

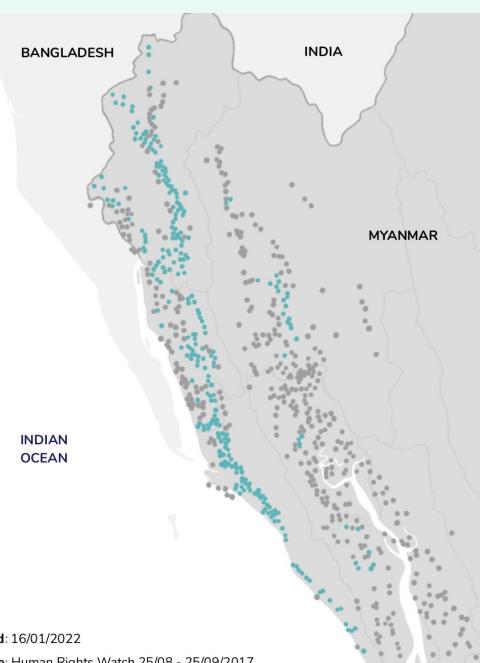
MYANMAR

Impunity in Myanmar: a case of impotence or inaction on behalf of the international community?



The Rohingya minority in Myanmar is considered the most persecuted ethnic group in the world. Despite countless human rights violations committed by the Myanmar authorities since 1988, the Rohingya population seems to have been abandoned by the international community. The Tatmadaw military has enjoyed total impunity since 1988 and has continued its bloody repression of peaceful activists since the February 2021 coup. The international community, including the United Nations, has often declared "never again" in the wake of the Holocaust, the 1994 genocide in Rwanda, or even the 1995 Srebrenica massacre. However, the case of Myanmar demonstrates not only the powerlessness of the international community, but their unwillingness to act on crimes against humanity. This policy brief intends to summarize the political-historical context that has given rise to the current situation, to assess the international response, and to offer our recommendations at the local, regional and international levels.

By Isabelle Tattevin



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The Rohingya minority in Myanmar is considered the most persecuted ethnic group in the world¹. Despite countless human rights violations committed by the Myanmar authorities since 1988, the Rohingya population seems to have been abandoned by the international community². The Tatmadaw military has enjoyed total impunity since 1988 and has continued its bloody repression of peaceful activists since the February 2021 coup. The international community, including the United Nations, has often declared “never again” in the wake of the Holocaust, the 1994 genocide in Rwanda, or even the 1995 Srebrenica massacre. However, the case of Myanmar demonstrates not only the powerlessness of the international community, but their unwillingness to act on crimes against humanity. This policy brief intends to summarize the political-historical context that has given rise to the current situation, to assess the international response, and to offer our recommendations at the local, regional and international levels.

¹ Human Rights Council (2017). Human Rights Council opens special session on the situation of human rights of the Rohingya and other minorities in Rakhine State in Myanmar. *Human Rights Council*. [online] Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22491>. [Consulted on: 3 Dec. 2021].

² Amnesty International. (2017). Myanmar : L'ONU a abandonné les Rohingyas. [online] 3 dec. Available at: <https://www.amnesty.be/infos/blogs/blog-paroles-chercheurs-defenseurs-victimes/article/myanmar-l-onu-a-abandonne-les-rohingyas>. [Consulted on: 3 Dec. 2021].

I - Political and historical context: a country ravaged by inter-ethnic conflicts

Myanmar is a multi-ethnic and multi-religious country with eight main ethnic groups and 135 national races³. The main ethnic groups are Bamar, Shan, Kachin, Kayah, Chin, Mon, Naga and Rakhine. Nearly 80% of the population is Buddhist, 6.3% is Christian and 2.3% is Muslim⁴. Due to the political hegemony of the majority Bamar ethnic group since independence in 1948, the country has experienced decades of civil war between the government, the Tatmadaw army and the many ethnic minorities. As a result, Myanmar has suffered from endemic poverty, corruption and political repression since independence. Due to ongoing conflicts with these ethnic minorities, only 4% of the country's budget was spent on education and 21% on military in 2013⁵. Moreover, due to its wealth of natural resources, Myanmar seems to exemplify the resource curse theory developed by Richard Auty in 1990⁶: The negative correlation between natural resources and growth rates is explained by corruption, power struggles, inequality and volatility of resource prices. This chronic inequality creates economic and social polarization that can increase interethnic hostility.

The Muslim minority in Myanmar, the Rohingya, constitute 31 percent of the population, which is about 1 million people. Rohingya's ethnicity has been defined as "*an ongoing process of identity formation that has unified Muslim communities in the Northern Arakan region with a similar cultural profile, but a diverse historical background.*"⁷ However, the official view of the Myanmar authorities is that the Rohingya are illegal immigrants from Bangladesh. Unrecognized by the 1982 Citizenship Act, the Rohingya have faced systematic discrimination for decades, including violations of their freedom of movement, rights to family life and access to health and education services. The law defines three types of citizenship. Full citizens who constitute the 135 recognized ethnicities in Myanmar make up the Burmese nation. Associate citizens can vote, but cannot run for office. Finally, naturalized citizens such as the Rohingya are those who have resided in Myanmar for a long time, but are still considered foreigners. Therefore, their status, which can be withdrawn at any time, institutionalizes their discrimination and exclusion.

The right to nationality is recognized in a number of key international human rights instruments. Although Myanmar has not ratified a number of these key instruments, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the citizenship law contravenes several other treaties to which Myanmar is a party.

³ Department of Population. (2016). The Union Report (Volume-2C): Religion. *UNFPA Myanmar*. [online] Available at: <https://myanmar.unfpa.org/en/publications/union-report-volume-2c-religion>. [Consulted on: 3 Dec. 2021].

⁴ *Ibid.*

⁵ NA. (2022). SITUATION ÉCONOMIQUE. *Inforbirmanie.org*. [online]. Available at: <http://www.info-birmanie.org/situation-economique/>. [Consulted on: 20 Dec. 2021].

⁶ Auty, R. (2007). Natural resources, capital accumulation and the resource curse. *Ecological economics*. [online] Available at: <https://www.sciencedirect.com/science/article/abs/pii/S0921800906004551>. [Consulted on: 1 Dec. 2021].

⁷ Leider, J. (2018). Rohingya: The History of a Muslim Identity in Myanmar. *Oxford University Press*. [online]. Available at: <https://oxfordre.com/asianhistory/view/10.1093/acrefore/9780190277727.001.0001/acrefore-9780190277727-e-115?rskey=JTwotD>. [Consulted on: 1 Dec. 2021].

These include the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD). In addition, the citizenship law allows for arbitrary revocation of citizenship on vague and political grounds, in direct contradiction to Article 15 of the Universal Declaration of Human Rights, which explicitly prohibits arbitrary deprivation of citizenship. Thus, since 1982, Myanmar has been in violation of international law.

However, the first wave of interethnic violence that prompted international intervention occurred in 2012. This violence between Buddhist and Rohingya communities in Arakan State resulted in the displacement of 100,000 citizens and the deaths of at least 80 people, 80 percent of whom were Muslim⁸. Beheading, stabbings, shootings and widespread arson have been reported. Although the nongovernmental organization Human Rights Watch concluded that the crimes amounted to crimes against humanity in the context of an ethnic cleansing campaign against the Rohingya⁹, neither the United Nations (UN) nor any other country has declared that a crime against humanity, genocide or ethnic cleansing has been orchestrated. The Myanmar authorities defined the event as a case of spontaneous communal violence, despite the fact that the persecution followed a campaign of hatred and dehumanization by the Rakhine Nationalities Development Party (RNDP)¹⁰. Through this propaganda campaign, the Rohingya were defined as illegal migrants, terrorists, and as a people who threaten national security. Myanmar's authorities, as well as the UN and its member countries, were aware of this growing genocidal ideology, but failed to intervene to prevent or stop these crimes¹¹.

On August 25, 2017, when the militant group Arakan Rohingya Salvation Army (ARSA) attacked a number of Myanmar security posts, the Tatmadaw response was almost immediate and brutal. According to Human Rights Watch, nearly 300 villages have been attacked and destroyed in Rakhine State¹². Thousands of citizens, including children, have been maimed, raped and killed. The UN estimates that approximately 270,000 Rohingya Muslims sought refuge in Bangladesh following the 2017 violence, causing a growing influx of asylum seekers. Crimes against humanity highlighted by many NGOs include: forced population transfers, deportations, killings, sexual violence, and persecution included in the Rome Statute of the International Criminal Court (ICC)¹³¹⁴.

⁸ Human Rights Watch. (2012). The Government Could Have Stopped This. *Human Rights Watch*. [online]. Available at: <https://www.hrw.org/report/2012/07/31/government-could-have-stopped/sectarian-violence-and-ensuing-abuses-burmas-arakan>. [Consulted on: 3 Dec. 2021].

⁹ Human Rights Watch. (2013). Burma: End 'Ethnic Cleaning' of Rohingya Muslims, Unpunished Crimes Against Humanity, Humanitarian Crisis in Arakan State. *Human Rights Watch*. [online]. Available at: <https://www.hrw.org/news/2013/04/22/burma-end-ethnic-cleansing-rohingya-muslims>. [Consulted on: 3 Dec. 2021].

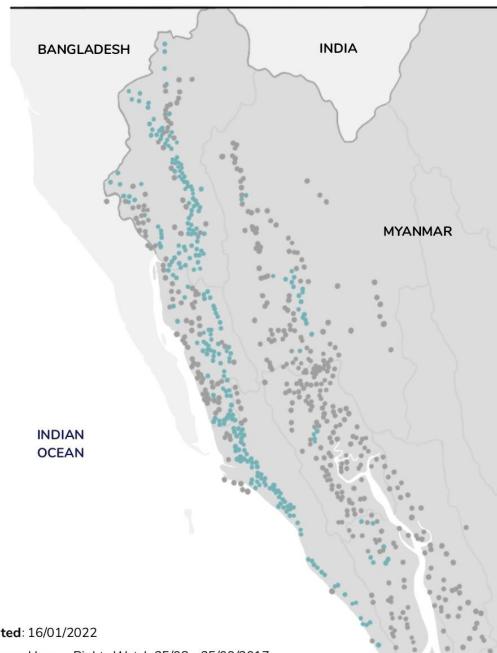
¹⁰ The RNDP, founded in 2010 by Arakanese nationalists.e, has consistently propagated discriminatory and genocidal rhetoric about the Rohingya. In 2012, they quoted Hitler, claiming that certain inhumane acts are necessary.

¹¹ *Ibid.*

¹² *Ibid.*

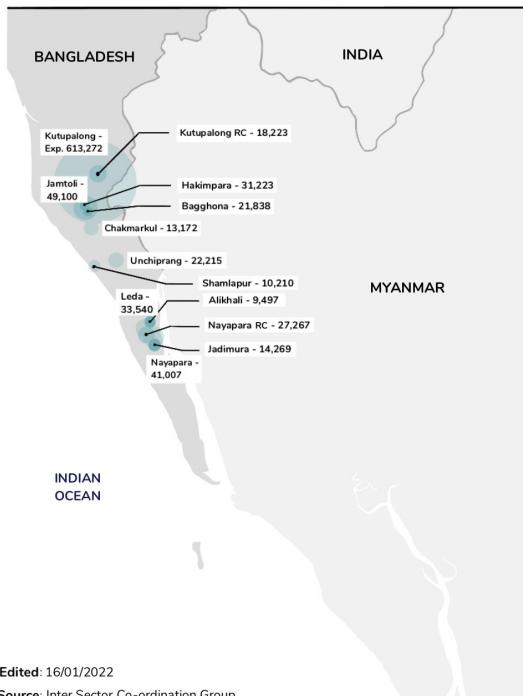
¹³ Amnesty International. (2017). Rohingya: Crimes Against Humanity in Myanmar. *Amnesty International*. [online]. Available at: <https://www.amnesty.fr/conflicts-armes-et-populations/actualites/rohingyas-des-crimes-contre-lhumanite>. [Consulted on: 3 Dec. 2021].

¹⁴ This treaty establishes the three major international crimes: genocide, crimes against humanity and crimes of aggression. The ICC can only prosecute these four crimes if the state in question is unable or unwilling to do so.



Destroyed villages in Rakhine state.

- 288 villages partially or totally destroyed in the townships of Maungdaw, Buthidaung and Rathedaung.
- 578 villages intact.



Camps de réfugié.e.s Rohingyas au Bangladesh

- Figures refer to refugees in camps as of 7 January 2020.
- RC refugee camps

Finally, in February 2021, despite Myanmar's democratic progress between 2017 and 2021, the Tatmadaw staged a violent coup d'état and is now pursuing a bloody crackdown on protesters. Although it is difficult to know the exact number, it is estimated that more than 1,000 citizens have been killed by security forces since February¹⁵. In September 2021, the UN reported that the situation in Myanmar was turning into a "human rights catastrophe"¹⁶.

II - The inaction and impotence of the UN since 1988

The impunity of the Tatmadaw since 1988

The United Nations is widely regarded as having a poor record of engagement in Myanmar, with a number of failed missions in the decades following the 1988 uprising, including silence on the crackdown on the Rohingya that led to the atrocities and mass exodus of 2017¹⁷.

In 1988, the Tatmadaw violently suppressed anti-government protests, killing between 5,000 and 10,000 students¹⁸. However, neither the Security Council nor the UN General Assembly has taken action to hold Myanmar accountable for these violations or to prevent their recurrence¹⁹. Indeed, despite the extent of the violence, the Security Council has not adopted any resolution, allowing the Myanmar authorities to enjoy complete impunity.

The UN's response to the 2012 ethnic cleansing

The UN defines ethnic cleansing as "...making an area ethnically homogeneous by using force or intimidation to remove people from the area"²⁰. But in 2012, the Burmese government ordered the forced

¹⁵ Reuters. (2021). Death toll since Myanmar coup tops 1,000, says activist group. *Reuters*. [online]. Available at: <https://www.reuters.com/world/asia-pacific/death-toll-since-myanmar-coup-tops-1000-says-activist-group-2021-08-18/>. [Consulted on: 3 Dec. 2021].

¹⁶ UN Human Rights. (2021). Human rights 'catastrophe' in Myanmar: UN calls for urgent action. *UN News*. [online]. Available at: <https://news.un.org/en/story/2021/09/1100922>. [Consulted on: 3 Dec. 2021].

¹⁷ Cheung, C. (2021). Beyond the Coup in Myanmar: The Need For an Inclusive Accountability. *Justsecurity.org*. [online]. Available at: <https://www.justsecurity.org/76182/beyond-the-coup-in-myanmar-a-crisis-born-from-impunity>. [Consulted on: 3 Dec. 2021].

¹⁸ Renaud, E (2009). The Repression of the August 8-12 1988 (8-8-88) Uprising in Burma/Myanmar. *Sciences Po*. [online]. Available at: <https://www.sciencespo.fr/mass-violence-war-massacre-resistance/en/document/repression-august-8-12-1988-8-8-88-uprising-burmamyanmar.html>. [Consulted on: 3 Dec. 2021].

¹⁹ Cheung, C. (2021). Beyond the Coup in Myanmar: The Need For an Inclusive Accountability. *Justsecurity.org*. [online]. Available at: <https://www.justsecurity.org/76182/beyond-the-coup-in-myanmar-a-crisis-born-from-impunity>. [Consulted on: 3 Dec. 2021].

²⁰ United Nations. (2022). Office of Genocide Prevention and Responsibility to Protect. *ONU*. [online]. Available at: <https://www.un.org/fr/genocideprevention/#:~:text=est%2oun%2outil%2oessential%20%C3%Aglabor%C3%A9,et%2onationaux%20%C3%A0%2ol'utiliser.&text=se%2oveut%2oun%2outil%2oprogrammatique>. [Consulted on: 10 Dec. 2021].

displacement of over 125,000 Rohingya and other Muslims²¹. Burmese officials, Buddhist monks, and community leaders all organized and encouraged Arakanese fighters backed by state security forces to carry out a coordinated attack on Muslim villages in October 2012. The manner in which these civilians (an ethnic minority) were attacked and displaced - in a planned, coordinated and lethal manner - is therefore a clear violation of international law.

However, as in 1988, the UN refused to recognize this crime and only responded with non-binding resolutions. In 2011, under the leadership of President Thein Sein, the government undertook a series of reforms, including easing restrictions on the country's media and releasing a number of political prisoners. Despite the impunity of the Myanmar authorities, the UN has praised the Myanmar regime for its democratic progress. However, many academics believe that the UN has overstated the legitimacy of these advances. Indeed, the UN's primary focus on supporting the democratic process and economic development in Myanmar, while paying less attention to escalating ethnic tensions with the Tatmadaw, contributed to its failure to prevent genocide²².

The inadequate response to the violence of 2017

After the release of a UN report that revealed the extent of the violence committed in 2017, the UN took the decision to establish a Fact Finding Mission Myanmar (FFM) that resulted in the release of a 441-page report in 2018²³. However, the genocide against the Rohingya people persists in the absence of concrete measures or Security Council resolutions. Long before the UN established the MFF, human rights defenders in Myanmar had already been collecting evidence of ethnic cleansing and demanding accountability for crimes committed against all ethnic nationalities. However, it was not until 2019 that the international community took action to hold Myanmar authorities accountable for atrocities committed in the country. In November 2019, the Pre-Trial Chamber of the International Criminal Court authorized the Office of the Prosecutor to open an investigation into the forced deportation and other possible crimes against the Rohingya in 2016 and 2017. Nevertheless, the ICC has made little progress since then.

The UN's condemnation and public statements are most often seen as insufficient in the face of a regime that does not fear international condemnation. As a result, the UN has been criticized for failing to implement specific sanctions, for not imposing an embargo on weapons, and for not asking the Myanmar authorities to allow a humanitarian mission. While the UN did implement some of these interventions between 2017 and 2021, many feel that their efforts were far too late.

²¹ Human Rights Watch. (2013). Burma: End 'Ethnic Cleansing' of Rohingya Muslims, Unpunished Crimes Against Humanity, Humanitarian Crisis in Arakan State. *Human Rights Watch*. [online] Available at: <https://www.hrw.org/news/2013/04/22/burma-end-ethnic-cleansing-rohingya-muslims>. [Consulted on: 3 Dec. 2021].

²² Rosenthal, G. (2019). A Brief An Independent Inquiry Into the Involvement of the United Nations in Myanmar From 2010 TO 2018. *UN News*. [online]. Available at: <https://www.un.org/sites/www.un.org.sg/files/atoms/files/Myanmar%20Report%20-%20May%202019.pdf>. [Consulted on: 3 Dec. 2021].

²³ The full report of the fact-finding mission:
https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_CRP.2.docx

Although the UN's responses between 1988 and 2017 were largely unsuccessful, the UN did take initiatives that included allowing other countries to recognize the gravity of the situation and respond accordingly. Conversely, following the violent coup of 2021, their efforts are now not unsuccessful, but almost non-existent.

The UN's inaction since the February 2021 coup

Since February 2021, the mass persecution of demonstrators has continued, but the Security Council has only adopted two press statements and a presidential statement. In these statements, the Security Council expressed its concern about the situation in the country and called for restraint and dialogue. However, it did not explicitly call for the coup to be reversed, preferring to insist on the release of former political leaders. He also refused to stress the importance of taking further action if the Tatmadaw disregards his demands. As a result, there have been numerous calls for stronger Security Council action in the form of formal condemnation, an arms embargo, targeted sanctions and intervention under the *Responsibility to Protect* (R2P) standard, but any resolution proposing such actions would likely be vetoed by China and Russia, which fully support the military junta. R2P requires each state to intervene when mass atrocities are committed in other countries. In order to maintain the principle of sovereignty, the 2001 report defining the R2P standard emphasizes that the responsibility to protect is primarily that of local actors and that only when the state in question is unable or unwilling to protect its citizens is its sovereign status temporarily ignored in the eyes of international law.

The Security Council's inaction toward Myanmar after the coup is consistent with its response to the Rohingya crisis in 2017, when it took ten weeks to issue even a presidential statement. In light of the scale of violations since the coup, there have been calls for the invocation of R2P. However, neither the Security Council nor the Human Rights Council referred to R2P in their responses. Two weeks before the violence in 2017, the UN Secretary-General wrote a report on R2P in which he warned that "*there is a gap between our stated commitment to R2P and the daily reality faced by populations at risk of genocide*"²⁴. The UN thus seems to be aware of the inconsistency between its commitments and its actions.

Myanmarese demonstrators write "We Need R2P" and "R2P- Save Myanmar" on t-shirts and banners²⁵. These actions raise many questions. Does the R2P consensus still exist considering the veto power of China and Russia in the Security Council, countries that support the Tatmadaw regime? If the R2P consensus still exists, how was it possible that in 2017 thousands of people were killed, maimed and raped and hundreds of thousands were forced to flee to neighboring Bangladesh?

²⁴ Mennecke, M (2021). The Failure of the International Community to Apply R2P and Atrocity Prevention In Myanmar. Department of Law, University of Southern Denmark. [online]. Available at: <https://portal.findresearcher.sdu.dk/en/publications/the-failure-of-the-international-community-to-apply-r2p-and-atroc>. [Consulted on: 3 Dec. 2021].

²⁵ Lilly, D. (2021). The UN's Response to the Human Rights Crisis After the Coup in Myanmar: Destined to Fail?. International Peace Institute. [online]. Available at: <https://www.ipinst.org/wp-content/uploads/2021/06/The-UNs-Response-Coup-in-Myanmar-Final.pdf> [Consulted on: 3 Dec. 2021].

Although the Security Council's inaction has been explained by the veto power of Russia and China, the Secretary-General could invoke Article 99 of the UN Charter²⁶ to unilaterally hold a session on Myanmar (which he has the power to do if he believes there is a threat to international peace and security)²⁷. This would force Council members who are adamantly opposed to sanctions to negotiate and test support for options such as an arms embargo, targeted sanctions, invocation of R2P and a civilian protection monitoring mission²⁸.

The failures of the UN since 1988 seem to stem from a reluctance of the UN, not from the impotence of the institution and particularly the Security Council. The Security Council's only official response to the genocide against the Rohingya in 2017 was a presidential statement that emphasized the responsibility of the Myanmar authorities to protect its population. The Council has met nine times about Myanmar since the coup and has adopted six statements. However, no substantive action has been taken. Compared to the scale and gravity of human rights violations in Myanmar, the response of the United Nations, both as an intergovernmental body of member states and as a system of operational entities, has been woefully inadequate. Our recommendations for the UN will be detailed at the end of this policy brief.

III - The regional actors and the principle of non-interference

The approach of ASEAN: the principle of non-interference

In addition to the UN, regional bodies such as the Association of Southeast Asian Nations (ASEAN) and the European Union (EU) have been responding to this violence since 2012 - these two bodies, especially, demonstrate the foundations of the current debate on the principle of non-interference in the internal affairs of a State²⁹.

This principle of ASEAN has resulted in an institutional structure that severely limits the ability of the organisation to punish its members through diplomatic, financial or military sanctions. Since the creation of the association, the ASEAN charter explicitly stated that coercive measures would not be used and actively discouraged member states from interfering in the internal affairs of others, even if those internal affairs constitute crimes against humanity. Since 2012, ASEAN has never explicitly condemned the Myanmar authorities.

Following the 2012 violence, ASEAN prioritized humanitarian intervention without political commitment or condemnation. Partly because ASEAN did not condemn the new regime, it is the first organisation to be granted permission to offer humanitarian aid. In August 2012, the then President of Indonesia, Susilo Bambang Yudhoyono, wrote to the President of Myanmar, Thein Sein, requesting that

²⁶ 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 endanger the maintenance of international peace and security.

²⁷ Mennecke, M. (2021). The Failure of the International Community to Apply R2P and Atrocity Prevention In Myanmar. *Department of Law, University of Southern Denmark*. [online]. Available at: <https://portal.findresearcher.sdu.dk/en/publications/the-failure-of-the-international-community-to-apply-r2p-and-atroc>. [Consulted on: 3 Dec. 2021].

²⁸ *Ibid.*

²⁹ The principle of non-interference in the internal affairs of states means that a state must not intervene in a dictatorial manner in the internal affairs of other states.

Myanmar permit observers to visit the affected area, which allowed one of the first regional humanitarian agencies to respond to the crisis in the Rakhine State. However, problems in the Rakhine State have hampered this progress and ASEAN, as a regional organisation, remains very limited in its ability to intervene. Some academics nevertheless consider that their approach remains the most appropriate³⁰. By choosing to induce an inclusive process through persuasive dialogues and behind-the-scenes negotiations, Myanmar authorities view ASEAN actors as legitimate authorities³¹.

In consequence, favouring the maintenance of diplomatic relations with the Myanmar authorities could be a better approach, according to some commentators³². This has led to certain achievements, such as the negotiation with the military junta which permitted international aid to reach the population, as well as the contribution to democratic reforms in 2008.

The Consensus of ASEAN in 5 points

Even though many academics consider the non-interference approach to be unsuccessful, ASEAN is currently the only player that has been able to organize negotiations with the new regime. As specialist Sophie du Rocher asserts, “*Europe failed to understand and accept that Burmese military leaders were ultimately as much part of the solution as they were part of the problem*”³³.

In April 2021, ASEAN established a five-point consensus to respond to the coup during the first coordinated international meeting to reduce tensions in the country.

These five points endorsed by ASEAN member states and Min Aung Hlaing, the army commander and ruler of Myanmar since the coup are, in order of priority, to:

1. Immediate cessation of violence
2. Encourage a constructive dialogue among all parties concerned
3. Nominate a special envoy of the ASEAN Chair
4. Provide humanitarian assistance
5. Facilitate the visit of the special envoy and delegation of ASEAN to Myanmar.

The evaluation of this meeting and the consensus reached are very divergent. Many commentators and Myanmarese protestants believe that this meeting legitimized the coup and offered impunity to the junta for their detention of the opposition. It seems that these critics tend to ignore the fact that ASEAN functions on the principle of consensus decision-making. If ASEAN condemns the coup and the current practices of the military, their diplomatic ties with the Tatmadaw, which allow certain negotiations, would be broken. Indeed, Professor Morten B. Pedersen considers that the frustration of the

³⁰ Pedersen, B. (2012). A good office?: twenty years of UN mediation in Myanmar. *International Peace Institute*. [online]. Available at: <https://ciaotest.cc.columbia.edu/wps/ipi/0026613/index.html>. [Consulted on: 3 Dec. 2021].

³¹ Nguyen, V. (2018). The Rohingya Crisis in Myanmar: Rethinking International Engagement Toward Better Humanitarian Protection. *University of Texas Austin*. [online]. Available at: https://www.files.ethz.ch/isn/154973/pi_ebook_good_offices.pdf. [Consulted on: 3 Dec. 2021].

³² *Ibid.*

³³ *Ibid.*

international community and Myanmar activists is due in part to the “limited understanding of international politics in 2021”³⁴.

In analysing the UN response, we have noticed that there is a considerable gap between the UN's promises and their concrete actions. A criticism that therefore does not apply to the ASEAN Consensus is the declaration of promises and unrealistic initiatives. Indeed, ASEAN has shown consistency between its values and its interventions. Partly linked to the great hostility between the member countries of ASEAN before its creation, the charter of this association must ensure that no country intervenes in the internal affairs of other member states. Nonetheless, the UN has repeatedly declared their adherence to the principle of the responsibility to protect a people against crimes against humanity. However, considering that China and Russia, the countries that do not respect the foundations of democracy, have a right of veto over the invocation of R2P, this principle, thus, seems impossible to implement.

The five-point Consensus established by ASEAN is admittedly imperfect. However, considering that apart from public statements, the UN Secretary-General has not led the development of a joint political strategy, the ASEAN response seems to be, for the moment, the best strategy available. In fact, the UN adopted this consensus due in part to the fact that it was much more detailed than the vast majority of UN declarations and resolutions. So far, we could say that the consensus has generated little progress, but we cannot really know the results yet.

IV - The response of the EU, are sanctions the best approach?

Since 2013, EU policy in Myanmar has been guided by the framework adopted by the EU Foreign Affairs Council in July 2013. This three-year action plan focuses on four points: peace, democracy, development and trade. The preamble to this resolution states, “*The European Union – which over the years has called for change and imposed sanctions – has a responsibility to help*”³⁵.

Since 1988, the EU has prioritised diplomatic and financial sanctions. However, the effectiveness of these two interventions is often questioned. In the past, EU sanctions were too loosely targeted and potentially affected the country's economy at large and the population in general. Wide-ranging economic and trade sanctions put in place in the past - for instance, the targeting of Myanmar's main export sectors such as natural gas, clothing and agricultural products - would punish Myanmar's civilian population more than the army.

The response of EU to the 2021 coup

Since the coup, the EU adopted a new series of diplomatic and financial reforms. Unlike their past sanctions, this time it targets specific individuals. Sanctions aimed at people are a safer bet as they would have limited negative side effects on the population. However, they would also have little impact on the

³⁴ Chen Chen, L., (2011). ASEAN Summit on Myanmar and the 5-Point Consensus. *Asialink*. [online]. Available at: <https://asialink.unimelb.edu.au/insights/asean-summit-on-myanmar-and-the-5-point-consensus>. [Consulted on: 4 Dec. 2021].

³⁵ Council of the European Union. (2021). Council conclusions on the Comprehensive Framework for the European Union's policy and support to Myanmar/Burma. *Council of the European Union*. [online]. Available at: https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/138272.pdf. [Consulted on: 5 Dec. 2021].

military: Myanmar's military leaders seem quite satisfied to stay within the country's borders or visit only close allies, and have few assets in Western jurisdictions. Key Tatmadaw figures, including the commander-in-chief, have been the target of US and European sanctions following the 2017 violence against the Rohingya, with little obvious effect.

Symbolically, however, extending these restrictions to a larger group of people, including those now granted positions on the governing body, the State Administrative Council, would signal that the coup of state is unacceptable. Pressure on known regional financial centers, including Singapore, could also be an effective, albeit difficult way to freeze assets, block transactions or deny financial services to the same people.

Pre-existing EU restrictive measures also remain in place. These are an embargo on arms and equipment that could be used for internal repression, a ban on the export of dual-use goods intended for the army and border police, and a ban on military training and military cooperation with the Tatmadaw. The majority of commentators consider that arms embargoes and military sanctions should be adopted by all countries. Indeed, trade and investment related sanctions have had catastrophic consequences for the people of Myanmar in the past³⁶. The withdrawal of trade preferences, for example, would mainly affect workers, mainly women, in the country's textile industry³⁷. However, it seems that unlike the UN, the EU has responded to the expectations of the international community by modifying its approach to sanctions. As many new sanctions continue to be imposed on Myanmar, it is impossible today to assess the success of these recent measures. Nevertheless, the fact that the new EU sanctions are militarily targeted has been welcomed.

Conclusion

By analyzing the international policy of the UN, ASEAN and the EU, we have seen that these organizations have adopted varied and sometimes contradictory responses since 1988. The UN Security Council, still not adopting any resolution, seems to have really abandoned Myanmar. As one Myanmar commentator put it: "*To what extent does the UN need to be self-critical in order to do something about its own failings?*"³⁸

Despite much discussion about ASEAN's non-interference principle, the association seems to have made more progress than the UN. It is only through this approach that the Myanmar authorities have permitted humanitarian aid into the country. Moreover, the five-point consensus established in 2021 is today the only precise and realistic political strategy that has been accepted by the new military regime.

³⁶ Crisis Group Asia. (2020). Responding to the Myanmar Coup. [online]. Available at: <https://d2071andvipowj.cloudfront.net/b166-responding-to-the-myanmar-coup.pdf>. [Consulted on: 7 Dec. 2021].

³⁷ Heiduk, F. (2018). Myanmar, the Rohingya Crisis, and Further EU Sanctions. *Stiftung Wissenschaft und Politik* (SWP). [online]. Available at: <https://www.swp-berlin.org/en/publication/myanmar-the-rohingya-crisis-and-further-eu-sanctions>. [Consulted on: 4 Dec. 2021].

³⁸ Lilly, D. (2021). The UN's Response to the Human Rights Crisis After the Coup in Myanmar: Destined to Fail?. *International Peace Institute*. [online]. Available at: <https://www.ipinst.org/wp-content/uploads/2021/06/The-UNs-Response-Coup-in-Myanmar-Final.pdf>. [Consulted on: 8 Dec. 2021].

Finally, although EU diplomatic and financial sanctions are controversial, when militarily targeted, they still seem to be the most effective way to inhibit the military. However, it is essential that the EU ensures that these sanctions exclusively affect the military regime and not civilians. Finally, the EU must refrain from lifting any sanctions before the regime has met all of its demands.

Myanmar therefore finds itself at a critical point in its history. Opposition to the military regime is now so strong that the only way to achieve their goal may be armed conflict, unless a political solution is reached. At the same time, the military junta is leading the state to collapse. The stakes could not be higher, and the crisis demands a concerted and robust response from the international community.

Recommendations

Our recommendations at the international level: the policy of the United Nations

- The UN must anchor the response in a political strategy: the UN must urgently develop a strategy to deal with the crisis, in particular by strengthening the work of the special envoy for Myanmar and by creating an international support group, while ensuring that human rights, not economic development, are at the centre of any political process.
- The Security Council must urgently discern the ethnic cleansing of the Rohingya in 2012 and the genocide in 2017 and encourage other nations to recognize them as well.
- The UN must urgently increase its capacity to monitor human rights, even if it is done remotely, particularly through digital platforms.
- The UN must provide clear leadership that encourages a less risk-averse approach: the UN Secretary-General should visit the region to meet with all key actors and strengthen the partnership of the UN with ASEAN and other concerned states.
- Strengthen protection services: Humanitarian partners should urgently update their humanitarian appeal and activate the protection cluster in urban areas of Myanmar to coordinate the augmentation of protection services such as psychosocial support, emergency legal and individual case management.
- Support existing protection efforts at the national and/or local level: The greatest forces for change have come from protesters, those involved in the civil disobedience movement, human rights organizations and civil society. The United Nations should more strongly support these efforts and the crucial protection role they play.

Our regional recommendations

1. The ASEAN's case

- The ASEAN must call for the release of all political prisoners, including human rights defenders, protesters, protest leaders and journalists, and the lifting of all restrictions on the Internet and on communication platforms in general.
- The ASEAN should fully support moves by the international community to impose a global arms embargo and targeted economic sanctions against the military, their personnel and related business entities.
- The ASEAN should encourage a coordinated response between ASEAN, the Security Council and the UN Human Rights Council with the aim of sending a joint delegation to Myanmar to monitor the situation, cease the violence and help broker a democratic, peaceful and human rights-based solution.
- The ASEAN should encourage the military regime to ensure access for humanitarian aid and health care to all affected areas in Myanmar, including by opening cross-border humanitarian aid corridors.
- The ASEAN countries should not send exiled workers from Myanmar back home, regardless of their status. Destination ASEAN countries must extend the labour contracts of Myanmar exiled workers for an additional year or more.

2. The EU's case

- The EU must discern the 2017 Rohingya genocide and the 2012 ethnic cleansing.
- Dialogue with Myanmar should not be limited to expressing deep concerns about the crisis in the Rakhine State, but should aim to engage with local partners at the practical level on the management of the Rohingya crisis.
- The EU must ensure that the junta has indeed met all its demands before lifting any sanctions.
- The EU must ensure that their sanctions do not affect civilians.
- The EU must make it clear to other ASEAN member states that the return to full military power in Myanmar is tarnishing the reputation of the association as a whole.

Our recommendations for the army and other Myanmar authorities

- Immediately release anyone arbitrarily detained.
- Put an end to the state of emergency.
- Put an end to all violence and crimes against humanity against civilians.
- Put an end to restrictions to the Internet and all other communication platforms.

- Ensure that all people in need have access to humanitarian assistance, including by restoring access for UN relief flights.
- Ensure that all those responsible for crimes related to violations of international law, particularly international humanitarian law, international human rights law and international refugee law, are addressed through national criminal justice mechanisms or credible, competent and independent international organizations.

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