence and wrongful forcible means, the President may, after co-ordinating with the National Defence and Security Council, promulgate an ordinance and declare a state of emergency. In the said ordinance, it shall be stated that the area where the state of emergency in operation is the entire Nation and the specified duration is one year from the day of promulgation."

³ Article 418(a) of the Myanmar 2008 Constitution: "In the matter concerning the declaration of the state of emergency according to Section 417, the President shall declare the transferring of legislative, executive and judicial powers of the Union to the Commander-in-Chief of the Defence Services to enable him to carry out necessary measures to speedily restore its original situation in the Union. It shall be deemed that the legislative functions of all Hluttaws and leading bodies shall be suspended from the day of declaration. It shall also be deemed that on the expiry of the term of the said Hluttaws, the relevant Hluttaws have been dissolved automatically."

⁴ International Crisis Group, *op. cit.*, 4

⁵ *Ibid*

outcome, the generals launched a sustained campaign of accusations against the NLD, claiming that irregularities had compromised the integrity of the process. Independent election monitors, however, confirmed the overall credibility of the vote, noting only minor procedural flaws.⁶ The military's narrative of electoral fraud thus functioned as a political instrument to justify the coup and preserve its institutional prerogatives. Beyond the electoral context, deeper motivations underpinned the Tatmadaw's intervention. The growing popularity of Aung San Suu Kyi and her party, the NLD's efforts to integrate ethnic political parties into government, and proposed reforms in relevant economic domains, such as the licensing of foreign banks, traditionally under military control, directly threatened both the Tatmadaw's political dominance and its financial interests.⁷ Additionally, Min Aung Hlaing's personal ambitions, including his reported desire to assume the presidency, contributed to the decision to act when negotiations with the NLD leadership failed.⁸

Following the coup, the military reorganized the governing structure into the State Administrative Council (SAC), with Min Aung Hlaing as its chair.⁹ Yet, instead of consolidating control without resistance, as had been the case in earlier decades, the junta faced a society profoundly transformed by years of tentative democratization and generational change. Beginning on 2 February, peaceful mass protests rapidly spread across the country, with tens of thousands gathering in urban centers such as Yangon.¹⁰ These demonstrations soon united into the Civil Disobedience Movement (CDM), a broad-based campaign of resistance that mobilized large segments of society. Civil servants, health care professionals, and workers in the banking sector engaged in strikes and boycotts aimed at undermining the functioning of the junta. The movement was further reinforced by the establishment of the National Unity Government (NUG) in exile, which, acting as the "shadow government", sought international recognition as the legitimate representative of Myanmar's democratic aspirations.¹¹

The junta responded to these challenges with escalating violence and repression. The SAC authorized the use of live ammunition against peaceful demonstrators and made explicit threats to shoot protestors in the head.¹² Simultaneously, the military imposed a harsh regime of information

⁶ Congressional Research Service, "Coup in Burma (Myanmar): Issues for U.S. Policy." (updated February 23, 2021): 2 https://www.congress.gov/crs_external_products/IN/PDF/IN11594/IN11594.2.pdf

⁷ Catharin Dalpino, "US-Southeast Asia Relations: ASEAN Confronts Dual Crises." *Comparative Connections* 23 (May 2021): 58 <https://cc.pacforum.org/wp-content/uploads/2021/05/05-US-Southeast-Asia-Relations-23.1.pdf>

⁸ Congressional Research Service, *op. cit.*, 2

⁹ Catharin Dalpino, *op. cit.*, 58

¹⁰ International Crisis Group, *op. cit.*, 6

¹¹ Catharin Dalpino, *op. cit.*, 58

¹² *Ibid*

control: internet access was restricted or suspended nationwide, access to social media platforms such as Facebook and Twitter was blocked and martial laws criminalizing opposition were enacted.¹³ By mid-April 2021, the combined impact of political upheaval and economic disruption had already devastated Myanmar's economy, with the World Bank estimating a contraction of 10%, accompanied by a surge in food and fuel prices.¹⁴ Thus, the coup not only dismantled the democratic institutions conscientiously built over the preceding decade, but also intensified a pre-existing trajectory of violence and repression that had already drawn the scrutiny of external actors in connection with the Rohingya crisis. In this sense, the events of February 2021 did not represent an isolated rupture, but rather a turning point that heightened international concern and compelled renewed attention to Myanmar's broader human rights situation.

The international response to Myanmar has been neither uniform nor consistent. Following the waves of violence in 2016 and 2017, many states issued strong condemnations and called for humanitarian access to northern Rakhine, with some providing direct assistance to Rohingya refugees. The European Union, Australia, Canada, and the United States went further by imposing targeted sanctions on senior military officials, while others, whether bound by close political and economic ties to Myanmar or unwilling to jeopardize regional dynamics, chose to shield the authorities. The military coup once again revealed the deep divisions within the international community's response, mirroring those already evident during the Rohingya crisis. Western democracies and groupings such as the EU strongly condemned "the use of lethal force against unarmed people",¹⁵ whereas Myanmar's Asian neighbors and regional trade associations adopted more cautious or muted positions. This disparity underscored the absence of a unified international strategy, highlighting the persistent divergences between Western actors pressing for accountability and Asian partners prioritizing stability and strategic ties. Such a fragmented landscape of reactions, shaped both by the Rohingya crisis and by the 2021 coup d'état, provides the foundation for the following section, which will examine in detail the measures undertaken by individual states and international organizations.

In response to the junta's seizure of power and the ensuing humanitarian crisis, the international community adopted a range of legal and political countermeasures. Among the most

¹³ International Crisis Group, *op. cit.*, 6

¹⁴ Catharin Dalpino, *op. cit.*, 59

¹⁵ U.S. Department of Defense, "Joint Statement of Chiefs of Defense Condemning Military-Sponsored Violence in Myanmar." (March 27, 2021) <https://www.defense.gov/News/Releases/Release/Article/2552778/joint-statement-of-chiefs-of-defense-condemning-military-sponsored-violence-in/>

active actors were Brussels and Washington. Muhammad and Sahide argue that “the United States and the European Union’s reactions are straightforward: they pushed for restrictions against Myanmar’s commerce, investment, military exchanges, and supply of military equipment”.¹⁶ The following section examines the legal instruments, political rationale, and strategic implications of the EU and US measures.

3.1 Implementation of sanctions and the lack of international consensus

3.1.1 The European Union and the Pursuit of Normative Sanctions

The European Union has long positioned itself as a vocal advocate of human rights and democratic principles in Myanmar. This normative posture, rooted in the EU’s foreign policy identity, has been consistently reflected in its legal and political responses to the country’s military-led repression. Already in the aftermath of the 1988 crackdown on peaceful protests, most European states suspended bilateral aid, while the European Community imposed an arms embargo and suspended defence cooperation in 1991. These measures were codified into a unified framework with the adoption of the “EU Common Position on Myanmar” in October 1996, which introduced visa bans for high-level officials, froze the assets of senior junta members, and suspended all official visits.¹⁷ In parallel with its restrictive measures, the EU has consistently funded humanitarian aid for Rohingya refugees. Notably, between 1991 and 2004 alone, the EU allocated €56.4 million toward humanitarian aid for displaced persons from Myanmar, with additional allocations to improve living conditions in the Nayapara and Kutupalong camps in Bangladesh.¹⁸ Following the country’s political opening in the early 2010s, the EU progressively lifted its sanctions. In April 2013, the Council suspended restrictive measures, and restored trade preferences under the Generalized System of Preferences to support Burma’s democratic transition.¹⁹ This led to a surge in bilateral trade and European foreign direct investment (FDI), especially in the oil, gas, and tourism sectors. By 2018, Myanmar had become the

¹⁶ Ali Muhammad, Ahmad Sahide, “ASEAN’s RESPONSE TO THE MYANMAR MILITARY COUP: FROM NONINTERVENTION TO RESPONSIBILITY TO PROTECT.” *UNISCI Journal* 59 (May 2022): 47
<https://www.unisci.es/wp-content/uploads/2022/11/UNISCIDP59-3ALI.pdf>

¹⁷ Jatswan S Sidhu, “International Responses to Human Rights Violations in Myanmar: The Case of the Rohingya.” *Journal of International Studies* (2020): 128
https://www.academia.edu/77139311/International_Responses_to_Human_Rights_Violations_in_Myanmar_The_Case_of_the_Rohingya

¹⁸ Ibid

¹⁹ Bernat Baena, “The Rohingya Genocide: Global Inaction and the Failure of Responsibility to Protect.” *European Student Think Tank* (2025) <https://esthinktank.com/2025/02/05/the-rohingya-genocide-global-inaction-and-the-failure-of-responsibility-to-protect/>

EU's sixth largest trading partner in the region, with exports to Europe reaching €1.56 billion, ten times the figure recorded in 2012.²⁰ However, the eruption of mass violence against the Rohingya minority in 2017 triggered renewed debate in Brussels, particularly around the possible withdrawal of trade privileges. Hence, EU's restrictive measures were gradually reactivated. In October 2017, France and the UK suspended military training programs with Myanmar's armed forces.²¹ In April 2018, the arms embargo was strengthened, and sanctions were imposed on military and border officials responsible for human rights abuses.²² On 25 June 2018, the EU and Canada jointly adopted targeted sanctions, including travel bans and asset freezes, against seven high-ranking officers directly implicated in the atrocities in Rakhine State.²³ Building on earlier measures, in 2019, the Council introduced a ban on any cooperation or training with the Tatmadaw.²⁴

The coup d'état of 1 February 2021 marked a decisive turning point. On 22 March, the European Council sanctioned 11 individuals, involved in the coup and the violent suppression of peaceful protests. The list included top military figures such as the Tatmadaw's Commander-in-Chief Min Aung Hlaing, and Deputy-Commander-in-Chief Soe Win, as well as the new Chairperson of the Union Election Commission for his role in nullifying the results of the 2020 general elections. As outlined in the Council's official statement, these sanctions entailed "a travel ban and an asset freeze", while "EU citizens and companies are forbidden from making funds available to the listed individuals and entities." The package also included "the withholding of financial assistance going to the government, the freezing of all assistance to government bodies that may be seen as legitimising the Myanmar military junta", and was accompanied by sustained diplomatic pressure.²⁵ On 19 April, the EU extended its sanctions to ten additional individuals and two military-controlled companies, MEHL and MEC, on the grounds that they "operate in many sectors of Myanmar's economy and are owned and controlled by the Myanmar Armed Forces (Tatmadaw), and provide revenue for it". These measures specifically targeted the junta's financial interests, while being "crafted in such a way to avoid undue harm to the people of Myanmar". The Council concluded that this decision "sends a

²⁰ Arlo Poletti, Daniela Sicurelli, "The Political Economy of the EU Approach to the Rohingya Crisis in Myanmar." *Politics and Governance* 10, (2022): 52 <https://www.cogitatiopress.com/politicsandgovernance/article/view/4678/2459>

²¹ Simon Adams, *op. cit.*, 8

²² ESThinktank, "The Rohingya Genocide."

²³ Simon Adams, *op. cit.*, 15

²⁴ ESThinktank, "The Rohingya Genocide."

²⁵ European Council, "Myanmar/Burma: EU sanctions 11 people over the recent military coup and ensuing repression." (March 22, 2021) <https://www.consilium.europa.eu/en/press/press-releases/2021/03/22/myanmar-burma-eu-sanctions-11-people-over-the-recent-military-coup-and-ensuing-repression/>

clear message to the military leadership: continuing on the current path will only bring further suffering and will never grant any legitimacy”.²⁶

In its 25 May 2021 statement, the European External Action Service (EEAS) clarified that these new sanctions complemented existing ones, including “an enhanced arms embargo”, export bans on dual-use goods, surveillance technologies, and “a prohibition of military training and military cooperation with the Tatmadaw.” It further reported that the number of individuals listed had risen from 14 to 35.²⁷ On the multilateral front, the EU co-sponsored the February 2021 resolution of the UN Human Rights Council, calling on Myanmar’s authorities “to protect the rights to freedom of opinion and expression, religion or belief, association and peaceful assembly in accordance with international human rights law”.²⁸ The most comprehensive overview of the EU’s sanction regime can be found in the official Council dossier on restrictive measures towards Myanmar. As of the most recent update: “so far, the Council has adopted eight packages of sanctions targeting Myanmar’s military regime, which is responsible for overthrowing the democratically elected government, with 106 individuals sanctioned and 22 entities sanctioned”.²⁹ The measures remain in place and were most recently extended until 30 April 2026.³⁰

Despite the consistency of its restrictive measures, the EU has often been perceived as adopting a comparatively softer posture than the United States. Its preference for calibrated, multilateral action, rather than extensive unilateral sanctions reflects both internal constraints and the Union’s normative orientation. Nevertheless, the EU has repeatedly affirmed its readiness to adopt further measures in the absence of progress on the ground, reiterating its commitment to supporting “the people of Myanmar in their quest for a free, peaceful and democratic future”.³¹

²⁶ European Council, “Myanmar/Burma: EU imposes sanctions on 10 individuals and two military-controlled companies over the February military coup and subsequent repression.” (April 19, 2021) <https://www.consilium.europa.eu/en/press/press-releases/2021/04/19/myanmar-burma-eu-imposes-sanctions-on-10-individuals-and-two-military-controlled-companies-over-the-february-military-coup-and-subsequent-repression/>

²⁷ European External Action Service (EEAS), “Military Coup in Myanmar.” (May 25, 2021) https://www.eeas.europa.eu/eeas/military-coup-myanmar_en

²⁸ United Nations Human Rights Council, Situation of human rights in Myanmar, A/HRC/S-29/L.1 (February 12, 2021), available from <https://docs.un.org/en/A/HRC/S-29/L.1>

²⁹ European Council, “Sanctions against Myanmar”. <https://www.consilium.europa.eu/en/policies/sanctions-against-myanmar/>

³⁰ European Council, “Myanmar: EU restrictive measures renewed until 30 April 2026.” <https://www.consilium.europa.eu/en/press/press-releases/2025/04/25/myanmar-eu-restrictive-measures-renewed-until-30-april-2026/>

³¹ European Council, “Sanctions against Myanmar.”

3.1.2 The United States unilateral coercion

While the EU has favored calibrated multilateral responses, the United States has pursued a more unilateral and coercive approach, rooted in its long-standing normative stance toward Myanmar, rooted in its condemnation of the military regime's systematic human rights violations. Following the violent suppression of the 1988 pro-democracy demonstrations, Washington suspended all aid and indefinitely froze diplomatic engagement, leaving the position of US ambassador to Myanmar vacant since 1992.³² These early measures laid the foundation for a broader unilateral sanctions regime, encompassing trade and financial restrictions designed to curb repression and promote democratic transition. This stance was reinforced throughout the 1990s and early 2000s, particularly with the enactment of the Free Burma Act which imposed a variety of mandatory sanctions against Burma and countries assisting Burma.³³ Despite this punitive approach, the United States simultaneously provided consistent humanitarian support to the Rohingya population. Since 1991, US assistance to Rohingya refugees in Bangladesh has included multi-million-dollar allocations to UNHCR, the International Committee of the Red Cross (ICRC), and other NGOs. In 2010 alone, more than \$23 million was provided for humanitarian purposes, alongside vocal opposition to forced repatriation.³⁴ That same year, Congressman Christopher Smith introduced a House resolution calling for "full and equal citizenship" for the Rohingya and an end to all forms of repression, which he described as equivalent to crimes against humanity.³⁵ During the Obama administration, Myanmar became a focal point of the US "Pivot to Asia". The policy of engagement was symbolically marked by two presidential visits, in 2012 and 2014. Following the NLD's 2015 electoral victory, President Obama lifted longstanding sanctions, reflecting a cautious endorsement of Myanmar's democratic momentum.³⁶ Consequently, US FDI and development assistance peaked at over \$120 million in 2020.³⁷

Yet, the 2021 military coup prompted a resolute response from the Biden administration. On February 1, President Biden called for a global coalition to defend Burmese democracy. The

³² Jatswan S Sidhu, *op. cit.*, 127

³³ US Congress, "S.1092 - Free Burma Act of 1995." 104th Congress (1995–1996)
<https://www.congress.gov/bill/104th-congress/senate-bill/1092/titles>

³⁴ Jatswan S Sidhu, *op. cit.*, 127

³⁵ *Ibid*

³⁶ Thu Htet, "Shifting the US-Myanmar under Trump Administration and its Geopolitical Implication." *WIMAYA 2* (2021): 49,49 <https://wimaya.upnjatim.ac.id/index.php/wimaya/article/view/51/91>

³⁷ Wui Chern Liew, "The United States' Myanmar policy after the 2021 military coup and its prospects under China–US strategic competition." *Asian Affairs An American Review* 50 (October 2023): 256
https://www.researchgate.net/publication/374438930_The_United_States'_Myanmar_policy_after_the_2021_military_coup_and_its_prospects_under_China-US_strategic_competition

following day, the State Department formally recognized the events as a “coup d’état.” On February 10, Biden issued Executive Order 14014, which became the legal cornerstone of US sanctions policy. In this landmark document, the President declared that the coup and the military’s repressive actions constitute “an unusual and extraordinary threat to the national security and foreign policy of the United States” and declared “a national emergency to deal with that threat”.³⁸ The Order authorized asset freezes and export-control restrictions on military leaders, their families, and business networks, including a freeze on approximately \$1 billion of Myanmar government assets held in the USA.³⁹ The administration followed up by designating multiple individuals, including Than Hlaing and other senior military figures, as well as major military-controlled entities. Washington also coordinated its sanctions with allies such as the United Kingdom and Canada and announced joint packages on May 17, 2021.⁴⁰ Biden’s policy included a clear shift of aid: over \$42 million in bilateral assistance was immediately redirected from the junta to civil society initiatives.⁴¹ As observed by Dalpino, the administration aimed to establish “a ladder of sanctions” to restrict both domestic and international revenue sources available to the junta.⁴²

Congressional engagement further bolstered the American response. In 2021, lawmakers introduced several bills, including the Protect Democracy in Burma Act (H.R.1112) which mandated State Department reporting on US efforts to engage with ASEAN and the UN in restoring Myanmar’s democratic trajectory;⁴³ the Rohingya Genocide Determination Act (S.1142) which required a formal assessment of “whether the situation constitutes genocide under U.S. law”;⁴⁴ and the BURMA Act (S.2937) which imposed property and visa-blocking sanctions on those undermining democracy and obligated the Treasury to regulate financial accounts connected to sanctioned entities.⁴⁵ Simultaneously, the executive branch maintained a strong position. In 2023, Myanmar’s opposition NUG was formally welcomed in Washington with the opening of a liaison office.⁴⁶ In July, the administration reiterated that “all options are on the table to punish the junta”.⁴⁷ Despite criticism that “the United States’ blind resolve to use only comprehensive sanctions” may delay democratization

³⁸ Executive Order 14014 of February 10, 2021, “Blocking Property With Respect to the Situation in Burma.” Federal Register 86 (February 12, 2021) <https://www.govinfo.gov/content/pkg/FR-2021-02-12/pdf/2021-03139.pdf>

³⁹ Catharin Dalpino, *op. cit.*, 60

⁴⁰ Wui Chern Liew, *op. cit.*, 257

⁴¹ International Crisis Group, *op. cit.*, 7

⁴² Catharin Dalpino, *op. cit.*, 60

⁴³ US Congress, “H.R.1112 - Protect Democracy in Burma Act of 2021.” 117th Congress (2021-2022)

⁴⁴ US Congress, “S.1142 - Rohingya Genocide Determination Act of 2021.” 117th Congress (2021-2022)

⁴⁵ US Congress, “S.2937 - BURMA Act of 2021.” 117th Congress (2021-2022)

⁴⁶ Phyu Hnin, “How a Fractured Myanmar is Navigating U.S.-China Rivalry.” *United States Institute of Peace* (April 3, 2024) <https://www.usip.org/publications/2024/04/how-fractured-myanmar-navigating-us-china-rivalry>

⁴⁷ Wui Chern Liew, *op. cit.*, 260

or harm civilians,⁴⁸ US policy has remained comprehensive and continues to emphasize political isolation of the junta.

Beyond legal and humanitarian tools, Washington's response has also been shaped by broader strategic dynamics. In particular, the Biden administration has interpreted the Myanmar crisis through the lens of growing strategic competition with China in Southeast Asia. As highlighted by Liew, the military coup in Naypyidaw "indirectly suggested the administration's challenge in the rise of autocracy under the backdrop of China–US competition",⁴⁹ thereby transforming Myanmar's democratic regression into a regional flashpoint with significant implications for US interests. This perception has been reinforced by the legacy of the Trump administration, whose adherence to the "America First" doctrine led to a progressive withdrawal from multilateral frameworks and a sharp decline in strategic engagement across the Indo-Pacific.⁵⁰ The reversal of certain sanctions under Trump's presidency has been widely criticized as, in the words of Tom Andrews, "a major step backward for international efforts to save lives by restricting the murderous junta's access to weapons".⁵¹ Ultimately, this uneven and, at times, contradictory posture contributed to a broader regional realignment: "the declining engagement in the region provided the power vacuum for China, as China has taken advantage of it to engage with other nations in the region".⁵²

As Western actors prioritized sanctions and diplomatic isolation in response to Myanmar's escalating crisis, a different pattern has emerged among neighboring powers. Notably, ASEAN Member States, China, Russia and India, have either actively opposed or refrained from supporting punitive international measures, choosing instead to maintain or even strengthen their engagement with the military regime. These responses, examined below, reveal a complex mosaic of diverging interests, calibrated risk management, and cautious engagement that contrasts sharply with the more normative stance adopted by the EU and the United States.

⁴⁸ Thiha Myo Nyun, "Feeling Good or Doing Good: Inefficacy of the U.S. Unilateral Sanctions against the Military Government of Burma/Myanmar." *Washington University Global Studies Law Review* 7 (2008): 479,480
<https://heinonline.org/HOL/Page?handle=hein.journals/wasglo7&id=473&collection=journals&index=>

⁴⁹ Wui Chern Liew, *op. cit.*, 261

⁵⁰ Thu Htet, *op. cit.*, 51

⁵¹ Office of the High Commissioner for Human Rights (OHCHR), "UN expert appalled by US withdrawal of sanctions against companies providing weapons to Myanmar junta." (July 30, 2025) <https://www.ohchr.org/en/press-releases/2025/07/un-expert-appalled-us-withdrawal-sanctions-against-companies-providing>

⁵² Thu Htet, *op. cit.*, 52

3.1.3 The “ASEAN Way”

Among these actors, the Association of Southeast Asian Nations (ASEAN) occupies a particularly delicate position. As the only regional organization with institutional ties to Myanmar, ASEAN stands out as the forum most directly implicated in the management of the crisis, yet also the most constrained in its ability to respond effectively. ASEAN found itself at the heart of the international expectations, tasked with handling the fallout from Myanmar, long viewed as the bloc’s “sick man”.⁵³ However, in the aftermath of the 2017 clearance operations in Rakhine State, ASEAN refrained from attributing responsibility or acknowledging the nature of the atrocities. The Chair’s Statement of September 2017 made no reference to the term “Rohingya”, instead generically expressing concern for “all acts of violence which resulted in loss of civilian lives”.⁵⁴ Furthermore, the humanitarian response coordinated by the ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management (AHA Centre) focused almost exclusively on assisting return and resettlement mechanisms in Rakhine, rather than addressing the root causes of displacement or engaging with the refugee camps in Bangladesh.⁵⁵ The organization’s reluctance to address the Rohingya crisis stemmed from ASEAN’s founding principles: sovereignty, non-interference in internal affairs, consensus-based decision-making, and a preference for quiet diplomacy.⁵⁶

In the immediate aftermath of the military takeover orchestrated by General Min Aung Hlaing, ASEAN struggled to articulate a coherent and unified position. While Indonesia, Malaysia and Singapore called for the restoration of democratic order and the release of political prisoners, Thailand, Cambodia, and Vietnam, adopted a more neutral stance, framing the crisis as an internal affair of a sovereign country.⁵⁷ In particular, Brunei, which held the rotating ASEAN Chairmanship in 2021, issued a statement expressing “concern” and calling for “dialogue, reconciliation and the return to normalcy”,⁵⁸ yet without explicitly condemning the coup.

⁵³ International Crisis Group, *op. cit.*, 8

⁵⁴ Amnesty International, “OPEN LETTER: ASEAN MUST ADDRESS HUMAN RIGHTS VIOLATIONS AROUND THE MYANMAR RAKHINE CRISIS.” (October 6, 2017) <https://www.amnesty.org/en/wp-content/uploads/2021/05/ASA1672362017ENGLISH.pdf>

⁵⁵ Kilian Spandler, “Lessons from ASEAN’s Rakhine response.” *East Asia Forum* (February 5, 2020) <https://eastasiaforum.org/2020/02/05/lessons-from-aseans-rakhine-response/>

⁵⁶ Abdullahi AYOADE Ahmad, “The Principle of Non-Interference and the Question of Human Rights Violation: The Case of the Rohingya Minority.” *Asian Journal of Social Sciences and Management Studies* 3 (July 2016): 291 https://www.researchgate.net/publication/309746395_The_Principle_of_Non-Interference_and_the_Question_of_Human_Rights_Violation_The_Case_of_the_Rohingya_Minority

⁵⁷ Catharin Dalpino, *op. cit.*, 60

⁵⁸ Sahil Mathur, “Myanmar’s Coup D’Etat: What Role for ASEAN?.” *The Diplomat* (February 3, 2021) <https://thediplomat.com/2021/02/myanmars-coup-detat-what-role-for-asean/>

Recognizing the need to demonstrate regional leadership, an emergency summit was convened in Jakarta on 24 April 2021, under Indonesia's initiative. Notably, the attendance of Senior General Min Aung Hlaing at the meeting underscored both the gravity of the crisis and ASEAN's ambition to position itself as a credible mediator. The summit culminated in the adoption of the "Five-Point Consensus" (5PC) which outlined a framework for de-escalation and dialogue, including: (1) the immediate cessation of violence; (2) constructive dialogue among all parties; (3) the appointment of a Special Envoy of the ASEAN Chair to facilitate mediation; (4) the provision of humanitarian assistance through the AHA Centre; (5) a visit by the Special Envoy to meet with all relevant parties.⁵⁹ Yet, the Five-Point Consensus quickly revealed its limitations. The Tatmadaw ignored its commitment to halt violence and actively escalated its repressive campaign in the following months. By mid-2021, the number of civilian casualties and arbitrary arrests had risen dramatically, while the junta declared that it would consider the "suggestions made by ASEAN leaders when the situation returns to stability".⁶⁰ The military regime consistently blocked access to the Special Envoy and rejected any dialogue with representatives of the NUG, which it labeled as a terrorist organization.⁶¹ Moreover, the Association's rotating chairmanship and divergent political cultures among Member States hindered the development of a coherent response. While Indonesia, Malaysia, and the Philippines advocated for a more assertive stance, others including Thailand, Cambodia, and Vietnam, favored continued engagement with the junta and opposed punitive measures.⁶² Consequently, these internal fractures resulted in a policy impasse that undermined ASEAN's credibility and effectiveness as a mediator.

Nonetheless, reflecting growing frustration within the bloc and a gradual willingness to deviate from its sacrosanct non-interference principle, ASEAN excluded Min Aung from the 2021 and 2022 summits, allowing only non-political representatives from Myanmar to participate.⁶³ ASEAN progressively intensified its calls for implementation of the 5PC, with the Cambodian and Indonesian chairmanships adopting increasingly critical language in their joint communiqués, highlighting with concern "the lack of substantial progress on the implementation by the Authority

⁵⁹ Association of Southeast Asian Nations (ASEAN), "Chairman's Statement on the ASEAN Leaders' Meeting." (April 24, 2021) <https://asean.org/wp-content/uploads/Chairmans-Statement-on-ALM-Five-Point-Consensus-24-April-2021-FINAL-a-1.pdf>

⁶⁰ Human Rights Watch, "Myanmar: ASEAN's Failed '5-Point Consensus' a Year On." (April 22, 2022) <https://www.hrw.org/news/2022/04/22/myanmar-aseans-failed-5-point-consensus-year>

⁶¹ Ibid

⁶² Catharin Dalpino, *op. cit.*, 60

⁶³ Sebastian Strangio, "Myanmar's Junta Chief Not Invited to ASEAN Summit, Cambodia Confirms." *The Diplomat* (October 6, 2022) <https://thediplomat.com/2022/10/myanmars-junta-chief-not-invited-to-asean-summit-cambodia-confirms/>

in Myanmar, despite their commitment to the 5PC in April 2021”.⁶⁴ However, ASEAN’s capacity to exert tangible pressure on the junta remained severely constrained. The absence of binding enforcement mechanisms, coupled with the Myanmar military’s persistent obstructionism, rendered these declarations largely ineffective. The appointment of successive special envoys (including Brunei’s Second Foreign Minister Erywan Yusof, Cambodian Foreign Minister Prak Sokhonn, and Indonesia’s Foreign Minister Retno Marsudi) led to only marginal engagement.⁶⁵ In each instance, the junta repeatedly denied access to key stakeholders, including the NUG and detained opposition leaders, and restricted humanitarian channels and civil society access.

Significantly, both ASEAN and the EU have been acknowledged by the United Nations as key regional actors in fostering accountability. As early as 2018, the IIFFMM explicitly recommended that “relevant regional organizations, including the European Union and the Association of Southeast Asian Nations (ASEAN), should develop strategies to ensure accountability for perpetrators of crimes under international law in Myanmar”.⁶⁶ This early recognition underscored the normative potential of regional mechanisms in reinforcing international legal standards and in upholding fundamental human rights. In the same spirit, the General Assembly’s resolution of 18 June 2021 welcomed ASEAN’s diplomatic initiative, urging Myanmar to “swiftly implement the five-point consensus [...] to facilitate a peaceful solution in the interest of the people of Myanmar and their livelihoods”.⁶⁷ It further called upon Burma “to continue engaging with the Association of Southeast Asian Nations in seeking a sustainable peaceful resolution to the current political crisis, taking into account the important role of the Association in continuing to assist Myanmar in its transition to democracy”.⁶⁸

Although these statements reflect the broad international recognition of ASEAN’s diplomatic contribution, the bloc’s overall handling of the Myanmar crisis has ultimately exposed the structural constraints of its institutional framework. The so-called “ASEAN way”, grounded in principles of non-interference and consensus decision-making, while central to regional cohesion, has limited the

⁶⁴ Association of Southeast Asian Nations (ASEAN), “ASEAN Leaders’ Review and Decision on the Implementation of the Five-Point Consensus”. ASEAN Indonesia 2023 (September 5, 2023): 2, para. 9 <https://asean.org/wp-content/uploads/2023/09/01.FINAL-ASEAN-LEADERS-REVIEW-AND-DECISION-ON-THE-IMPLEMENTATION-OF-THE-5PC-1.pdf>

⁶⁵ Michael Tene, “ASEAN Five-Point Consensus on Myanmar.” *Rajaratnam School of International Studies (RSIS)* (July 2024) <https://rsis.edu.sg/wp-content/uploads/2024/07/CO24106.pdf>

⁶⁶ IIFFM 2018 Report, para. 115

⁶⁷ United Nations General Assembly (UNGA) resolution 75/287, The situation in Myanmar, A/RES/75/287 (June 25, 2021), available from <https://docs.un.org/en/A/RES/75/287>

⁶⁸ Ibid

organization's ability to address mass atrocities and democratic regression occurring within one of its own Member States.⁶⁹ As Myanmar's political and human rights situation continues to deteriorate, ASEAN's cautious and fragmented diplomacy underscores the urgent need for a more coordinated and principled international approach.⁷⁰ This necessity becomes even more pressing when viewed in light of the enduring support for the military regime by powerful external actors such as China, Russia, and India, whose respective policies and strategic interests in Myanmar will be examined in the following sections.

3.1.4 China: strategic alignment under the banner of non-interference

China's response to the unfolding crisis in Myanmar must be understood within the broader context of its enduring strategic partnership with the country and its aversion to any form of external intervention in the internal affairs of sovereign states. Prior to the 2021 military coup, China had maintained strong relations with both the civilian government led by Aung San Suu Kyi and the military elite, thereby ensuring continuity of its influence regardless of Myanmar's domestic political configuration.⁷¹ During the decades of international isolation in the 1990s and 2000s, Beijing remained a steadfast ally of the Tatmadaw, guided by converging geopolitical objectives: securing regional stability along its southwestern border, protecting extensive economic investments, and counterbalancing Western normative pressures. These priorities became particularly salient in the aftermath of the 2017 military operations in Rakhine State, which triggered international outrage over atrocities against the Rohingya population. While several Western states condemned the violence and adopted targeted sanctions, China used its diplomatic weight to shield Myanmar, notably by blocking binding action within the UN Security Council.⁷² Consistent with its traditional doctrine of non-interference, Beijing characterized the Rohingya crisis as an issue that "should be handled properly by Bangladesh and Myanmar through bilateral channels".⁷³ In multilateral fora, Chinese

⁶⁹ Endah Rantau Itasari, "The Role Of The Asean Intergovernmental Commission Of Human Rights In Giving Protection To The Ethnic Rohingya Of The Spirit In Southeast Asia." *Jurnal IUS Kajian Hukum dan Keadilan* 8 (December 2020): 578

https://www.researchgate.net/publication/348073291_The_Role_Of_The_Asean_Intergovernmental_Commission_Of_Human_Rights_In_Giving_Protection_To_The_Ethnic_Rohingya_Of_The_Spirit_In_Southeast_Asia

⁷⁰ Abdullahi AYOADE Ahmad, *op. cit.*, 291

⁷¹ Kristina Kironka, Diya Jiang, "China–Myanmar Relations after the 1 February Military Coup." *ANU Press* (2023): 121 <https://www.jstor.org/stable/jj.13167839.10?seq=1>

⁷² Phyu Hnin, "How a Fractured Myanmar is Navigating U.S.-China Rivalry."

⁷³ Ministry of Foreign Affairs People's Republic of China, "Wang Yi Introduces China's Position on Issue of the Rohingya People." (November 19, 2017)

representatives consistently worked to dilute the language of UN resolutions and emphasized the importance of stability and development over punitive measures. Notably, China did not participate in or endorse the mechanisms established by the HRC or UNGA concerning Myanmar, and abstained from votes referring the situation to international legal bodies. This stance reinforced Beijing's image as a reliable partner for regimes seeking to avoid Western censure and legal consequences.

Following the military coup of 1 February 2021, China's initial reaction was marked by deliberate ambiguity. Unlike Western powers that swiftly condemned the seizure of power and called for the restoration of democracy, Beijing refrained from issuing any direct criticism of the Tatmadaw. For example, the official Chinese state-run media Xinhua referred to the events simply as a "major cabinet reshuffle announced in Myanmar",⁷⁴ reflecting China's desire to maintain working relations with whichever authority holds power in Naypyidaw. In parallel, China actively opposed any Security Council resolution that condemned the military takeover or imposed sanctions, invoking the inviolable principles of "sovereignty" and "non-interference".⁷⁵ Alongside Russia, Beijing played a central role in weakening the language in Security Council presidential statements, removing explicit references to the 2020 elections, the NUG, and the persecution of the Rohingya.⁷⁶ At the UN General Assembly, Beijing abstained from the landmark resolution adopted on 18 June 2021, which condemned the coup and called for a global arms embargo on Myanmar. Chinese diplomats justified the decision by arguing that pressure or sanctions will only intensify confrontation. More broadly, China has sought to reshape multilateral discourse around Myanmar by promoting the "ASEAN way" as the only legitimate forum to address the crisis.⁷⁷

At the same time, however, the military coup of February 2021 immediately cast a shadow over China's extensive economic interests in Myanmar, many of which are anchored in strategic infrastructure projects under the Belt and Road Initiative (BRI). Chief among these is the China–Myanmar Economic Corridor (CMEC), which connects China's Yunnan province to the Indian

https://www.fmprc.gov.cn/mfa_eng/gjhdq_665435/2675_665437/2681_663366/2683_663370/202406/t20240607_11406751.html

⁷⁴ Xinhua, "Major cabinet reshuffle announced in Myanmar." *China Daily* (February 2, 2021)

<https://global.chinadaily.com.cn/a/202102/02/WS6018aee3a31024ad0baa6a4a.html>

⁷⁵ Ahmed Arafa Abdelrehim Hammad, "Protection of civilians in the law of war: A case study of Myanmar." *Liberal Arts and Social Sciences International Journal (LASSIJ)* 5 (October 2021):134

https://www.researchgate.net/publication/355509656_Protection_of_civilians_in_the_law_of_war_A_case_study_of_Myanmar

⁷⁶ Wui Chern Liew, *op. cit.*, 263

⁷⁷ Kristina Kironka, Diya Jiang, *op. cit.*, 124

Ocean through Myanmar's Rakhine State.⁷⁸ This corridor includes the deep-sea port of Kyaukphyu, a parallel oil and gas pipeline, and an associated Special Economic Zone.⁷⁹ Consequently, the coup and the wave of civil unrest that followed, created immediate risks to the continuity and safety of these projects, threatening to destabilize a corridor considered vital for China's strategic access to maritime trade routes.⁸⁰ In particular, following the junta's violent crackdown on protesters, anti-Chinese sentiment surged across the country, fueled by widespread perceptions of Beijing's tacit endorsement of the military regime. In March 2021, several Chinese-funded factories were torched during demonstrations in Yangon, thereby provoking strong diplomatic reactions from Beijing. The Chinese government urged the junta to ensure the protection of its nationals and economic interests, while state media portrayed the attacks as acts of terrorism requiring firm judicial response. In turn, the junta arrested dozens of individuals and handed down harsh sentences, seemingly to reassure China of its commitment to safeguarding bilateral ties.⁸¹

Despite these tensions, Beijing opted for accommodation rather than confrontation. While initially avoiding explicit recognition of the new authorities, China gradually adjusted its diplomatic posture to the changing reality on the ground. In June 2021, China's Ambassador to Burma met with Senior General Min Aung Hlaing, reaffirming their "traditional friendship".⁸² Symbolically, official communications from the Chinese Embassy began referring to Senior General Min Aung Hlaing as the "Leader of Myanmar", signalling a step toward *de facto* legitimization of the regime. Meanwhile, China continued to expand its engagement with the junta through bilateral and regional platforms, advancing new BRI-related projects and offering financial and technical support for infrastructure development. Notably, China approved twenty-two new cooperation projects under the Mekong-Lancang framework.⁸³ The security dimension of bilateral relations also persisted, albeit with greater opacity. While Chinese officials formally denied supplying arms or military assistance to the junta, the 2023 report by the UN Special Rapporteur on Myanmar revealed that entities based in China provided the junta with an estimated \$267 million in arms and associated materials since the 2021

⁷⁸ International Crisis Group, "A Rebel Border: India's Evolving Ties with Myanmar after the Coup." (April 11, 2025) <https://www.crisisgroup.org/asia/south-east-asia/myanmar-india/b182-rebel-border-indias-evolving-ties-myanmar-after-coup>

⁷⁹ Kristina Kironka, Diya Jiang, *op. cit.*, 126

⁸⁰ *ivi*, 130

⁸¹ *ivi* 124

⁸² Embassy of the People's Republic of China in the Republic of the Union of Myanmar, "The Leader of Myanmar Senior General Min Aung Hlaing Met with Chinese Ambassador to Myanmar." (June 6, 2021) http://mm.china-embassy.gov.cn/eng/sgxw/202106/t20210606_8906439.htm

⁸³ Kristina Kironka, Diya Jiang, *op. cit.*, 125

coup.⁸⁴ These included dual-use technologies, telecommunications tools, aircraft components, and radar systems. Notably, the report underscored that over 94% of these supplies were transferred directly to military-controlled entities, bypassing civilian oversight.⁸⁵ Given the Chinese government's tight control over its arms industry, it is highly probable that such shipments were state-authorized.⁸⁶ Despite international calls for restraint, Beijing has refrained from imposing any form of arms embargo or export restrictions on its companies, thereby reinforcing the Tatmadaw's operational capacity and shielding the regime from accountability.

Taken together, China's posture towards Myanmar illustrates a broader strategy of pragmatic alignment, where economic imperatives, geopolitical influence, and normative resistance to Western-led accountability converge. Yet, Beijing is not alone in pursuing a calibrated engagement with the military regime. Other major powers, most notably Russia and India, have similarly resisted punitive international action while seeking to preserve and, in some cases, expand their strategic footholds in Myanmar. Although their motivations, historical ties, and modes of engagement differ from China's, both Moscow and New Delhi have played consequential roles in enabling the junta's resilience on the international stage.

3.1.5 Russia's Authoritarian Solidarity and Militarized Engagement

Since February 2021, the Russian Federation has emerged as one of the most prominent and unapologetic international supporters of Myanmar's junta, elevating a previously steady partnership into a strategic alliance grounded in mutual diplomatic, military, and economic interests.⁸⁷ Moscow's backing has not only filled the vacuum left by the West's condemnation and sanctions, but has also entrenched Russia's presence as a pivotal actor in Myanmar's defense, energy, and geopolitical realignment. Russia was among the first major powers to openly engage with the junta after its violent power grab, dispatching Deputy Defense Minister Alexander Fomin to Naypyidaw in March 2021 for the annual Armed Forces Day parade.⁸⁸

⁸⁴ Human Rights Council, *The Billion Dollar Death Trade: The International Arms Networks that Enable Human Rights Violations in Myanmar*, A/HRC/53/CRP.4, para. 8 (May 17, 2023) available from <https://www.ohchr.org/sites/default/files/documents/countries/myanmar/crp-sr-myanmar-2023-05-17.pdf>

⁸⁵ *ivi*, para. 46

⁸⁶ *ivi*, para. 63

⁸⁷ Martin Smith, Jason Gelbort, *op. cit.*, 85

⁸⁸ Catharin Dalpino, *op. cit.*, 60

Particularly, the military dimension of the bilateral partnership has intensified considerably since the coup. According to the UN Special Rapporteur's 2023 investigation, Russian entities have transferred at least \$406 million in arms, and advanced weapons systems to the junta since February 2021.⁸⁹ These transfers include fighter jets, missile systems, drones, and rotary aircraft, which have reportedly been used in indiscriminate airstrikes and mass atrocities, including the systemic targeting of Rohingya civilians. Between July and December 2022 alone, 135 "airwar incidents" were documented, many involving daily aerial attacks, with the Myanmar military heavily relying on foreign-supplied aircraft, primarily from Russia.⁹⁰ As emphasized by advocacy group Justice For Myanmar, "Russia's arms industry earns big profits from the Myanmar military's atrocities. The same Russian arms industry that supplies the terrorist Myanmar military is manufacturing the arms that are enabling Russia's unprovoked aggression against Ukraine".⁹¹ This observation underscores a broader pattern of reciprocal authoritarian solidarity between the two regimes, wherein both are subjected to intense Western sanctions and diplomatic isolation, yet find in each other a reliable partner in defiance.⁹²

Parallel to the military support, Russia has considerably expanded its economic footprint in Myanmar, leveraging the latter's increasing isolation from Western markets to deepen bilateral ties in critical sectors. The energy sector has emerged as a central pillar of this cooperation. In June 2023, the junta signed a substantial energy deal with Moscow; moreover, Gazprom, one of Russia's major state-owned energy firms, had already formalized agreements with Myanmar's Ministry of Electricity and Energy in 2019 for exploration and production projects.⁹³ Burma's increasing reliance on Russian energy imports has been facilitated by the creation of direct financial and banking channels aimed at circumventing Western-controlled systems. Such mechanisms have enabled Myanmar to pay for Russian oil and gas using alternative arrangements, strengthening economic interdependence between the two countries and further insulating them from the sanctions imposed by the US and like-minded nations. Such dynamics are indicative of a broader pattern wherein countries subjected to Western sanctions forge closer ties in an effort to shield their regimes from external economic shocks.⁹⁴ In this

⁸⁹ Human Rights Council, *The Billion Dollar Death Trade*, para. 8

⁹⁰ *ivi*, para. 53

⁹¹ Justice for Myanmar, "Justice For Myanmar calls for sanctions on 19 Russian suppliers of arms and related equipment to the Myanmar military." (March 27, 2022) <https://www.justiceformyanmar.org/press-releases/justice-for-myanmar-calls-for-sanctions-on-19-russian-suppliers-of-arms-and-related-equipment-to-the-myanmar-military>

⁹² International Crisis Group, "Coming to Terms with Myanmar's Russia Embrace." (August 4, 2022) <https://www.crisisgroup.org/asia/south-east-asia/myanmar-russia-internal/coming-terms-myanmars-russia-embrace>

⁹³ Aung Myo Htun, "Political Economy of Myanmar and Russia Friendship Before and After the Military Coup in 2021." *Palgrave Macmillan* (April 19, 2025):173 https://link.springer.com/chapter/10.1007/978-981-96-3073-8_9

⁹⁴ *ivi*, 183

context, Myanmar's pivot toward Russia is not only a reactive strategy to international condemnation, but also a deliberate attempt to reposition itself within an alternative global order. The Russian side, in turn, views Myanmar as a gateway to Southeast Asia, a region of growing strategic relevance where Moscow seeks to counterbalance American influence.⁹⁵ In fact, the Kremlin has also engaged in symbolic acts of solidarity and political legitimation. In 2022, Min Aung Hlaing attended Russia's Eastern Economic Forum in Vladivostok as an official guest,⁹⁶ receiving high-level treatment normally reserved for recognized heads of state. Similarly, Russian Foreign Minister Sergei Lavrov's official visit to Naypyidaw in August 2022⁹⁷ underscored Russia's continued diplomatic recognition of the junta, with both sides reaffirming their strategic partnership and commitment to deepening cooperation.

As the two foremost providers of military equipment to the Tatmadaw, China and Russia have entrenched ties with Myanmar's security apparatus. State-linked Chinese firms remain among the key suppliers of dual-use technologies and arms, while Moscow has delivered advanced fighter jets and other offensive capabilities. Crucially, both governments have systematically obstructed the inclusion of language in UN Security Council texts that would explicitly prohibit arms transfers to the junta. The consistent use of their veto power has prevented the Council from adopting binding sanctions, thereby shielding Myanmar's military leadership from international enforcement mechanisms and reinforcing the regime's impunity.⁹⁸

3.1.6 India's Strategic Ambiguity: Balancing Security and Regional Influence

India's response to the Myanmar crisis has been shaped by a combination of geopolitical interests and regional security imperatives. Since the launch of Myanmar's democratic transition in 2011, New Delhi had pursued a policy of constructive engagement with Naypyidaw, driven by three interrelated objectives: stabilising India's volatile north-eastern border, enhancing economic connectivity with Southeast Asia under the "Act East" policy, and countering the strategic encroachment of China in the Indo-Pacific region. These priorities were exemplified by India's investment in the Kaladan

⁹⁵ *ivi*, 177

⁹⁶ The Republic of the Union of Myanmar, Ministry of Information (September 8, 2022) <https://www.moi.gov.mm/moi/%3Aeng/news/8118>

⁹⁷ The Republic of the Union of Myanmar, Ministry of Information (August 4, 2022) <https://www.mofa.gov.mm/en/press-release-3-8-2022/>

⁹⁸ Ali Muhammad, Ahmad Sahide, *op. cit.*, 48

Multi-Modal Transit Transport Project and ongoing counter-insurgency cooperation against separatist groups operating along the border.⁹⁹

The military coup of February 2021, however, posed a serious challenge to this approach. In the immediate aftermath, India refrained from condemning the seizure of power and instead adopted a posture of cautious silence. Echoing its traditional doctrine of non-interference, the Ministry of External Affairs issued a carefully worded communiqué expressing “deep concern” and calling for a “peaceful resolution through dialogue and reconciliation”.¹⁰⁰ Meanwhile, India preserved its economic engagements, maintained energy and infrastructure investments, and reportedly continued supplying military equipment worth over \$51 million to the junta.¹⁰¹ This initial position reflected New Delhi’s assumption that the Tatmadaw would swiftly consolidate control, allowing India to preserve its strategic interests and contain Chinese influence. However, the rapid escalation of armed resistance undermined this calculation. Insurgencies in Chin and Sagaing regions severely disrupted Tatmadaw operations, and by late 2023, the military had lost control over vast portions of territory. In particular, the Three Brotherhood Alliance’s Operation 1027 led to the fall of large areas in northern Shan State, while the Arakan Army gained control over much of Rakhine and parts of Chin State. These shifts compelled India to quietly recalibrate its posture. By early 2024, New Delhi had initiated informal contacts with non-state armed groups, including the Arakan Army, whose cooperation had become indispensable to safeguard progress on the Kaladan corridor. India’s evolving approach thus reflects a strategic dilemma. On one hand, New Delhi recognised the growing relevance of anti-regime actors and engaged with them pragmatically. On the other, it continued to maintain formal diplomatic ties with the junta and avoided public recognition of the opposition.¹⁰²

The Myanmar crisis also produced tangible humanitarian repercussions within India’s borders. The northeastern state of Mizoram received over 50,000 refugees, primarily from the Chin minority, prompting the local government to provide shelter and assistance in open defiance of New Delhi’s instructions to restrict border crossings and repatriate undocumented migrants. India’s broader handling of the Rohingya issue further illustrates its securitised approach. Despite not being a party to the 1951 Refugee Convention, India has long hosted Rohingya communities in urban areas. However, since 2017, the Modi government has increasingly depicted them as a security threat,

⁹⁹ International Crisis Group, “A Rebel Border: India’s Evolving Ties with Myanmar after the Coup.”

¹⁰⁰ Ministry of External Affairs, Government of India, “Official Statement.” Ministry of External Affairs, Government of India, (February 4, 2022) https://mea.gov.in/media-briefings.htm?dtl/34818/%20Official_Statements

¹⁰¹ Human Rights Council, The Billion Dollar Death Trade, para. 8

¹⁰² International Crisis Group, “A Rebel Border: India’s Evolving Ties with Myanmar after the Coup.”

subjecting them to detention, deportation, and denial of asylum procedures.¹⁰³ In March 2021, the Indian Supreme Court refused to halt deportations despite the post-coup context, ruling that Rohingya who have taken refuge in India could be expelled even if facing persecution.¹⁰⁴ At the multilateral level, India abstained from the June 2021 UN General Assembly resolution condemning the coup and calling for an arms embargo, aligning itself with China, Russia, and Vietnam in upholding principles of sovereignty and non-intervention. While it expressed support for ASEAN-led efforts and the release of political prisoners, India avoided references to the NUG or the Rohingya, thereby signalling its reluctance to endorse robust accountability measures or confront the military regime. As a consequence, New Delhi has been accused of “prioritizing stability and strategic interests over human rights concerns”.¹⁰⁵

3.2 Economic sanctions as instruments of international pressure: assessing effectiveness in Myanmar

The use of economic sanctions has evolved significantly over time, shifting from a tool of warfare to a distinct instrument of foreign policy situated between traditional diplomacy and military coercion. While historically sanctions accompanied or foreshadowed armed conflict, modern sanctions are often deployed as independent measures intended to compel changes in state behavior without recourse to force.¹⁰⁶ Especially in the post-Cold War era, the United States has assumed a leading role in this domain, employing sanctions, both unilaterally and multilaterally, to promote foreign policy objectives such as the protection of human rights and the restoration of democratic governance.¹⁰⁷

Economic sanctions can be defined in various ways, depending on the conceptual lens adopted. According to Nyun, in broader terms, they encompass all measures aimed at generating economic hardship, while narrower definitions may focus only on formal trade embargoes or other coercive tools tied to clearly defined political objectives.¹⁰⁸ Within the conventional nomenclature, the state or group of states imposing such measures is referred to as the “sender,” while the recipient

¹⁰³ Pamreihor Khashimwo, “India's response to the Myanmar crisis: A reluctant neighbor.” *World Affairs* 187 (October 29, 2024): 499 https://onlinelibrary.wiley.com/doi/epdf/10.1002/waf2.12048?saml_referrer=

¹⁰⁴ Supreme Court of India, *Mohammad Salimullah v. Union of India* on 8 April, 2021 <https://indiankanoon.org/doc/10486034/>

¹⁰⁵ Pamreihor Khashimwo, *op. cit.*, 501

¹⁰⁶ Thihan Myo Nyun, *op. cit.*, 462

¹⁰⁷ *ivi*, 463

¹⁰⁸ *ivi*, 464

country is designated as the “target”. Sanctions can be either unilateral, enacted by a single state, or multilateral, involving coordination among multiple actors. Unilateral sanctions are often employed as a means of conveying moral disapproval or expressing normative condemnation of a target state’s conduct. However, they often lack the necessary efficacy to induce meaningful policy change and risk exacerbating humanitarian suffering, particularly when directed against authoritarian regimes. In such contexts, such as Myanmar’s military junta, the absence of electoral accountability and institutional checks substantially diminishes the likelihood that economic pressure will catalyse domestic reform. Indeed, as posited by Wood, autocratic regimes frequently respond to sanctions by intensifying internal repression in an effort to maintain regime stability, rendering the adverse effects of sanctions markedly more severe than in democratic settings, where institutional and societal resilience mitigate authoritarian entrenchment.¹⁰⁹ Conversely, multilateral sanctions are generally perceived to carry greater normative legitimacy, as they reflect a broader international consensus. Yet, according to Hufbauer, “the greater the number of countries needed to implement sanctions [...] the less likely it is that they will be effective”.¹¹⁰ This view is contested by other analysts, who argue that when sanctions are supported by a coalition of states, particularly those with significant economic leverage over the target, they are more likely to produce compliance than measures adopted in isolation. Nevertheless, in an era marked by dense economic interdependence and strategic rivalry, even multilateral sanctions often acquire a predominantly symbolic dimension. Their effectiveness may be significantly undermined when influential global actors, particularly those with substantial economic or geopolitical ties to the target state, refuse to participate in punitive measures. Ultimately, it is not the number of participating states but their specific identity and relative economic influence that shape the outcome of a sanctions regime. It is the strategic leverage and influence of key senders, rather than broad-based participation per se, that most directly shape outcomes.¹¹¹ Empirical studies underscore the limited effectiveness of sanctions: when defined as achieving full compliance by the targeted regime, according to Pape, success rates fall below 10%,¹¹² even under more flexible criteria,

¹⁰⁹ Reed M. Wood, “‘A Hand upon the Throat of the Nation’: Economic Sanctions and State Repression, 1976–2001.” *International Studies Quarterly* 52 (September 2008): 494
<https://academic.oup.com/isq/article/52/3/489/1871290?login=true>

¹¹⁰ Gary Clyde Hufbauer, Jeffrey J. Schott et al., “Economic Sanctions Reconsidered.” *Peterstone Institute for International Economics* (November 2007): 172
https://dl1.cuni.cz/pluginfile.php/863435/mod_resource/content/0/Gary%20Clyde%20Hufbauer%2C%20Jeffrey%20J.%20Schott%2C%20Kimberly%20Ann%20Elliott%2C%20Barbara%20Oegg-Economic%20Sanctions%20Reconsidered%20%282008%29.pdf

¹¹¹ Thihan Myo Nyun, *op. cit.*, 465

¹¹² Robert A. Pape, “Why Economic Sanctions Do Not Work.” *International Security* 22 (1997): 93
[https://web.stanford.edu/class/ips216/Readings/pape_97%20\(jstor\).pdf](https://web.stanford.edu/class/ips216/Readings/pape_97%20(jstor).pdf)

such as partial concessions or negotiated compromises, Hufbauer argues that the success rate rarely exceeds 35%.¹¹³

The legitimacy of unilateral sanctions under international law remains a deeply contested subject. Critics argue that such measures violate the principle of state sovereignty, enshrined both in the UN Charter and in customary international law, by permitting external actors to interfere in matters that fall strictly within the domestic jurisdiction of sovereign states. These concerns become particularly salient when sanctions are employed to induce large-scale political transformations, as exemplified by the case of Myanmar. Although non-forcible in nature, unilateral sanctions may nonetheless produce effects comparable to those of military intervention, thereby blurring the distinction between lawful economic pressure and impermissible coercion.¹¹⁴ However, proponents of unilateral sanctions emphasize that neither Article 2(4) nor Article 2(7) of the UN Charter explicitly prohibits economic coercion by individual member states, as the limitations contained therein apply exclusively to actions undertaken by the UN as a collective entity. Furthermore, they argue that there exists no binding customary norm precluding the use of economic statecraft as a means of promoting human rights. On the contrary, the Charter affirms that the protection of human rights constitutes a matter of international concern, thereby transcending the traditional boundaries of domestic sovereignty. From this perspective, the imposition of sanctions aimed at curbing gross human rights violations may be interpreted not as a breach of international law, but as a fulfilment of its foundational principles.¹¹⁵

Nonetheless, the decline in the adoption and effectiveness of sanctions in recent years can be attributed to deeper transformations within the global order. The erosion of the post-Cold War liberal consensus and the emergence of a multipolar world, marked by China and Russia's growing resistance to Western-led initiatives, have contributed to a progressively fragmented UN Security Council. While in the 1990s divergences among the Permanent Five members often resulted in abstentions, the current geopolitical landscape is increasingly characterized by overt opposition and the recurrent use of the veto power. This shift has substantially weakened both the coherence and the enforceability of UN-mandated sanctions regimes.¹¹⁶ As observed by former Russian Defence Minister Sergei Ivanov, "I know of no instances in world practice and previous experience in which

¹¹³ Gary Clyde Hufbauer, Jeffrey J. Schott *et al.*, *op. cit.*, 73

¹¹⁴ Thihan Myo Nyun, *op. cit.*, 465 498, 499

¹¹⁵ *ivi*, 499,500

¹¹⁶ Alex Vines, "The effectiveness of UN and EU sanctions: lessons for the twenty-first century." *International Affairs* 88 (July 2012): 868 <https://academic.oup.com/ia/article/88/4/867/2326600?login=true>

sanctions have achieved their aim and proved effective”.¹¹⁷ In a similar vein, the Chinese government has repeatedly emphasized that “using pressure and imposing sanctions is not practical and will not help settle the issue”.¹¹⁸

The case of Myanmar offers a compelling illustration of the inherent contradictions and limitations of sanctions as instruments of international pressure. Since the violent suppression of the 1988 pro-democracy movement, the country has been subject to one of the most extensive and severe sanctions regimes in modern history. Initially introduced by Western powers as a reaction to egregious human rights violations, these measures have evolved from broad-based embargoes to increasingly sophisticated forms of targeted restrictions. However, their overall effectiveness in fostering meaningful political change or weakening the military’s grip on power remains deeply contested.¹¹⁹

During the pre-reform period, sanctions were generally structured around three broad categories: the suspension of development assistance and technical cooperation; targeted measures against specific individuals and entities; and wide-ranging bans on trade and investment. The withdrawal of development aid by OECD countries, coupled with US-led efforts to curtail engagement by international financial institutions, severely constrained Myanmar’s access to global standards of governance and institutional capacity-building.¹²⁰ Far from triggering reform, this isolation deepened the country’s developmental lag vis-à-vis its ASEAN neighbours and created an “unhelpful West-versus-East dynamic”.¹²¹ By the late 1990s and early 2000s, the US and EU shifted towards so-called “smart sanctions”, including visa bans and asset freezes targeting members of the military junta and their business networks. While these measures were more narrowly focused, they failed to substantially alter the strategic calculus of the regime. Rather than curbing the influence of military elites, they inadvertently consolidated their economic dominance by reducing foreign competition and reinforcing monopolistic privileges. Business conglomerates with close ties to the regime, often operating through offshore structures in jurisdictions such as Singapore, proved highly

¹¹⁷ Steven Myres, “Russia says it opposes UN sanctions on Iran.” *New York Times* (August 26, 2006) <https://www.nytimes.com/2006/08/26/world/middleeast/26russia.html>

¹¹⁸ Howard French, “China seeks solution to Darfur crisis”. *New York Times* (January 24, 2007) <https://www.nytimes.com/2007/01/24/world/asia/24iht-sudan.4327564.html>

¹¹⁹ International Crisis Group, *op. cit.*, 8

¹²⁰ *ivi*, 9

¹²¹ *ivi*, 8

adept at absorbing the costs of sanctions and circumventing compliance mechanisms.¹²² Comprehensive bans on trade and investment, particularly those adopted by Washington, had the most far-reaching socioeconomic consequences. The 2003 US import ban, for instance, devastated Myanmar's nascent garment industry, resulting in the overnight loss of tens of thousands of civilian jobs. These sanctions disproportionately harmed the informal economy and the general population, while leaving the military's core sources of power largely intact.¹²³

Contrary to some Western narratives, sanctions were not decisive in prompting the limited political opening that began in 2011. The military's decision to embark on a carefully calibrated reform process was primarily motivated by strategic concerns, most notably the desire to counterbalance China's growing influence, rather than external economic pressure. The 2008 Constitution had already institutionalised a framework that safeguarded military supremacy while permitting superficial civilian participation. Retrospective analyses confirm that "outside pressure and sanctions played no meaningful role in triggering the reform process"¹²⁴ and, in some cases, may even have strengthened the financial position of the military elite by displacing Western firms in favour of less regulated regional actors. Furthermore, the sanctions regime inhibited the emergence of a politically engaged middle class.¹²⁵ Since 2011, Bruxelles and Washington progressively rolled back most of their restrictive measures, preserving only arms embargoes, but the renewed military violence against the Rohingya in 2016–2017 led to the reimposition of selected sanctions. These new measures were more precisely designed, but failed to achieve their intended policy outcomes. As numerous observers have noted, "they were not effective in nudging Myanmar to make changes in policy regarding the Rohingya".¹²⁶

The limited impact of sanctions is further compounded by persistent challenges in implementation, coordination, and scope. Despite declarations by the US, EU, and UK regarding enhanced cooperation, enforcement has remained fragmented and inconsistent. The UN Special Rapporteur observed that, while some arms trading entities have been sanctioned, the broader networks enabling these transactions have remained largely untouched. Transactions are frequently rerouted through formally unsanctioned actors. Myanmar Oil and Gas Enterprise (MOGE) constitutes

¹²² *ivi*, 9, 11

¹²³ *ivi*, 10

¹²⁴ *ivi*, 11

¹²⁵ Agnes Frittink, Niklas Swanström, "European sanctions against Myanmar." *Institute for Security & Development Policy* (January 20, 2010): 2 https://www.isdp.eu/wp-content/uploads/publications/2010_frittin-swanstrom_european_sanctions.pdf

¹²⁶ International Crisis Group, *op. cit.*, 17

an illustrative case: despite credible evidence linking MOGE's revenues to the Tatmadaw's atrocity crimes, only the EU has imposed full sanctions, while the US has merely restricted financial services involving the company.¹²⁷ Similar gaps persist in sectors such as jade and gemstones, where informal structures and opaque financial flows impede effective regulation.¹²⁸

The geopolitical dimension has also played a crucial role in limiting the effectiveness of sanctions. Myanmar's strategic partnerships with China, Russia, India, and various ASEAN members have provided the regime with critical economic and military lifelines. These actors have generally refrained from endorsing punitive measures, viewing them as Western-driven initiatives misaligned with their own strategic interests. Frittink and Swanström argue that "only sanctions enforced by the most important economic partners (China, India, and ASEAN) would have any measurable effect".¹²⁹ The withdrawal of Western investors has merely created a vacuum quickly filled by regional players with fewer normative constraints, thereby ensuring the continuity of revenue streams to the regime.¹³⁰

Moreover, the protracted duration of sanctions, in the absence of tangible results has further undermined their perceived legitimacy. Hufbauer suggests that "the longer the sanctions run",¹³¹ the less likely they are to succeed. Frittink and Swanström support this view, highlighting that "the argument that 'Sanctions need time to work' is empirically a misreading of the situation in Myanmar which has endured sanctions now for over twenty years".¹³² Targeted governments often adapt by developing sophisticated strategies to circumvent restrictions, while simultaneously exploiting the external pressure to reinforce nationalist narratives and consolidate internal control. In Myanmar, the military has consistently blamed foreign sanctions for the country's economic decline, thereby deflecting internal criticism and justifying its authoritarian grip. Empirical evidence highlights this paradox,¹³³ showing that "existing sanctions are ineffective and in some cases directly counter-productive"¹³⁴ as instead of destabilising the regime, they have inflicted severe harm on the civilian population through rampant inflation, shortages of essential goods, and economic dislocation.

¹²⁷ Justice for Myanmar, "International sanctions since the Myanmar military's illegal attempted coup." (February 5, 2024) <https://www.justiceformyanmar.org/stories/what-has-been-done-to-stop-the-myanmar-militarys-atrocity-crimes>

¹²⁸ Sergey Sosnovskikh, *et al.*, "Sanctions rarely achieve their goals – here's why they failed in Russia and Myanmar." *The Conversation* (February 24, 2025): 3 <https://e-space.mmu.ac.uk/638604/1/Sosnovskikh%20et%20al.%20%282025%29%20Sanctions%20rarely%20achieve%20their%20goals.pdf>

¹²⁹ Agnes Frittink, Niklas Swanström, *op. cit.*, 2

¹³⁰ Sergey Sosnovskikh, *et al.*, *op. cit.*, 2

¹³¹ Gary Clyde Hufbauer, Jeffrey J. Schott *et al.*, *op. cit.*, 172

¹³² Agnes Frittink, Niklas Swanström, *op. cit.*, 3

¹³³ Maung Aung Myoe, *op. cit.*, 486

¹³⁴ Agnes Frittink, Niklas Swanström, *op. cit.*, 1

In the absence of a binding framework under Chapter VII of the UN Charter, these sanctions remain non-compulsory and are applicable only to actors within the jurisdiction of sender states, allowing third countries, especially in Asia, to maintain economic and military ties with the junta. The lack of a genuinely multilateral sanctions framework has also proven detrimental. Vetoes by China and Russia have consistently blocked Security Council–mandated sanctions, compelling democratic states to rely on fragmented and unilateral initiatives. Even among coordinated sanctioning actors such as the US, EU, and UK, the 2023 Report by the Special Rapporteur underscores “significant missed opportunities” to harmonise their approaches and to close existing enforcement gaps.¹³⁵

Recent data suggests that, when strategically designed and rigorously implemented, sanctions can still produce tangible effects. According to the UN Special Rapporteur’s 2024 report, the volume of military supplies acquired by the SAC declined significantly, from \$377 million in FY2022 to \$253 million in FY2023. Notably, exports from Singapore dropped dramatically from over \$110 million to approximately \$10 million during the same period.¹³⁶ These figures underscore the potential of well-targeted sanctions to disrupt critical supply chains and erode the junta’s operational capacity. However, such outcomes highlight the need of a fundamental recalibration of the international sanctions architecture. Isolated, uncoordinated or narrowly focused measures risk entrenching the very systems of repression they are meant to undermine.

3.3 A comparative sanctions analysis: the case of South Africa

The international sanctions campaign against South Africa’s apartheid regime is frequently cited as a paradigmatic example of how external coercive measures, when strategically calibrated and implemented within a favourable context, can exert substantial political pressure and ultimately contribute to democratic transformation.¹³⁷ While comparisons may be drawn between the situation in South Africa during the 1980s and the ongoing crisis in Myanmar, such parallels must be approached with caution. Rather than assuming the analogy to be inherently valid, this section adopts

¹³⁵ Human Rights Council, *The Billion Dollar Death Trade*, para. 109

¹³⁶ Human Rights Council, *Banking on the Death Trade: How Banks and Governments Enable the Military Junta in Myanmar*, A/HRC/56/CRP.7 (June 26, 2024), available from <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session56/a-hrc-56-crp-7.pdf>

¹³⁷ Philip I. Levy, “Sanctions on South Africa: What Did They Do?.” *American Economic Review* 89 (May 1999): 415 <https://pubs.aeaweb.org/doi/pdfplus/10.1257/aer.89.2.415>

a comparative perspective that acknowledges the profound differences in geopolitical context, institutional configuration, and internal political dynamics. It is precisely by systematically unpacking these differences that a meaningful comparative assessment becomes possible. The South African experience, therefore, offers a compelling and instructive case study for evaluating the broader question of sanctions' effectiveness. By examining the dynamics, mechanisms, and outcomes of the sanctions regime imposed on South Africa's apartheid, this section aims to extract critical insights relevant to understanding why similar instruments have yielded markedly different results in the case of Myanmar.

The apartheid subjected to international sanctions was formally institutionalised following the electoral victory of South Africa's National Party in 1948. This marked the beginning of a system of racial supremacy grounded in legalised segregation and systemic exclusion. At the heart of this architecture were two legislative acts passed in 1950: the Population Registration Act, which classified all citizens into rigid racial categories (white, black, Coloured, and Indian),¹³⁸ and the Group Areas Act, which enforced strict residential segregation assigning each group to geographically and socially distinct living zones.¹³⁹ These legal frameworks entrenched the white minority's political and economic dominance while relegating the black South Africans to the status of second-class citizens or, in practice, non-citizens.¹⁴⁰ The denial of full citizenship and political participation to black South Africans finds a notable parallel in the plight of the Rohingya in Myanmar, who continue to face institutionalised marginalisation and the systematic denial of nationality.

Domestic opposition to apartheid emerged primarily by the African National Congress (ANC), whose early commitment to nonviolent protest was brutally repressed by the state. A turning point occurred with the Sharpeville massacre in 1960, when police forces opened fire on peaceful demonstrators, killing sixty-nine individuals. The event triggered nationwide unrest and catalysed international condemnation. In the aftermath, the ANC was outlawed, and key leaders, most notably Nelson Mandela, were imprisoned. Mandela's arrest and life sentence in 1962 came to symbolise the regime's determination to suppress political dissent at any cost.¹⁴¹ Despite the growing international

¹³⁸ For the Registration Population Act, see <https://sahistory.org.za/sites/default/files/archive-files2/leg19500707.028.020.030.pdf>

¹³⁹ For the Group Areas Act, see <https://blogs.loc.gov/law/files/2014/01/Group-Areas-Act-1950.pdf>

¹⁴⁰ Alexander Lavery, "Impact of Economic and Political Sanctions on Apartheid." *The African File* (June 7, 2007) <https://theafricanfile.com/politicshistory/impact-of-economic-and-political-sanctions-on-apartheid/>

¹⁴¹ Thomas Darryl C., "United Nations Sanctions South Africa for Apartheid." *EBS CO* <https://www.ebsco.com/research-starters/diplomacy-and-international-relations/united-nations-sanctions-south-africa>

clamor throughout the 1960s and 1970s, efforts to mobilise meaningful economic sanctions remained fragmented. While the United Nations imposed an arms embargo, broader multilateral sanctions would not materialise until the mid-1980s. By this time, escalating internal resistance, sustained by decades of systemic oppression, had plunged the country into deep political instability. In July 1985, President P. W. Botha declared a state of emergency, prompting a decisive shift in international engagement.¹⁴² Between 1985 and 1987, a series of coordinated sanctions were enacted, particularly by the European Community, the United States, and the Commonwealth, encompassing trade, financial, and diplomatic domains. These measures were framed not merely as punitive tools, but as instruments of collective pressure aimed at dismantling the structures of apartheid and facilitating a transition toward a nonracial, democratic order.¹⁴³

The progressive strengthening of international sanctions reflected a growing global consensus that apartheid constituted not merely a matter of domestic jurisdiction, but a grave violation of fundamental human rights and a threat to international peace and security. In this regard, the UN played a central role in shaping both the normative discourse and the institutional framework of the global anti-apartheid campaign. As early as 2 December 1950, the General Assembly adopted Resolution 395(V), formally declaring that the apartheid policy was intrinsically rooted in racial discrimination and therefore incompatible with principles enshrined in the UN Charter.¹⁴⁴ This was followed by Security Council Resolution 134 of 1 April 1960, which condemned the Sharpeville massacre and called upon the government to abandon its policy of racial segregation.¹⁴⁵ Crucially, this resolution marked the first time that the Security Council acknowledged the situation in South Africa as a source of international friction capable of endangering peace and security. In the years that followed, the General Assembly and Security Council adopted a significant number of resolutions reiterating calls for the dismantlement of apartheid and urging member states to take appropriate measures against the South African government. A relevant development occurred in November 1962, when the General Assembly endorsed a package of collective measures representing a new stage in the international response. These included the suspension or refusal to establish diplomatic relations, the closure of ports and airspace to South African vessels and aircraft, legislative

¹⁴² Philip I. Levy, *op. cit.*, 416,417

¹⁴³ *ivi*, 417

¹⁴⁴ United Nations General Assembly (UNGA), resolution 395(V), Treatment of people of Indian origin in the Union of South Africa, A_RES_395(V) (December 2, 1950), available from <https://digitallibrary.un.org/record/209555?v=pdf>

¹⁴⁵ United Nations Security Council (UNSC), resolution 134, QUESTION RELATING TO THE SITUATION IN THE UNION OF SOUTH AFRICA, S RES 134 (April 1, 1960), available from <https://digitallibrary.un.org/record/112105?v=pdf>

bans on trade and arms transfers, and a general boycott of South African goods.¹⁴⁶ These recommendations laid the foundation for more robust international measures and served to increase the normative pressure on states to act in a coordinated manner. The first major binding instrument adopted within the UN framework came with the UN Security Council Resolution 181 of 7 August 1963, which called upon all states to cease the sale and shipment of arms and related matériel to South Africa.¹⁴⁷ While initially voluntary, this arms embargo was subsequently rendered mandatory with the adoption on 4 November 1977 of Security Council Resolution 418,¹⁴⁸ which unequivocally prohibited all states from providing South Africa with any form of arms or military equipment.

Parallel the measures adopted within the UN, individual States and other organizations implemented a wide range of autonomous sanctions that significantly reinforced the international campaign against apartheid. The European Community, under increasing domestic and international pressure, introduced its first trade and financial restrictions in September 1985. Although initially modest in scope, these sanctions were subsequently strengthened in 1986 to include a ban on the import of South African iron, steel, and gold coins, as well as a prohibition on new investments within the country.¹⁴⁹ Similarly, the Commonwealth adopted coordinated sanctions in October 1985, further signalling the international community's growing intolerance of the apartheid regime.¹⁵⁰ The United States Congress played a particularly prominent role through the enactment of the Comprehensive Anti-Apartheid Act in 1986. This legislation imposed substantial constraints on economic relations with Pretoria, including a ban on loans to the South African government and the prohibition of imports of key commodities such as coal, uranium, textiles, and agricultural products.¹⁵¹ Meanwhile, the Organization of African Unity (OAU) and the Commonwealth had long championed the international isolation of the apartheid regime. As early as the 1960s, several African states adopted unilateral trade and diplomatic sanctions. Algeria, Ethiopia, Libya, Mauritania, Kenya, Uganda, and others implemented comprehensive boycotts, which included the closure of ports and airspace to South

¹⁴⁶ United Nations General Assembly (UNGA), resolution 1761(XVII), The policies of apartheid of the Government of the Republic of South Africa, A/RES/1761(XVII) (November 6, 1962), available from

[https://docs.un.org/en/A/RES/1761\(XVII\)](https://docs.un.org/en/A/RES/1761(XVII))

¹⁴⁷ United Nations Security Council (UNSC), resolution 181, S_RES_181 (August 7, 1963), available from

<https://digitallibrary.un.org/record/112181?v=pdf>

¹⁴⁸ United Nations Security Council (UNSC), resolution 418, S_RES_418 (November 4, 1977), available from

<https://digitallibrary.un.org/record/66633?v=pdf>

¹⁴⁹ Philip I. Levy, *op. cit.*, 417

¹⁵⁰ Joseph Hanlon, "Successes and Future Prospects of Sanctions against South Africa." *Review of African Political Economy* 47 (1990): 87 <https://www.jstor.org/stable/4006039?seq=2>

¹⁵¹ US Congress, "H.R.4868 - Comprehensive Anti-Apartheid Act of 1986." 99th Congress (1985-1986)

<https://www.congress.gov/bill/99th-congress/house-bill/4868>

African vessels and aircraft.¹⁵² The collective momentum extended also beyond Africa. Even the Burmese government chose not to renew its coal purchase contracts with South Africa. In Asia, India severed all remaining air links by denying landing and transit rights to South African aircraft,¹⁵³ while Japan imposed a ban on investments.¹⁵⁴ Crucially, major powers such as the Soviet Union and the People's Republic of China responded positively to appeals from the South African liberation movement by adopting comprehensive trade embargoes as early as the 1960s.¹⁵⁵

By the mid-1980s, this broad constellation of state and non-state actors had succeeded in constructing one of the most extensive sanctions regimes in modern history. The overarching goal of this collective effort was to exert sustained and multidimensional pressure on the apartheid regime, with the ultimate aim of initiating a transition towards a democratic, unitary state based on majority rule. To this end, internal policy documents of the Commonwealth outlined four principal tactical objectives underpinning the sanctions strategy: the denial of access to essential goods, particularly arms and oil; the exacerbation of overall economic strain; the erosion of white minority morale; and the empowerment of those engaged in the struggle to dismantle apartheid.¹⁵⁶ These operational goals were complemented by the adoption of the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid, which established a legal foundation for identifying apartheid as a crime against humanity under international law and for enabling its prosecution.

The effectiveness of sanctions imposed on the apartheid regime in South Africa has drawn considerable scholarly and political attention. One relevant benchmark, as discussed by Levy, is to consider whether the stated political objectives (namely, the dismantlement of the apartheid system and the establishment of a nonracial democracy), would have been achieved in the absence of external coercive measures.¹⁵⁷ In the South African context, evidence suggests that sanctions, while not the sole driver of change, played a decisive role in accelerating the political transformation. As Levy observed, sanctions represented “the ‘final straw’ that made economic conditions intolerable and forced political change”.¹⁵⁸ Beyond the material impact, the symbolic weight of sanctions was considerable. They served to deepen South Africa's international isolation, reinforcing the perception that the apartheid regime was morally and politically untenable. In this regard, the arms embargo

¹⁵² P. Tlate, “SANCTIONS AGAINST APARTHEID.” *South African History Online*: 41,42

¹⁵³ *ivi*, 43

¹⁵⁴ Joseph Hanlon, *op. cit.*, 88

¹⁵⁵ P. Tlate, *op. cit.*, 46

¹⁵⁶ Joseph Hanlon, *op. cit.*, 87

¹⁵⁷ Philip I. Levy, *op. cit.*, 419

¹⁵⁸ *Ibid*

assumed not only strategic importance but also diplomatic resonance: Lavery argues that “if an arms embargo had not been put in place, the West would not have been able to directly challenge the regime in power”.¹⁵⁹ In this sense, the imposition of such measures elevated the apartheid issue within Western political discourse, mobilized civil society, and contributed to the broader delegitimization of the regime. Moreover, South Africa’s increasing isolation on the global stage coincided with growing domestic dissatisfaction. Segments of the white minority, particularly within the business community, began to perceive the maintenance of apartheid as economically unsustainable in the face of international disinvestment and financial pressure.¹⁶⁰ The strategic utility of sanctions was also underscored by prominent black leaders. Upon his release in 1990, Nelson Mandela famously declared: “to lift sanctions now would be to run the risk of aborting the process toward ending apartheid”.¹⁶¹

Despite substantial efforts by Pretoria to circumvent restrictions through re-export schemes involving third countries and the pursuit of military self-sufficiency, these evasive strategies proved financially onerous. The apartheid government was compelled to divert significant national resources from essential services, such as healthcare and education, in order to bolster military readiness.¹⁶² Even in cases where embargoes were technically evaded, the costs of bypassing them were substantial. For instance, while the oil embargo failed to completely sever South Africa’s access to petroleum supplies, the regime was nonetheless forced to allocate approximately \$2 billion annually to circumvent its effects.¹⁶³ Similarly, attempts to bypass the arms embargo significantly strained the national budget and undermined broader fiscal stability. Indeed, the sanctions imposed between 1985 and 1987 had measurable economic consequences. Total trade volumes declined by 7%, and the country was compelled to offload its coal exports at prices significantly below the global market rate.¹⁶⁴ In parallel, financial sanctions and the widespread international campaign of disinvestment cut off capital inflows, obliging the government to allocate approximately \$3 billion annually to service its external debts.¹⁶⁵ The result was a contraction of growth by roughly 1.5% throughout the 1980s and early 1990s, coupled with an overall weakening of economic resilience.¹⁶⁶ Further

¹⁵⁹ Alexander Lavery, “Impact of Economic and Political Sanctions on Apartheid.”

¹⁶⁰ Thomas Darryl C., “United Nations Sanctions South Africa for Apartheid.”

¹⁶¹ Gary Clyde Hufbauer, Jeffrey J. Schott, “Case 62-2 and 85-1.” *Peterson Institute for International Economics* (May 1, 2008) <https://www.piie.com/commentary/speeches-papers/case-62-2-and-85-1>

¹⁶² Alexander Lavery, “Impact of Economic and Political Sanctions on Apartheid.”

¹⁶³ Joseph Hanlon, *op. cit.*, 88

¹⁶⁴ *Ivi*, 89

¹⁶⁵ *Ibid*

¹⁶⁶ Mr. Tamim Bayoumi, “Output, Employment and Financial Sanctions in South Africa.” *International Monetary Fund* (December 1, 1990): 21 <https://www.elibrary.imf.org/view/journals/001/1990/113/001.1990.issue-113-en.xml>

evidence of the economic dislocation caused by sanctions is provided in a 1990 International Monetary Fund report authored by Tamim Bayoumi, which found that “the impact economic sanctions had on the country is unmistakable”.¹⁶⁷ The analysis observed that sanctions contributed to a reversal of the apartheid’s economic architecture: while employment among nonwhite population increased, white employment stagnated, and real wages for white workers declined.¹⁶⁸ In effect, the intended system of exploitation, in which white prosperity rested on black economic subjugation, was thus progressively eroded.

On the political front, sanctions exerted cumulative pressure on the white political establishment. By the late 1980s, confronted with intensifying domestic unrest and sustained international condemnation, the ruling National Party began to signal its willingness to engage in negotiations with the ANC. The release of Nelson Mandela on 11 February 1990 and the subsequent initiation of formal talks between the ANC and the government marked a turning point in South Africa’s political trajectory.¹⁶⁹ These developments are widely interpreted as the outcome of prolonged external pressure: as noted in the 1987 report by the Reagan administration, “existing pressures [...] have played a role in helping to convince the South African government that it must move beyond its current position and accept change”.¹⁷⁰ By 1991, US President George H. W. Bush lifted American sanctions, acknowledging the “satisfactory progress toward eliminating apartheid”.¹⁷¹ The formal abolition of apartheid and the subsequent democratic elections in 1994 resulted in the election of Nelson Mandela as president and the establishment of a new constitutional order, therefore completing the trajectory of transformation. While sanctions alone cannot be regarded as the sole determinant of this transformation, their role in shaping the structural and normative conditions that enabled democratic change is both evident and significant.

Frequently invoked as a paradigmatic case of effective economic coercion, the sanctions regime imposed against apartheid in South Africa continues to inform contemporary debates on the utility of sanctions in addressing grave human rights violations, most notably in the context of

¹⁶⁷ Ibid

¹⁶⁸ Ibid

¹⁶⁹ Thomas Darryl C., “United Nations Sanctions South Africa for Apartheid.”

¹⁷⁰ “Letter to the Speaker of the House of Representatives and the Chairman of the Senate Foreign Relations Committee Transmitting a Report on Apartheid in South Africa.” *The Ronald Reagan Presidential Library* <https://www.reaganlibrary.gov/archives/speech/letter-speaker-house-representatives-and-chairman-senate-foreign-relations-4#:~:text=Pursuant%20to%20Section%20501%20of,the%20system%20of%20apartheid%20and>

¹⁷¹ “Remarks on the Termination of Economic Sanctions Against South Africa and a News Conference.” *The American Presidency Project* (July 10, 1991) <https://www.presidency.ucsb.edu/documents/remarks-the-termination-economic-sanctions-against-south-africa-and-news-conference>

Myanmar. US Senator Mitch McConnell has argued that “sanctions worked in South Africa and they will in Burma too”.¹⁷² However, drawing a direct analogy between the two cases is misleading.¹⁷³ While both situations involved the international community targeting entrenched and authoritarian minority regimes responsible for systemic human rights abuses, important differences must be acknowledged. In South Africa, the imposition of extensive sanctions was the result of a protracted international campaign that gained traction only after years of domestic resistance and sustained media attention. Indeed, it was not until the mid-1980s that major Western powers, including the United States and the European Community, enacted broad-based economic measures. By contrast, in the case of Myanmar, the international response was more immediate but also more fragmented, reflecting not only different geopolitical dynamics, but also structural divergences in the economic and political systems of the two countries.

In contrast to South Africa, whose economy was highly integrated into global trade networks and thus susceptible to external constraints, Myanmar entered the sanctions era already debilitated by decades of economic mismanagement, entrenched corruption, and self-imposed isolation. As a result, the country’s limited exposure to international markets significantly weakened the potential impact of externally imposed economic restrictions. The traditional channels through which sanctions exert leverage, such as access to capital, trade, and financial systems, were far less operative in the Burmese case.¹⁷⁴ Moreover, equally significant was the normative framing underpinning the sanctions. In the South African context, the system of apartheid, rooted in racial discrimination, was immediately recognizable as a violation of international human rights norms, facilitating broad moral consensus and mobilization. Conversely, the atrocities perpetrated by the Myanmar military against the Rohingya are “only tenuously linked to norm transgressions and are less recognizable according to international law”.¹⁷⁵ This normative ambiguity has hindered the formation of a cohesive and unified international response.

Several structural variables further explain the divergent trajectories of these two sanction regimes. A primary factor is the presence (or absence) of a strong domestic opposition.¹⁷⁶ In South Africa, the ANC provided a unifying framework for broad-based resistance, supported by charismatic

¹⁷² Michael Ewing-Chow, “First Do No Harm: Myanmar Trade Sanctions and Human Rights.” *Northwestern Journal of International Human Rights* 5 (2007): 174

<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1051&context=njihr>

¹⁷³ *ivi*, 175

¹⁷⁴ Thihan Myo Nyun, *op. cit.*, 489

¹⁷⁵ *ivi*, 490

¹⁷⁶ Joseph Hanlon, *op. cit.*, 86

figures such as Nelson Mandela and Archbishop Desmond Tutu. Civil society activism, widespread resistance, and popular unrest sustained domestic pressure that worked synergistically with external sanctions. By contrast, in the case of Myanmar, although widespread resentment toward the junta exists, its translation into organized resistance has been severely hampered by pervasive state repression and limited civic space. Cultural factors, such as the stoic influence of Buddhism, may have further inhibited collective mobilization.¹⁷⁷

A second variable is the absence of a protective external actor.¹⁷⁸ South Africa did not benefit from the overt protection of any major power capable of vetoing international action. The same cannot be said for Myanmar, which enjoys the strategic backing of China and Russia, both Permanent Members at the UNSC, who have systematically obstructed efforts to adopt binding UN measures. As Hanlon put it, Myanmar “has a ‘big brother’ that can protect it from sanctions”.¹⁷⁹ These geopolitical asymmetries have profoundly shaped the scope and coherence of international responses. In the case of South Africa, the global campaign against apartheid was underpinned by a growing normative consensus and institutional coordination. The United Nations played a central role in shaping and legitimizing sanctions against Pretoria, from early General Assembly resolutions in the 1950s to binding Security Council measures. In fact, the Final Report of the Special Committee against Apartheid “urged all Governments, international organizations and solidarity movements to act in support of the struggle”.¹⁸⁰ By contrast, the Security Council has never succeeded in passing binding sanctions against Myanmar, resulting in a fragmented and largely symbolic international response.

An additional factor shaping the contrasting outcomes of the South African and Burmese sanctions regimes lies in the role played by non-state actors (NSAs) and the deployment of private sanctions. While transnational civil society mobilised in both contexts, the structure and efficacy of this support varied considerably. In South Africa, the ANC served as a central coordinating body, facilitating information flows and international advocacy. This enabled NGOs and grassroots movements, particularly in Western democracies, to engage in wide-reaching boycott campaigns, targeting banks, supermarkets, and universities that maintained ties with the apartheid regime,

¹⁷⁷ Michael Ewing-Chow, *op. cit.*, 175

¹⁷⁸ *Ibid*

¹⁷⁹ Joseph Hanlon, *op. cit.*, 87

¹⁸⁰ United Nations General Assembly, Report of the Special Committee against Apartheid (October 26, 1988)
https://digitallibrary.un.org/record/64966/files/A_43_22-EN.pdf

generating. These efforts were instrumental in generating reputational costs and contributing to the divestment of private capital flows. Whereas in Burma, although opposition figures such as Aung San Suu Kyi initially gathered international sympathy, the repressive information environment under the military regime constrained the ability of NGOs to verify and disseminate reliable data on human rights violations, thereby weakening the evidentiary basis for targeted campaigns.¹⁸¹ Furthermore, the Burmese opposition lacks a unifying and embedded structure comparable to the ANC. As a result, civil society initiatives tend to focus on isolated corporate targets and symbolic acts of protest, with limited impact on the regime's economic foundations or political legitimacy. According to Kowalewski, "in contrast to South Africa, in the case of Burma (Myanmar) NSAs did not aim at comprehensive isolation via private sanctions".¹⁸²

Finally, the divergent strategic priorities of the respective regimes influenced their responsiveness to external pressure. The apartheid government in Pretoria was seeking international legitimacy and long-term economic stability, while the military in Naypyidaw has remained primarily concerned with consolidating domestic power and safeguarding national sovereignty. Within this strategic framework, international isolation is not perceived as a fundamental threat, but rather as a tolerable consequence in pursuit of regime survival.¹⁸³

Therefore, while the South African case demonstrates that sanctions can contribute to political transformation, this outcome is far from automatic. Their effectiveness depends on a broader constellation of enabling conditions: sustained internal resistance, a cohesive international response, normative consensus, and the absence of protective umbrella provided by major geopolitical allies. In Myanmar, the absence of these factors has rendered sanctions largely ineffective, or worse, counterproductive, entrenching authoritarian rule while exacerbating civilian suffering. This comparative analysis shows that sanctions are not inherently futile, but their success hinges on strategic calibration, global coordination, and political will. Without these elements, sanctions risk becoming symbolic gestures rather than a stimulus for change.

¹⁸¹ Sina Kowalewski, "Overcoming the State centred Theory of International Sanctions: Non-State Actors Strategies Towards the Implementation of International Sanctions." *Central European Journal of International and Security Studies* 7 (2013): 83, 84 <https://cejiss.org/overcoming-the-state-centred-theory-of-international-sanctions-non-state-actors-strategies-towards-the-implementation-of-international-sanctions>

¹⁸² *ivi*, 89

¹⁸³ Michael Ewing-Chow, *op. cit.*, 176

3.4 Field-based perspectives and policy recommendations

To complement the documentary and legal analysis developed throughout this thesis, this section integrates empirical insights drawn from the interview I conducted with Ahmed Adam, Programme Manager for UN Advocacy at the Asian Forum for Human Rights and Development (FORUM-ASIA), actively engaged in the promotion of human rights in Asia. His insights offer valuable contextualisation on regional perceptions, structural challenges, and avenues for meaningful international engagement. The rationale behind the inclusion of this method is twofold: first, to enrich the understanding of the limitations of the international response to the Rohingya crisis by incorporating perspectives from field-based expertise; and second, to explore concrete strategies for strengthening accountability and visibility in light of the current geopolitical and humanitarian context. The interview was conducted in a semi-structured format to ensure both thematic consistency with the core questions of this research, allowing the respondent to elaborate freely on key issues such as accountability, regional dynamics, and strategic advocacy....., while the full transcript is available in the Appendix to ensure transparency and traceability.

A central theme that emerged during the interview, and which has likewise constituted a recurrent subject throughout this thesis, concerns the enduring challenges of accountability and enforcement. Adam underscored that any comprehensive strategy must address both dimensions of responsibility, namely individual criminal liability and state responsibility under international law, as neglecting either would result in incomplete justice. He further highlighted the urgency of halting arms transfers to the Myanmar military, noting that the absence of a binding global embargo continues to facilitate the commission of atrocities. Efforts to adopt such measures have, however, been systematically obstructed by China and Russia within the UN Security Council. In Adam's view, even Western actors undermine their credibility when calling for an end to arms transfers to Myanmar while simultaneously continuing exports to other states implicated in comparable crises. Greater normative consistency, particularly on the part of the European Union, the United States, and Canada, would not only reinforce the legitimacy of sanctions but also enhance their effectiveness in constraining the junta's capacity for violence. Furthermore, the interview illuminated the limited degree of international and regional attention accorded to the Rohingya crisis. Adam observed that Myanmar's instability is far from a recent development, having persisted since shortly after independence, only managed by brief and carefully orchestrated episodes of political opening. This long-standing continuity of repression, he argued, has fostered a gradual normalisation of the crisis in the eyes of external actors, thereby contributing to a steady erosion of political will. International attention briefly intensified during the 2017 clearance operations against the Rohingya and again in

the immediate aftermath of the 2021 coup, yet it soon receded as the conflict came to be perceived as intractable. Moreover, Myanmar's marginal weight in global geopolitics has relegated the crisis to a peripheral position on the agendas of most states, notwithstanding its profound humanitarian gravity. Thus, Adam's insights are useful to underscore how entrenched repression, coupled with limited strategic interest, systematically undermines sustained engagement, leaving accountability and protection mechanisms chronically under-resourced.

Despite these challenges, the interviewee identified new dynamics that may open avenues for change. Beyond the strictly legal and political dimensions, Adam underscored the ways in which FORUM-ASIA seeks to empower marginalised communities, including the Rohingya, by enabling their direct participation in human rights advocacy. Under its Strategic Plan 2023–2027, the organisation places particular emphasis on strengthening the capacity of local actors to articulate their own demands in international fora, rather than relying exclusively on intermediaries. As he highlighted, FORUM-ASIA remains the only Asian human rights organisation with a permanent presence in Geneva, where it facilitates access for victims, human rights defenders, and grassroots organisations to United Nations mechanisms. In parallel, it engages with ASEAN institutions to ensure that regional dialogues are not confined to state actors but also incorporate the perspectives of civil society. This approach illustrates the critical role played by NSAs in contexts where domestic opposition is fragmented and state repression has drastically narrowed political space. By reinforcing the agency of Rohingya communities and other marginalised groups, such advocacy acquires both greater legitimacy and long-term resilience, even when formal political channels remain obstructed.

In addition to civil society efforts, attention was drawn to recent political dynamics within Myanmar that may signal the emergence of transformative opportunities. The 2021 coup has prompted an unprecedented degree of cooperation among ethnic armed organisations, leading to a substantial erosion of the junta's territorial control, now reportedly reduced to less than 25% of the country. These groups have increasingly converged around a shared vision for a federal democratic future, premised on the principles of ethnic self-determination and inclusive governance. For the first time in decades, Myanmar's traditionally fragmented opposition appears to be coalescing around a common political project, which Adam identified as a genuine source of hope. He argued that sustaining this momentum requires the international community to recalibrate its engagement by supporting locally driven initiatives that authentically reflect the aspirations of Myanmar's diverse populations.

Building upon the insights provided in the interview and the documentary evidence analysed throughout the thesis, this final section offers a forward-looking set of policy recommendations aimed at addressing the structural root causes of the Rohingya crisis and advancing accountability, protection, and durable solutions. While sanctions and international condemnation have formed the backbone of the current response, they remain insufficient in isolation and often lack strategic coherence or enforceability. As observed by Frittin and Swanström, “sanctions are essentially an expression of helplessness”, and insistence “that sanctions must remain in place unless and until there is political reform makes no sense when those sanctions are shown to provide no leverage of any kind on the regime”.¹⁸⁴ Thus, a more multidimensional and pragmatic approach is warranted, integrating legal, diplomatic, humanitarian, and development-oriented instruments. The following recommendations outline the principal directions through which such an approach might be pursued.

A central recurrent imperative emerging from both documentary evidence and the the interview remains the pursuit of criminal and political accountability for the atrocities committed in Rakhine State. In this regard, the UN Security Council must “urgently exercise its Chapter VII responsibilities”¹⁸⁵ to adopt a resolution imposing a comprehensive arms embargo, freezing the junta’s access to financial flows, and referring the situation in Myanmar to the International Criminal Court.¹⁸⁶ Although the veto power of China and Russia has repeatedly obstructed such action, the mere tabling and open debate of a strong resolution, regardless of its outcome, would serve as a necessary act of political transparency and global solidarity. As stated by Regan Ahmed, “it’s time that the Security Council stands on its very promise of maintaining international peace and security, for which it was established”. In parallel, Member States should intensify targeted sanctions against military-linked entities, including MOGE,¹⁸⁷ Myanmar Foreign Trade Bank, and networks involved in aviation fuel supply and arms procurement, as highlighted in the 2023 conference room paper of the Special Rapporteur on the situation of human rights in Myanmar.

Closely intertwined with accountability is the need to address statelessness and the discriminatory legal frameworks that underpin the Rohingya’s marginalisation. At the heart of the Rohingya plight lies the enduring denial of citizenship. Reforming Myanmar’s 1982 Citizenship Law is a *sine qua non* for restoring the rights and legal personhood of the Rohingya population. In this

¹⁸⁴ Agnes Frittink, Niklas Swanström, *op. cit.*, 4

¹⁸⁵ Human Rights Council, The Billion Dollar Death Trade, para. 186

¹⁸⁶ *ivi*, para. 186 a, b, c

¹⁸⁷ Human Rights Council, The Billion Dollar Death Trade, para. 181

regard, Myanmar should be urged to accede to the 1954 and 1961 Statelessness Conventions¹⁸⁸ and implement the UNHCR's Global Action Plan to End Statelessness, particularly its core actions: resolving existing cases, preventing stateless births, and expanding access to civil documentation.¹⁸⁹ Recognizing that UNHCR lacks enforcement powers, the agency should shift its advocacy from a purely normative to an interest-based logic, demonstrating the long-term governance and development benefits that may accrue to Myanmar through inclusive nationality policies.¹⁹⁰ At the same time, the international community must press for the legal recognition of Rohingya identity and guarantee their full participation in any political process concerning their future.

Equally pressing is the protection of Rohingya refugees in Bangladesh and the reinforcement of humanitarian support. Bangladesh's role as host to nearly one million Rohingya refugees deserves renewed political and financial commitment from international actors. The Joint Response Plan (JRP) 2025–26, coordinated by UN agencies and the Government of Bangladesh, requires USD 934.5 million to respond to escalating needs, particularly in Cox's Bazar and Bhasan Char.¹⁹¹ Donor countries, especially the EU and the United States, must scale up their contributions and support a shift from short-term aid dependency toward a medium-term resilience framework. This includes investments in camp security, participatory governance, access to education, and livelihood programmes, with a particular emphasis on empowering Rohingya voices and reducing vulnerability to exploitation.¹⁹² The relocation to Bhasan Char should be halted until conditions of voluntariness, safety, and sustainability are independently verified.

Beyond humanitarian assistance, empowering civil society and fostering inclusive dialogue is another critical priority. In line with the recommendations of former UN High Commissioner for Human Rights Nada Al-Nashif, the creation of a democratic, inclusive, and rights-based future in Myanmar must begin with the repeal of all discriminatory legislation, the initiation of credible national reconciliation processes, and the establishment of an independent accountability mechanism.¹⁹³ Civil society actors must be supported and protected, both within Myanmar and in exile, through technical assistance, political backing, and financial support. Regional actors,

¹⁸⁸ Shehmin Awan, *op. cit.*, 100

¹⁸⁹ For the Global Action Plan to End Statelessness 2.0, see <https://www.refworld.org/policy/strategy/unhcr/2024/en/148761>

¹⁹⁰ Shehmin Awan, *op. cit.*, 101

¹⁹¹ For the Joint Response Plan 2025-2026 <https://rohingyaresponse.org/wp-content/uploads/2025/03/JRP-2025-26.pdf>

¹⁹² Ishrat Hossain, *op. cit.*, 8

¹⁹³ OHCHR, "Durable Solutions to the Rohingya Crisis in Myanmar." (June 21, 2023)

<https://www.ohchr.org/en/statements-and-speeches/2023/06/durable-solutions-rohingya-crisis-myanmar>

particularly ASEAN members, should provide greater space for civil society participation in dialogue formats and human rights monitoring processes. Moreover, safe resettlement channels for vulnerable refugees should be expanded, and countries in Southeast Asia encouraged to enhance temporary protection and education access schemes.¹⁹⁴

A further dimension concerns the reform of international diplomatic approaches. Rather than relying exclusively on static denunciations, external actors should adopt a more pragmatic and calibrated engagement strategy. This entails creating “common ground” for dialogue and policy incentives, even with regimes deemed hostile. The EU, in particular, could reshape its strategy to include calibrated diplomatic outreach, technical cooperation, and capacity-building in areas such as public administration, statistics, economic planning, and social development. While this should not be interpreted as legitimising the junta, it reflects the recognition that leverage is more likely to emerge from structured engagement than from isolation. Similarly, strategic concessions, when meaningful and verifiable, should be acknowledged and reciprocated.¹⁹⁵

Finally, sustaining political will and international attention remains essential. The adoption of General Assembly Resolution 79/278 in March 2025 represents an important step in maintaining political attention on the Rohingya crisis. The convening of the High-Level Conference on 30 September 2025 is expected to “mobilize political support, sustain international attention on the crisis, review the overall crisis and address its root causes”, with the aim of proposing a “comprehensive, innovative and concrete plan” for a sustainable resolution. Member States and civil society actors must actively participate in this process, ensuring that Rohingya voices are fully and meaningfully included in the deliberations. As the resolution explicitly calls for, all efforts must converge toward enabling “the voluntary, safe, sustainable and dignified return of Rohingya Muslims and other members of minority groups to Myanmar in a timely manner”.¹⁹⁶ However, serious concerns have been raised regarding the limited inclusion of Rohingya representatives in the conference proceedings. As highlighted by Amnesty International, the absence of a broad spectrum of Rohingya perspectives (particularly those of women, youth, and leaders from both refugee camps and the global diaspora) risks undermining the legitimacy and effectiveness of the process. Ensuring that affected

¹⁹⁴ Daniel P. Sullivan, “Hope amid Despair: Finding Solutions for Rohingya in Bangladesh.” *Refugees International* (December 13, 2022) <https://www.refugeesinternational.org/reports-briefs/hope-amid-despair-finding-solutions-for-rohingya-in-bangladesh/>

¹⁹⁵ Agnes Frittink, Niklas Swanström, *op. cit.*, 4,5

¹⁹⁶ United Nations General Assembly (UNGA) resolution 79/278, Scope, modalities, format and organization of the High-level Conference on the Situation of Rohingya Muslims and Other Minorities in Myanmar, A/RES/79/278 (March 27, 2025), available from <https://docs.un.org/en/A/RES/79/278>

communities are placed at the forefront of discussions about their own future is not merely a matter of principle, but a precondition for durable and rights-based solutions. The credibility of international engagement depends on adopting a survivor-centered and inclusive approach, grounded in the restoration of citizenship and the full recognition of economic, social, and political rights for all people in Myanmar. Raising awareness on these issues and ensuring accountability for past and ongoing violations must remain central priorities as the international community charts a path forward.¹⁹⁷

This final set of insights confirms that any sustainable resolution to the Rohingya crisis must go beyond symbolic condemnation and isolated punitive measures. As underscored by Ahmed Adam’s testimony, accountability must be pursued not only through international tribunals but also through consistent political will and normative coherence on the part of the international community. Current sanctions have been deprived of much of their leverage, owing to the absence of a united front, the structural constraints of the Security Council, and the strategic shielding of Myanmar by powerful allies. Nevertheless, the evolving dynamics within Myanmar, including the unprecedented alliances among ethnic armed groups and the vision for a federal democratic future, offer a window of opportunity. Seizing this moment requires a recalibrated approach: one that centres affected communities, strengthens local agency, and aligns external responses with long-term goals of justice, protection, and self-determination. Ultimately, the case of the Rohingya in Myanmar exposes not only the broader limits of the current international order to prevent and respond to atrocities, but also the enduring necessity of strategic engagement, grounded in accountability and solidarity, as an essential tool for resisting impunity and promoting human rights.

¹⁹⁷ Amnesty International, “8 Years On: Accountability needed for Myanmar atrocities against Rohingya.” (August 22, 2025) <https://www.amnesty.org/en/latest/news/2025/08/8-years-on-accountability-needed-for-myanmar-atrocities-against-rohingya/>

CONCLUSION

This thesis set out to examine the effectiveness of the international community in holding Myanmar accountable for crimes committed against the Rohingya population and to uncover the structural limitations that continue to undermine global responses to mass atrocities. The analysis has shown that, while numerous international mechanisms exist in principle to prevent and punish mass atrocities, their application in the Rohingya case has been fragmentary, inconsistent, and ultimately ineffective. The study has demonstrated that accountability has remained largely declaratory, while structural conditions, both within Myanmar and in the international order, have perpetuated impunity. The findings reveal that the crisis is not merely a national tragedy, but a paradigmatic test case for the credibility of international law and institutions in addressing grave human rights violations. As Leila Zerrougui, former Special Representative of the Secretary-General for Children and Armed Conflict, observed before the Security Council, “in a number of situations, a shocking disregard for international law is in evidence and impunity prevails”.¹ Her statement encapsulates the central conclusion of this thesis: that the international community’s inability to enforce its own commitments results in the persistence of atrocities, despite the existence of clear normative frameworks.

The three chapters of this study have addressed different dimensions of the Rohingya crisis, but their findings converge toward a unified conclusion. Chapter 1 demonstrated that the systematic exclusion of the Rohingya from Myanmar’s political and legal order is rooted in colonial legacies, post-independence nationalism, and the codification of discriminatory citizenship laws, most notably the 1982 Citizenship Law. This legal disenfranchisement provided the structural basis for recurring campaigns of violent persecution, culminating in the 2017 “clearance operations”. Chapter 2 moved from domestic exclusion to the international legal sphere. The analysis corroborates the legal characterization of the atrocities perpetrated against the Rohingya as constituting crimes against humanity and genocide, as echoed by the UN Fact-Finding Mission. Yet, it also reveals the central limitation: notwithstanding extensive recognition of international crimes, the mechanisms to enforce accountability remain severely limited. While proceedings before the International Court of Justice and the International Criminal Court represent important legal milestones, they are insufficient to alter conditions on the ground. The persistence of violence by the *de facto* military authorities and the

¹ Statement by Leila Zerrougui, Open Debate of the Security Council on Children and Armed Conflict. Office of the Special Representative of the Secretary-General for Children and Armed Conflict (August 2, 2016) <https://childrenandarmedconflict.un.org/2016/08/statement-leila-zerrougui-open-debate-august-2016/>

continued forced displacement of the Rohingya underscore the profound gap between legal recognition and effective enforcement. Chapter 3 turned to sanctions and diplomatic measures, highlighting the asymmetry of international responses. Western powers, including the European Union and the United States, imposed targeted sanctions and embargoes, yet these efforts were undermined by the continued political and economic engagement of regional actors, particularly China, Russia, India and some ASEAN members. The analysis showed that sanctions, in the absence of multilateral coordination and credible enforcement, tend to reinforce authoritarian resilience rather than dismantle it. This finding confirms broader theoretical insights into the limited effectiveness of sanctions when applied in isolation or without political consensus. Taken together, these chapters present a comprehensive picture: historical exclusion created the structural conditions for persecution; international law provided the normative framework for accountability but lacked enforcement power; and sanctions offered tools of pressure that were diluted by geopolitical fragmentation. Considered collectively, each dimension demonstrates the systemic weakness of the international community architecture.

Despite the steady expansion of human rights treaties, judicial bodies, and accountability mechanisms since 1945, the reality remains that such instruments are only as effective as the political will that sustains them. As Zerrougui further warned, despite certain advances, “the overall picture of violations in situations of armed conflict is extremely worrisome”.² Therefore, the Rohingya crisis illustrates the enduring tension between the proliferation of international norms and the chronic weakness of enforcement. This gap is particularly troubling when viewed through the lens of the Responsibility to Protect (R2P), solemnly reaffirmed in the 2005 World Summit Outcome Document. Member States pledged that the international community, acting through the United Nations, would be “prepared to take collective action, in a timely and decisive manner [...] should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity”.³ Yet, no collective action under Chapter VII of the UN Charter has been undertaken for the protection of Rohingya and the Security Council, paralyzed by vetoes, has failed to uphold the very responsibility it declared two decades ago.

² Ibid

³ United Nations General Assembly (UNGA), resolution 60/1, 2005 World Summit Outcome, A/RES/60/1 (September 16, 2005), available from https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf

By integrating a comparative dimension, this thesis has further illuminated why international responses to Myanmar have failed. In Rwanda, the international community's failure was initially catastrophic: despite clear early warnings and explicit appeals from UN officials on the ground, the Security Council chose inaction, reducing rather than reinforcing its peacekeeping presence as the genocide unfolded. This paralysis, driven by cost calculations and strategic indifference, revealed the deep structural flaws of the international system, echoing, decades later, in the case of Myanmar. Yet, the international community's delayed action was ultimately followed by a coordinated effort under the authority of the Security Council, which established the International Criminal Tribunal for Rwanda (ICTR). Notwithstanding its limitations, the ICTR demonstrated that accountability could be pursued through collective institutional mechanisms when there is political consensus within the Council. By contrast, the government of Burma continues to deny the commission of crimes, obstruct investigations, and shield perpetrators. The absence of comparable collective international action has prevented the establishment of similar accountability mechanisms, leaving the responsibility to fragmented initiatives before the ICJ and ICC and to unilateral sanctions regimes, whose impact has been diluted by lack of coordination. In South Africa, coordinated multilateral sanctions eventually contributed to the dismantling of apartheid, showing that sustained pressure, stemming from internal opposition and broad international consensus, can yield transformative outcomes. The anti-apartheid struggle was widely recognized as a universal moral cause, galvanizing global civil society and mobilizing governments across ideological divides. By contrast, the plight of the Rohingya has not acquired the same universal resonance, remaining largely peripheral in the hierarchy of international priorities. Moreover, whereas South Africa's deep integration into global markets made it vulnerable to economic isolation, Myanmar's relative marginalization from international trade and finance has significantly reduced the leverage of sanctions. Rather than producing political concessions, external pressure has often reinforced the military regime, which has tightened its control over remaining resources, relied on supportive regional partners, and exploited nationalist rhetoric to consolidate its authority.

Ultimately, the Rohingya crisis stands as a stark reminder that law without enforcement remains rhetorical, and justice without action risks complicity. The persistence of atrocities in Myanmar reveals the urgent need for a recalibration of the international system, one that bridges the gap between normative aspiration and operational reality. As Zerrougui urged at the Security Council, the international community "can and must do more to address the root causes of suffering [...], to ensure respect for international humanitarian, human rights and refugee law, but also to seek

accountability when violations are committed.”⁴ This thesis echoes that call: accountability must become more than a normative commitment. The central contribution of this study has been to situate the Rohingya crisis within the broader failure of the international community to uphold its legal responsibilities, while advancing a multidimensional framework that integrates historical, legal, and policy perspectives. By doing so, it has sought not only to diagnose the weaknesses of the current accountability architecture, but also to illuminate potential pathways toward reform. Strengthening the independence and resources of international judicial bodies, enhancing coordination among states in the international community, and embedding civil society participation in accountability processes are all measures that could improve the effectiveness of international responses. Crucially, greater attention must be given to empowering affected communities. As the interview with FORUM-ASIA highlighted, legitimacy and durability in advocacy depend on the active involvement of the Rohingya themselves and other marginalized groups. If the promise of “never again” is to retain any credibility, the lessons of Myanmar must not be ignored. The Rohingya crisis should serve as incitement for strengthening the enforcement of international human rights standards, ensuring that the protection of vulnerable minorities moves from the margins of international concern to the core of global responsibility.

⁴ Statement by Leila Zerrougui, Office of the Special Representative of the Secretary-General for Children and Armed Conflict (August 2, 2016)

APPENDIX

Interview Transcript

Date: April 2, 2025

Interviewer: Doctor Virginia Benintende

Interviewee: Ahmed Adam

Occupation: Asian Forum for Human Rights and Development (FORUM-ASIA) – Programme Manager, UN Advocacy

1. Despite its magnitude as one of the world’s most acute humanitarian crises, why has the Rohingya crisis attracted limited global attention?

Myanmar has been in crisis for the last century since its independence and they have been under the military rule for ever. There was a small opening in 2011-2013 where the military agreed to allow the NLD to function and there were elections in 2014, so there was a brief period of a sort of power sharing. But it’s a misconception to say that Myanmar crisis started in 2021, because it’s been in crisis since gaining independence. And in the meantime, the ethnic conflict continued. Therefore, the first reason is: the crisis has been going on for so long that people accepted it as known, there hasn’t been so much attention. At the Human Rights Council, international attention increased in relation to the development in the country, especially with the 2017 operations against the Rohingya who were forced to seek refuge in Bangladesh and this created some international attention. But then it has faded again because there were elections in 2020, even if they were not free and fair. In 2020, the military didn’t accept the results of the elections and the coup occurred in 2021, leading to an uptake in international attention again. Because this conflict has been going on for so long, there hasn’t been so much international involvement in the country. The second reason is: there’s not so much international interest to protect such an unstable country. Compared to other crises in the world right now, Myanmar falls in some place lower in the list of priorities in countries because of its instability.

2. Moving beyond ASEAN's collective framework, how is the Rohingya humanitarian crisis perceived within individual neighbouring states such as Indonesia, Malaysia, and Thailand?

There's more solidarity in the society for the people in Myanmar and the Rohingya people who are fleeing. Yet, on the other side, the government is the main obstacle. For Bangladesh, it's quite different because it has been hosting 1 million Rohingya for a long time. Bangladeshi people find unsatisfaction because Bangladesh is already a very poor country and there's a lot of international aid that comes to Rohingya but not to Bangladeshi themselves. For what concerns Malaysia and Indonesia: they're Muslim-majority countries and there's a lot of solidarity. In Indonesia, for example, there are Rohingya refugee residing in the Aceh province, which is a Muslim state where the imposition of Sharia law is harsher than other parts of the country, and Rohingya have been able to live there. However, at the same time, there's a lot of hate speech in social media against the Rohingya, especially after the last presidential election, on how the previous government allowed Rohingya to exploit resources and take jobs. So, they're perceived as illegal immigrants. All this rhetoric is widely used by politicians especially. Indonesia has been pushing back to sea Rohingya who are coming to the country in ports. Especially with the escalation of violence in Rakhine state, there's been more and more Rohingya getting on board also because they don't want to go to Bangladesh. Therefore, many of them go to Indonesia or Malaysia. In Malaysia there's more securitization of migrants and of Rohingya, such as surveillance of migrants in general. In Thailand and Malaysia there are many migrant workers, who do like construction work, and refugees. They have proper papers of migrant workers, but they're not recognized as asylum seekers or refugees. Hence, also in these countries, the situation for migrants is not great. It is important to keep in mind that we need to differentiate between the state and the society: the state response does not reflect the sentiments of the people.

3. One of the key objectives of FORUM-ASIA 2023–2027 Strategic Plan is to empower marginalized communities. In this regard, how does your organization translate this commitment into concrete action with respect to the Rohingya minority?

Providing sharing capacity with human rights defenders and representatives from these communities to lead advocacy on their own and to advocate for themselves. Similarly to the Plan of 2017, our Strategic Plan 2023-2027 is an update of what our organization has already been doing. Our organization was set up as a common platform for Asian civil society participating in human rights at a time when there's not so much organized advocacy by Asian civil society at international platforms. It was created for Asian civil society to present a collective voice and that modus operandi still continued. In Geneva for example: we're the only Asian human rights organization that has a presence in Geneva. We support victims, human rights defenders and civil society representatives in all UN discussions. We do that also at the ASEAN level: providing platforms, making sure there are open spaces for civil society organization and representatives of these communities. We also do capacity building for civil society to engage in these processes and to document violations and abuses they are facing, so they can advocate for themselves without having someone to mediate their voices.

4. What strategies could be pursued to enhance the Rohingya crisis' visibility on the international stage and to raise broader awareness?

Firstly: the most relevant thing is accountability: Myanmar civil society has been calling for accountability. They see this recurring cycle of violence by the military which is able to continue to perpetrate violence because there's no accountability and they can act with impunity.

Secondly: after the military coup in 2021, even if there's been NGOs, CSOs, and activists from 1988, now they see much more reasons for help than any time in the past. Individual ethnic armed organizations have been fighting their own battles in the past to protect their territory and came together joining forces in fighting against the military. They see it as a reason for hope. Supporting that would be an important opportunity that the international community shouldn't miss. Supporting people's resistance and aspirations against the military. At the moment, the military is losing a lot of ground, it has less than 25% of the territorial control of the country. The rest is controlled by various ethnic organizations in coalition with each other. Myanmar people and the society are looking towards the establishment of a federal democracy, not a centralized system, where different ethnic groups have the right

to determine their own future as well as for territory and resources in their ethnic areas.

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