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"The situation in Myanmar"



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Topic Area: The situation in Myanmar

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1. Welcoming Message

Dear delegates,

We are in the very pleasant position to welcome you all to the Security Council of ThessISMUN 2018! As members of this year's board of the Security Council, we firmly believe that you will meet the expectations of the countries which were appointed to you and that you are called to represent before the UN Security Council, the prominent body of the United Nations. We also hope that we will all manage to cooperate efficiently and effectively both during and prior to the conference. However, in order to make this happen, we would like to provide you with some valuable information just before you embark on your exciting research on our topic area: "The situation in Myanmar".

First of all, as it may be clear by now, you are holding or looking at the Study Guide that we have meticulously prepared for you. This guide aims to offer you some general information on the topic and, mostly, to show you the direction towards which you should conduct your personal research. As you may already know, the issue related to the situation in Myanmar is quite complex. Thus you are called to conduct a thorough research on the very essence and the details of the topic, as well as on your country's specific position upon that. We can assure you that, should you combine the present study guide with your personal research, you will be sufficiently prepared for the Council Sessions. We highly encourage you to utilize not only the information provided in the main text of the current study guide, but also to follow the links incorporated in the footnotes of the document so as to examine thoroughly the whole texts of official UN documents and proceedings, as well as to check the links included in the "Further Reading" and "Bibliography" parts of the Study Guide.

Secondly, please be reminded that from this point on and until the closing ceremony of ThessISMUN 2018 we remain at your disposal for any questions or remarks you might have. You can always contact us through email, either on our personal accounts, which have been posted on the official website of ThessISMUN, or on the Council's official e-mail, which will be prepared by the time you are reading this.

Furthermore, we would like to kindly ask you to be punctual in terms of the deadlines we will set for the submission of the position papers. The sooner you submit your work, the sooner we will correct it and thus, the more time you will have to revise your argumentation and perfect your preparation for the sessions.

Besides, we strongly encourage you to start your preparation early enough, in order for you to efficiently elaborate on the topic and produce an exquisite piece of work. And above all, to inspire your zeal and enthusiasm, in order to seek for

the best solution on the Myanmar situation, always in respect to your countries' policies.

Panagiotis Viopoulos, President

Natalia Liarostathi, Vice-President

2. Mandate of the Committee

The Security Council is one of the six main bodies of the United Nations. According to the UN Charter, it bears the primary responsibility for the maintenance of international peace and security. Whenever the latter are threatened, the UN Security Council is entitled to meet and discuss upon the matter arisen.

UN Security Council holds a various arsenal of measures and initiatives that may take in order to deliver its crucial role regarding the maintenance of international peace and security. In particular, in case that peace and security is at stake, the Council can decide upon ways to resolve the problem that has emerged and call upon the parties involved to keep a specific stance. Among others, the Council can propose the signing of agreements and provide guidelines and principles for its conclusion, entertain mediation process between the parties, launch specific missions and envoys, as well as to ask the Secretary General for its good offices aiming to a peaceful settlement of the crisis. In cases of aggravation, the UN Security Council has the authority to ask for ceasefire and for the deployment of military observers or peacekeeping forces. Furthermore, the authority of the Council encompasses also the adoption of measures, such as economic sanctions, embargoes, rupture of diplomatic relations, blockades and, of course, collective military action under the prerequisites set by the UN Charter¹.

Being the only UN body of which the decisions are empowered with binding force, meaning that everyone is obliged to respect and implement them, UN Security Council plays the leading and crucial role in preserving international peace and security.

As far as its composition is concerned, it consists of 15 members, by which the 5 have a permanent seat (United States of America, Russian Federation, China, United Kingdom, France), whilst the other 10 seats are filled under a rotating system which also sets as criterion the contribution of a state in international peace and security. The 5 permanent members of the UN Security Council have the right to exercise veto power, meaning that, if present, any substantial

¹ United Nations, *What is the Security Council?* [Online], Available from: <http://www.un.org/en/sc/about/>

decision to be made can be blocked if any of the 5 permanent members exercises its veto power.

Besides, other member states of the UN may participate in the meetings of the Council, without a vote, in case the Council considers that the interests of that country are affected and its presence is subject to the prior authorization of the UN Security Council members.

3. Introduction to the Topic Area

Although the Myanmar crisis, namely the turmoil taking place in Rakhine state and the alleged atrocities against Muslim populations residing in the region, alongside the outburst of a serious refugee crisis, has reached the spotlight of the international being in the last semester of 2017, peace, stability and fundamental human rights in the area have been at stake since the independence of Myanmar (Burma at the time) by the British colony power, back in 1948. In the meantime, Myanmar has experienced rounds of violence and conflict in domestic level and high political tension, including military coups, whilst after 2015, a period of stabilization in political level seems to be in process.

Nevertheless, the issue of the “Rohingya” people has not yet been resolved, neither the situation has been ameliorated. On the contrary, Rohingyas, namely Muslim people living in Rakhine state, have been subject to oppression and marginalization policies from the very beginning of the independent Burmese state, now named “Myanmar”, which is its official and UN-accepted name. Actually, as already mentioned, Myanmar crisis could be also defined as “Rohingya crisis”, or “Rakhine crisis”, meaning that, at the time being, the focus of the international community is mostly put on the situation regarding the conflict taking place in Rakhine state, the situation regarding Rohingyas and in general civilians in the area, the deprivation of their fundamental rights and the forced displacement of many people either within the territory of Myanmar or to other states, mainly Bangladesh.

The seriousness of the situation in Myanmar and the threat posed to peace, security, stability and fundamental human rights and values can be reflected by a series of different factors: the conflict between Muslim groups (mainly Rohingya) and the official security forces, the religious hatred grown within the population and especially the Buddhist majority of the country, the atrocities committed against Rohingya civilians, including women and children, by the official Myanmar authorities, the accusations for genocide or ethnic cleansing, expressed by official UN officers and many states, the fact that more than 1,000,000 Rohingyas are stalled in Bangladesh (a number overcoming the one of those being in Myanmar), the ongoing and evolving humanitarian crisis, accompanying the refugee one, with the latter being deemed as the “world's fastest growing refugee crisis”.

All the aforementioned render the Myanmar crisis one of the major problems that the international community must deal with. The UN Security Council met in order to discuss upon the situation in Myanmar after many years, whilst the different approaches by superpowers and state blocks have not let any Resolution to be adopted.

By virtue of the all these implications, the current Study Guide seeks to present to the best way possible the historic routes of the conflict, the recent outburst of the crisis, the various opinions expressed in the field of international politics, as well as some questions that reflect serious disturbances to the international law.

4. Historical Background

From colonialism to independence: From Burma to Myanmar

A long time British colony, Burma declare its independence in 1948. Since then, the county has been bifurcated by ethnic strife. Burmese people were almost the two thirds of the total population while the other third was consisted by more than 100 different ethnic groups. The democratic model lasted until 1962. In 1974, Burma adopted a model based to isolation and nationalisation of the major enterprises, in respect to a socialist economic model.²

Furthermore, 1989 was the year that Burma's name was changed to Myanmar by the governing military junta. This was a result of stifling a popular uprising that took place the previous year.³ Burma was seen as a name deriving from the colonial legacy of the British. Furthermore, it was supported that the name indicated and allowed a sense of exclusivity by referring to the Burman majority of the country.⁴

The 2008 blockade of humanitarian aid, that was targeting the victims of Cyclone Nargis, undercut the legitimacy of the regime. At that point, the international community was entangling into the idea of a humanitarian intervention. Further down the line, in 2008, the establishment of a new constitution was announced by the junta. Amid everything, in 2011 the junta dissolved, establishing the bases for a democratic constitution in the country.⁵

In 2011, the government moved against the Christian Katchin minority that was fighting for autonomy at the time. The fighting resulted in displacements and severe atrocities that alarmed human rights groups.⁶

²Council on Foreign Relations. (2018). *Understanding Myanmar*. [online]

³News.bbc.co.uk. (2017). *BBC News - Should it be Burma or Myanmar?*. [online]

⁴Economist.com. (2017). *Cite a Website - Cite This For Me*. [online]

⁵Council on Foreign Relations. (2017). *Understanding Myanmar*. [online]

⁶Council on Foreign Relations. (2017). *Understanding Myanmar*. [online]

The new Thein Sein administration dragged Myanmar again into the center of the international arena. Engagement became with Myanmar more promising.⁷ Despite the democratic turn in Myanmar's politics, the notorious ethnic violence kept on resisting the forces of improvement. In 2015, a ceasefire was signed. The ceasefire was a governmental initiative and involved 8 of the 15 armed ethnic groups.⁸

The Rohingya are the Muslims that live in the North of the Rakhine state. They were estimated to be roughly one million before the casualties started driving them away from Myanmar. The opposition supports that the Rohingya are interlopers that settled in during the colonial era and thus the government denies using the term Rohingya as they insist on not recognising their separate group identity.⁹

4.1. The Rohingya

The Rohingya have been located in Myanmar for centuries. They are placed in the Rakhine State in the West of Myanmar. What has characterised their conditions is that they have been isolated and mistreated from the military governments since the 1940's.¹⁰

The Rohingya identity was never officially recognised. Since the 1960's, the history of the Rohingya has been characterised by exploitation and discrimination. Looking back into the 1970's, "Operation Dragon" in 1978 forced 300.000 Rohingya to seek safety in Bangladesh. Even though they returned the next year, their life conditions never improved. The litmus stone of their oppression and exclusion was the statelessness status that they were given under the 1982 nationality law.¹¹

In 1982, the Rohingya were officially striped of their citizenship. That was the result of a rather strict nationality law that was imposed upon the people. The law recognised three kinds of citizenship: citizenship, associate citizenship and naturalised citizenship. The original citizenship is only granted to those who can prove to have roots in the country before 1824 and the British colonial era. The way of proving their roots is a rather complicated system organised in a way

⁷Council on Foreign Relations. (2017). *Understanding Myanmar*. [online]

⁸Council on Foreign Relations. (2017). *Understanding Myanmar*. [online]

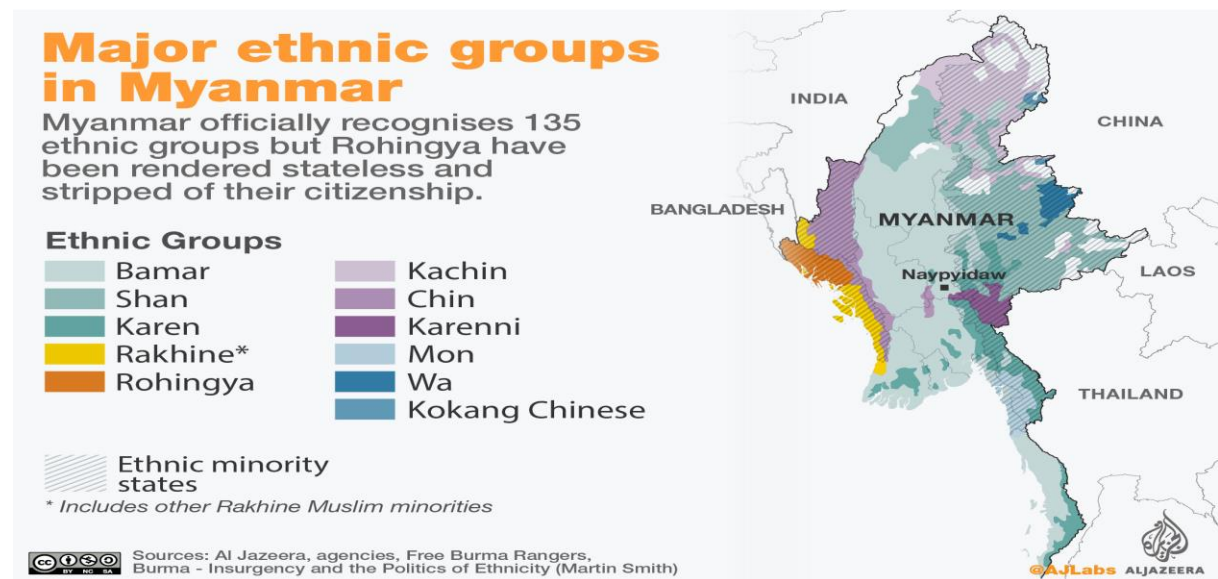
⁹Koutsoukis, M. and Beyer, M. (2017). *Myanmar's Rohingya Refugee Crisis, Explained*. [online] Bloomberg.com.

¹⁰Aljazeera.com. (2017). *Rohingya crisis explained in maps*. [online]

¹¹Uddin, N. (2015). State of Stateless People: The Plight of Rohingya Refugees in Bangladesh. In Howard-Hassmann R. & Walton-Roberts M. (Eds.), *The Human Right to Citizenship: A Slippery Concept* (pp. 67). University of Pennsylvania Press.

that leaves the Rohingya unable to provide the needed evidence in order to be granted the Burmese citizenship. Rohingya are not recognised as one of the national races. Being unable to prove their citizenship, the Rohingya have been subject to restriction of movement, denial of higher education and positions in the public sector of Myanmar.¹²

What is interesting is that 135 races are recognised as national races in Myanmar. This discrimination legitimises the view of Rohingya as a made up race that does not have historical existence and thus should not have identity claims in Myanmar.¹³



Aljazeera.com. (2017). Rohingya crisis explained in maps. [online]

The discrimination against some races on the right of nationality, deriving from the 1982 Citizenship Law, is diametrically opposed to the values of the Universal Declaration of Human Rights. Furthermore, the Convention on the Rights of the Child, requires every state to provide adequate interlocking that will ensure that all children are granted a nationality. Leaving children that are born in a certain state to carry the stateless status is contradicting every viable effort to provide protection and safety for any child that is born in Myanmar. Finally the law, is against any effort of elimination of discrimination on a racial basis in a national level.¹⁴

¹²Hrw.org. (2017). *Burma/Bangladesh: Burmese Refugees In Bangladesh - Discrimination in Arakan*. [online]

¹³Anon, (2017). *Foreign Law Guide*. [online] Available at: <http://burmacampaign.org.uk/media/Myanmar's-1982-Citizenship-Law-and-Rohingya.pdf> [Accessed 21 Dec. 2017].

¹⁴Anon, (2017). *Foreign Law Guide*. [online] Available at: <http://burmacampaign.org.uk/media/Myanmar's-1982-Citizenship-Law-and-Rohingya.pdf> [Accessed 21 Dec. 2017].

As a result, children born in Myanmar, are not secured to obtain a nationality. That creates initially the problem of statelessness. The law has been the mainstay of discrimination against Rohingya. When they are not considered citizens, they grow extremely vulnerable as there is not an institution or a law that actively protects their rights and wellbeing.¹⁵

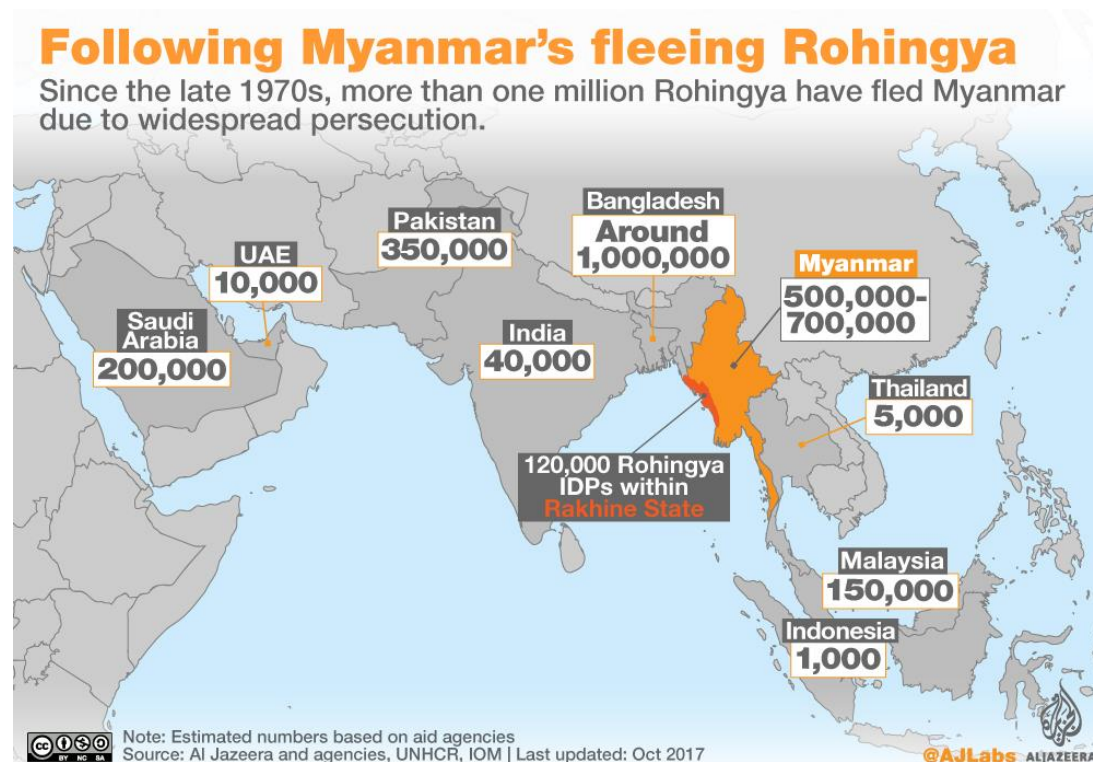
On the right of movement, Rohingya are not able to travel within Arakan or travel to other countries. In order to travel or even spend the night in another village, Rohingya need to issue a specific permit and show it to the headman of the village they wish to visit. Another form of oppression is forced labor. Rohingya of all ages, with children not being an exception, are forced to work without payment for state-run companies that generate profit. In addition to that, they are often building villages for non-Muslim migrants. Even though the International answer from ILO and the UN has been against this practise, the state has yet to actively stop a practise that clearly endangers and disrespects specific portions of the population.¹⁶

4.2. Bangladesh

As the image below showcases, Bangladesh has not been the only country where Rohingya found refugee leaving Myanmar. During the years, a number of countries have received Rohingya people looking for salvation. What is important though, is that Bangladesh during the years, has been the major recipient of Rohingya refugees, trying to flee violence and seek for acceptance in a state.

¹⁵Anon, (2017). *Foreign Law Guide*. [online] Available at: <http://burmacampaign.org.uk/media/Myanmar's-1982-Citizenship-Law-and-Rohingya.pdf> [Accessed 21 Dec. 2017].

¹⁶Hrw.org. (2017). *Burma/Bangladesh: Burmese Refugees In Bangladesh - Discrimination in Arakan*. [online]



Aljazeera.com. (2017). *Rohingya crisis explained in maps*.

The Rohingya exodus to Bangladesh has created a rather complicated situation. Due to the resource scarcity that Bangladesh faced, repatriation of the refugees that had arrived from Myanmar often seemed like the only viable solution. Their integration seemed to be extremely difficult for the local authorities. Consequently, even though there has been support for those registered in the legal camps in Bangladesh, the rest are treated like illegal immigrants.¹⁷

Additionally, the civil society has nourished anti-Rohingya sentiments that are usually driven by the political groups and the media. Besides that, there have been allegations of registered refugees tortured and mistreated in order to be repatriated and cross the border to Myanmar.¹⁸ One cannot fail to recognise the statements of Rohingya people regarding their treatment. There are statements of people thrown into the Naf river as a means of forcing them to swim back to Myanmar. Undeniably the existence, together with the illegal status of those

¹⁷Uddin, N. (2015). State of Stateless People: The Plight of Rohingya Refugees in Bangladesh. In Howard-Hassmann R. & Walton-Roberts M. (Eds.), *The Human Right to Citizenship: A Slippery Concept* (pp. 69). University of Pennsylvania Press.

¹⁸Uddin, N. (2015). State of Stateless People: The Plight of Rohingya Refugees in Bangladesh. In Howard-Hassmann R. & Walton-Roberts M. (Eds.), *The Human Right to Citizenship: A Slippery Concept* (pp. 70). University of Pennsylvania Press.

people, make them subjects of extremely inhumane treatment from local Bangladeshi authorities.¹⁹

5. The recent outburst of the crisis - current situation

5.1. Statelessness

In order to better grasp the problem that the Rohingya face and to depict the situation in Myanmar, the statelessness status needs to be shortly explained and examined. Statelessness plays an important role in their mistreatment and the continuous violation of their rights.

The essence of being stateless lies on the fact that a person does not belong to any state. While statelessness directly violates the right to nationality, it indirectly jeopardises many other rights that derive from it. By the international law, the definition of a de jure stateless is someone “*who is not considered as a national by any State under the operation of its law.*” On the other hand, a de facto stateless person, is one that is unable to prove his/her nationality.²⁰ According to the Declaration of Human rights “*everyone has the right to nationality*”. Not respecting that parameter, people that are deemed stateless, lack the right to have claims against a state. They remain on the margins of a state, people with nowhere to turn. As a result, those individuals often become victims of oppression and mistreatment due to their lack of “existence” in the eyes of the state.²¹

The mere existence of statelessness creates a vortex of mistreatment and denial. In an international system organised baser on states, not belonging to any of them, leaves Rohingya with nowhere to turn to, to seek actual legal protection.

5.2. Eruption of new conflicts

The Rohingya started relinquishing Myanmar in the 1970's, but they started massively migrating in the 1990's to Bangladesh. Those were later repatriated in

¹⁹Uddin, N. (2015). State of Stateless People: The Plight of Rohingya Refugees in Bangladesh. In Howard-Hassmann R. & Walton-Roberts M. (Eds.), *The Human Right to Citizenship: A Slippery Concept* (pp. 70). University of Pennsylvania Press.

²⁰Belton, K. (2015). Statelessness: A Matter of Human Rights. In Howard-Hassmann R. & Walton-Roberts M. (Eds.), *The Human Right to Citizenship: A Slippery Concept* (pp. 31-32). University of Pennsylvania Press.

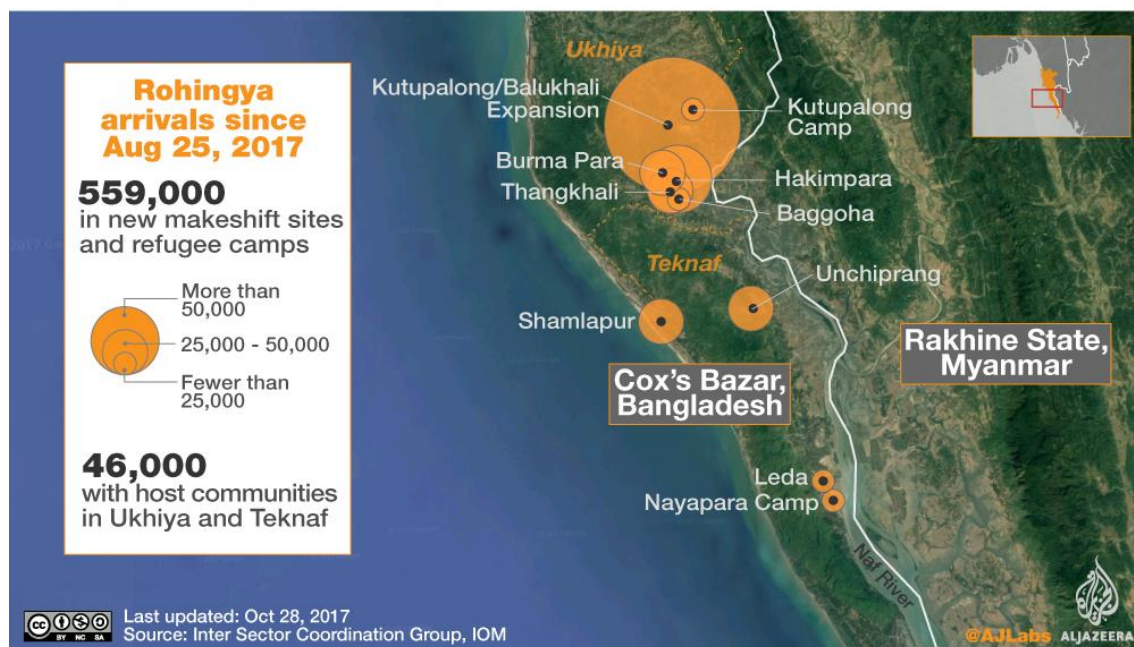
²¹Uddin, N. (2015). State of Stateless People: The Plight of Rohingya Refugees in Bangladesh. In Howard-Hassmann R. & Walton-Roberts M. (Eds.), *The Human Right to Citizenship: A Slippery Concept* p. 62 University of Pennsylvania Press.

Myanmar under the supervision of the United Nations High Commissioner for Refugees. Nonetheless, many of them returned to Bangladesh due to the discriminatory conditions they had to live under in Myanmar.²²

October 2016, marked a military incident that drove many Rohingya to flee to Bangladesh to in order to avoid atrocities. The incidents of August 2017 resulted in more Rohingya leaving the country²³. Since last August an estimated of 620.000 Rohingya have fled to Bangladesh after the systematic massacre and violence against them.²⁴ If we look into the facts more specifically the situation becomes revealing.

Refugee settlements in Cox's Bazar

Around **605,000** Rohingya have fled to Bangladesh since August 25, 2017, mostly residing in temporary makeshift settlements.



Aljazeera.com. (2017). *Rohingya crisis explained in maps*.

The religious contras in Myanmar have driven more than 400.000 Rohingya people out of the country. Many of them have found shelter in Bangladesh and others neighbouring countries.²⁵

²²Uddin, N. (2015). State of Stateless People: The Plight of Rohingya Refugees in Bangladesh. In Howard-Hassmann R. & Walton-Roberts M. (Eds.), *The Human Right to Citizenship: A Slippery Concept* p. 62 University of Pennsylvania Press.

²³Aljazeera.com. (2017). *Rohingya crisis explained in maps*. [online]

²⁴Beech, H. (2017). 'No Such Thing as Rohingya': Myanmar Erases a History. [online] Nytimes.com.

²⁵Koutsoukis, M. and Beyer, M. (2017). *Myanmar's Rohingya Refugee Crisis, Explained*. [online] Bloomberg.com.

In August 25 2017, the Arakan Rohingya Salvation Army(ARSA) attacked 25 security officials in Rakhine. This was the deadliest attack until that point, deeming the escalation of the situation unescapable.²⁶The security forces answered with operations. It was claimed that during those operations, Muslims were attacked without discrimination. While the army was claiming that a small amount of deaths existed, human-rights groups talked about hundreds of civilian deaths. 87.000 Rohingya were estimated to leave Myanmar then.²⁷

While the Burmese authorities categorise ARSA as terrorist group, ARSA is self-defined as a group of fighters, striving to provide protection for the Muslim Rohingya in Myanmar. Amid those contrasting claims, there have been no evidence that can actively connect the group with terrorist groups outside the country.²⁸

5.3. The actions of Myanmar authorities: allegations of atrocities

2012 has been a year of reforms in Myanmar. Those reforms came after decades of isolation for the country. The main issue became governance reform. In 2015, the National League for Democracy party saw an electoral win after many years of it being the opposition. Following the political and ideological changes, the answer of the international community saw a reform as well. Many countries lifted sanctions against Myanmar, while the US started establishing diplomatic relations.²⁹

During the years, the Rohingya have been denied their rights in Myanmar. Their Sein ,the former and 8th president of Myanmar, appointed the first female minister and he selected 16 technocratic deputy ministers. Additionally in the President's Office, the ministers increased from 2 to 6. Besides all the transformations, on the top layer of governance, the representation of ethnic minorities remained alarmingly thin.³⁰

During May 2012, an incident of a Rohingya woman that was raped and killed by three Muslim men reheated incidents of ethnic violence in Myanmar. Further down the line, in June, Rohingya reportedly stopped a bus and killed 10 Muslim passengers. As the tension escalated, in June Thein Sein declared that Myanmar

²⁶ABC News. (2018). *UN on 'full alert' as more than 11,000 Rohingya flee Myanmar in a day.* [online]

²⁷Koutsoukis, M. and Beyer, M. (2017). *Myanmar's Rohingya Refugee Crisis, Explained.* [online] Bloomberg.com.

²⁸ABC News. (2018). *UN on 'full alert' as more than 11,000 Rohingya flee Myanmar in a day.* [online]

²⁹Council on Foreign Relations. (2018). *Understanding Myanmar.* [online]

³⁰Holliday, I. (2013). Myanmar in 2012: Toward a Normal State. *Asian Survey*, 53(1), p. 93-94. doi:10.1525/as.2013.53.1.93

was in a state of emergency, stating that Rohingya posed a threat for the country. He proposed to the UN for them to be placed in camps in order to be transferred to third countries.³¹

The situation quickly resulted into incidents of communal violence. In 2012, the clashes between Rakhine Buddhists and Muslims resulted to many deaths and even more displacements. Later, in 2013 a small incident in a gold shop, created violence that left more than 40 people dead and in August 2013, Muslim shops and property were burned during a riot that took place. Furthermore, in 2014, according to a UN statement, due to an allegation of a killing of a police officer in Rakhine, more than 40 Rohingya men were killed. All those events are clearly showcasing the escalation of tension between the different ethnic groups in Myanmar during the past few years.³² The build up of the tension has undeniably left Rohingya as a central pillar when it comes to victims. Being a Muslim minority and not being recognised by the state, these are the parameters that worked into further escalation of the unease.

Additionally, in 2015 the government abrogated the voting rights that the minority group held, making their living conditions in Myanmar even more difficult.³³ Coming to 2016, the UNHCR report describes an effort for erasion of every landmark in the Myanmar stage that are part of the Rohingya memory. The state seems to actively try to erase every part that can permit any association of the Rohingya history with the one of Myanmar. According to reports, Rohingya people of the elite, people that can have influence and paradigmatic figures have been targeted. Hence, Myanmar shows a unique and extended amnesia regarding the Rohingya.³⁴

After the events of August 2015, the authorities responded with a time and violence extended process that targeted the minority group. The situation became so difficult resulting to allegations for human rights violations and to the recognition that the situation on hand was an ethnic cleaning.³⁵

5.4. Influx of migratory flows and the role of Bangladesh

After the 25th of August 2017, the migratory flows towards Bangladesh have reached a pick. The number of people that are entering Bangladesh in their effort to be secured from violence in Myanmar has been immense. As of the 11th of

³¹Holliday, I. (2013). Myanmar in 2012: Toward a Normal State. *Asian Survey*, 53(1), 96-97. doi:10.1525/as.2013.53.1.93

³²BBC News. (2017). *Why is there communal violence in Myanmar?*. [online]

³³ABC News. (2018). *UN on 'full alert' as more than 11,000 Rohingya flee Myanmar in a day*. [online]

³⁴Beech, H. (2017). *'No Such Thing as Rohingya': Myanmar Erases a History*. [online] Nytimes.com.

³⁵ABC News. (2018). *UN on 'full alert' as more than 11,000 Rohingya flee Myanmar in a day*. [online]

December an estimated of 860.000 Rohingya are in refugee camps in Cox's Bazaar in Bangladesh. The vast majority of them, more than 640.000, have arrived since the events of the 25th of August.³⁶ It is interesting, that more than 11.000 refugees have been reported to have crossed the borders to Bangladesh in a single day.³⁷

Even before the big exodus, 200.000 Rohingya were already placed in the Bangladeshi refugee camps. Facing already internal challenges, the additional more than half a million refugees put immense amounts of pressure on Bangladesh. The camps are not adequate for hosting such large amounts of refugees.³⁸

During the exodus of the Rohingya, Bangladesh has been trying to assist them and ensure that the right conditions can be created in order for them to be able to have decent living conditions. Quickly, four ministries (Home Affairs, Health and Family Welfare, Foreign Affairs, Food and Disaster Management) got involved to assist this effort of organising the response to the refugee crisis.

At the same time, according to WHO, an effort for immunisation regarding cholera has been put into practise in the Cox's Bazaar area. It is crucial that the refugees are secured from the deadly disease that can make the situation drastically harder for Bangladesh³⁹.

Bangladesh has been overwhelmed by the prodigious migratory flows that have been settling in the country. The refugee camps are crowded and the situation in Bangladesh seems to be escalating into more difficult conditions⁴⁰.

³⁶Unocha.org. (2018). *Rohingya Refugee Crisis / OCHA*. [online]

³⁷ABC News. (2018). *UN on 'full alert' as more than 11,000 Rohingya flee Myanmar in a day*. [online]

³⁸Unocha.org. (2018). *Rohingya Refugee Crisis / OCHA*. [online]

³⁹ABC News. (2018). *UN on 'full alert' as more than 11,000 Rohingya flee Myanmar in a day*. [online]

⁴⁰Holmes, O. (2017). *Myanmar signs pact with Bangladesh over Rohingya repatriation*. [online] the Guardian.

5.5. The genocide in Myanmar



ABC News. (2018). UN on 'full alert' as more than 11,000 Rohingya flee Myanmar in a day. [online]

The situation has taken such dimensions that one could easily characterise it as ethnic cleansing. The militias and the police are accused of indiscriminately burning villages, killing locals, raping women and children. Everything has been happening under the official “umbrella” answer that the Rohingya are the source of violence in Myanmar and the official response can do no less than cleansing the problem and answering to the violence.⁴¹

After the 25th August incidents, Myanmar’s retaliation has been far from forgiving. Rapes, killings, prosecutions, shelling and property arson have all been the ingredients that drove Human Rights Watch to give the situation, the characterisation of ethnic cleansing. According to the UN, the Rohingya have been identified as the world’s most persecuted people. Discrimination and prosecution, that recently multiplied, has been brought upon them for decades.⁴²

⁴¹Safi, M. (2017). *Myanmar burned Rohingya villages after refugee deal, says rights group*. [online] the Guardian.

⁴²ABC News. (2018). *UN on 'full alert' as more than 11,000 Rohingya flee Myanmar in a day*. [online]

6. The approach of the International Community

6.1. United Nations

The latest outburst of the crisis in the Rakhine state of Myanmar has revitalized the interest of the United Nations on one of the long-lasting problems affecting South-East Asia. In particular, the high-level body of the UN, the Security Council, has not yet discussed extensively on the situation in Myanmar during the years of its democratic transition, whilst the main focus of the UN was reflected through the operations of specialized bodies, especially of those dedicated to the promotion of human rights protection. Nevertheless, as already mentioned, the recent events led to a series of initiatives held within the whole UN system.

6.1.1. United Nations Security Council (UNSC)

Following the aggravation of the crisis in the Rakhine state, the escalation of violence from both sides, especially from the side of the Myanmar security forces, as well as the influx of refugees fleeing from the aforementioned region towards Bangladesh and other neighboring countries, the UNSC has included the situation in Myanmar in its Agenda for the first time after 8 consecutive years. Besides, until 2009, when the UNSC last met on Myanmar, the main issue under discussion was the political instability in the country and the treatment against political prisoners, as reflected by Press Statements published at the time⁴³. As far as the issue of atrocities against ethnic minorities, it was introduced during an UNSC meeting in 2007. However, a draft resolution mainly supported by the UK and the USA was vetoed by the Russian Federation and China⁴⁴, as well as the Presidential Statement issued afterwards contained no reference to the reported attacks against Rohingyas and other minority groups in the Rakhine state⁴⁵.

On the contrary, following its first meeting on Myanmar after 8 years on the 28th of September 2017, the UNSC has discussed three consecutive times (on 28/9, 6/11 and 12/12) after the outburst of the crisis, alarmed by the recent events in the Rakhine state. Although the Council has not yet managed to conclude in a Resolution on the topic under discussion, the briefings made by major UN

⁴³ Security Council Report, *UN Documents for Myanmar*, [Accessed 20 February 2018], Available from: <http://www.securitycouncilreport.org/un-documents/myanmar/>

⁴⁴ United Nations Security Council, *United Kingdom of Great Britain and Northern Ireland and United States of America: draft resolution (vetoed)*, 12 January 2007. [Online]. 2007, S/2007/14. Available from: <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/ROL%20S2007%2014.pdf>.

⁴⁵ United Nations Security Council, *Statement by the President of the Security Council (11 October 2007)*. [Online]. 2007, S/PRST/2007/37. Available from: <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Myan%20S%20PRST%202007%2037.pdf>.

officers, as well as the Presidential Statement of the 6th of November 2017⁴⁶ – being the only tangible outcome of the three meetings- are quite indicative of the stance of UNSC and its members. In particular:

UNSC meeting of the 28th of September: the first meeting of the UNSC after the serious escalation of the Rohingya crisis was characterized by a comprehensive briefing and the participation of the UN Secretary Antonio Guterres. Furthermore, all main international actors clarified their opinions regarding the situation in Myanmar.

First of all, the UN chief officer shared his concerns about the violence in the Rakhine state. Specifically, he condemned the attacks delivered by ARSA against the Myanmar security forces, whilst he instigated Myanmar's duty to end the military operations involving excessive use of force, to allow the access of humanitarian assistance to those in need as well as to ensure the return of the refugee and other displaced persons with due respect to be paid towards their safety, will and dignity. Additionally, he characterised the fact that the Muslim of the Rakhine state are not entitled to acquire citizenship as problematic⁴⁷.

As far as the approach of the UNSC members is concerned, there have been two different main views expressed. On the one hand, many member states condemned the stance of Myanmar against Rohingya and their omission to facilitate the provision of humanitarian assistance to the populations residing in the Rakhine state, whilst Myanmar was also blamed for committing acts of ethnic cleansing or genocide against Muslim populations. On the other hand, other members of the Council supported the way that Myanmar is handling the situation, invoking the necessity of the national government to stabilize the country against the actions of the fighters of Muslim militia groups in Rakhine. Besides, Myanmar and Bangladesh participated in the meeting as observers and they submitted their views on the topic discussed⁴⁸.

Presidential Statement of the 6th November 2017 (S/PRST/2017/22): given that the crisis has been ongoing and constantly escalating, the UNSC met again on the issue of Myanmar, in less than one month and a half. Notwithstanding the fact that the members insisted on their positions, the Council managed to issue a Presidential Statement, reflecting the main parts of agreement amongst the members and, prominently, of the P5.

⁴⁶ United Nations Security Council, Statement by the President of the Security Council (6 November 2017). [Online]. 2017, S/PRST/2017/22. The full text of the Presidential Statement is available at: http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_prst_2017_22.pdf. The respective Press Release is available at: <https://www.un.org/press/en/2017/sc13055.doc.htm>.

⁴⁷ United Nations, Myanmar - Remarks by UN Secretary General at the Security Council. [Online]. 2017. [Accessed 28 December 2017]. Available from: https://www.youtube.com/watch?v=XBw_kAjQiwI.

⁴⁸ United Nations Security Council, Records of the 8060th meeting (28 September 2017), [Online], 2017, S/PV.8060. Available from: http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_8060.pdf.

Pursuant to the aforementioned Presidential Statement, the UNSC has condemned the attacks that the ARSA had conducted against the Myanmar security forces and the situation of diffused violence within the Rakhine state. Furthermore, even though, there is no specific condemnation against the authorities of Myanmar, the Council has expressed its concerns for the alleged violations of human rights and international humanitarian law by the national security forces of Myanmar, highlighting also the various ways by which these breaches are being materialized.

In addition, it reiterates the responsibility of Myanmar to guarantee that its forces will avoid excessive military force, as well as they will fulfill obligations under international human rights and international humanitarian law. The high number of refugees and internally displaced persons, fleeing from the Rakhine state, is also addressed with the Presidential Statement, whilst Myanmar is called to cooperate with international organizations and NGOs in order to tackle with the large scale humanitarian crisis in Rakhine state. Lastly, the UNSC has assessed the steps taken in the meantime and it has welcomed some steps taken by Myanmar towards the amelioration of the situation. For example, the signing of the MOU between Myanmar and Bangladesh on the return of refugees, as well as the decision of the Government of Myanmar to establish “the Union Enterprise Mechanism for Humanitarian Assistance, Resettlement, and Development in Rakhine”⁴⁹.

In the aftermath of the adoption of the Presidential Statement described above, Myanmar and Bangladesh expressed again their views before the UNSC.

UNSC meeting of the 12th of December 2017: during the third consecutive meeting of the UNSC on the situation in Myanmar, the Council was briefed by the UN Under-Secretary General Mr Jeffrey Feltman and the Special Rapporteur of the UN Secretary General on Sexual Violence in Conflict, Ms Pramila Patten. Once again, it did not manage to reach a specific outcome, but the participating member states reassessed the measures taken to address the crisis and reiterated the basic directions of their stance.

On behalf of the United Nations, the Under-Secretary General expressed his concerns regarding the excessive numbers of refugees fleeing Rakhine state and moving to Bangladesh, the remaining insufficiency of the humanitarian assistance, whilst he shared with the UNSC member states the basic thoughts of the UN officers on the MOU signed between the two involved states and the possibilities of its success. Besides, the Special Rapporteur revealed its findings concerning rapes, sexual assaults and other acts of sexual violence against Rohingya women, committed by men of the Myanmar security forces, evoking thus that breaches of international humanitarian law are taking place.

⁴⁹ United Nations Security Council, *Statement by the President of the Security Council (6 November 2017)*, [Online], 2017, S/PRST/2017/22. Available from: https://www.un.org/en/ga/search/view_doc.asp?symbol=S/PRST/2017/22.

As far as the states' approaches are concerned, the main blocs maintained their initial positions, while the United Kingdom was the delegation which questioned the applicability of the MOU between Myanmar and Bangladesh, creating a round of serious concerns on how and by which means it could be efficiently implemented⁵⁰.

6.1.2. United Nations General Assembly (UNGA)

Over the last years, the UN General Assembly has been addressing the situation of human rights in Myanmar by adopting a series of Resolutions based on findings and reports of specialized UN bodies and mechanisms, as well as the works of its 3rd Committee. Notably, we may mention A/RES/67/233 (2012), A/RES/68/242(2013), A/RES/69/248 (2014), A/RES/70/233 (2015). The aforementioned Resolutions responded to all the issues regarding the shortcomings on the protection of human rights in Myanmar, including of course references to the serious violations of the rights of the Rohingyas and of the other minorities residing in the Rakhine state.

In light of the recent outburst of the crisis and the aggravation of the situation, the 3rd Committee of the UNGA concluded on a Draft Resolution, sponsored by Egypt, by which the Government of Myanmar is called to act accordingly in order to restore stability and dissolve the crisis. In particular, it covers a great range of the issues arisen in the context of the crisis in the Rakhine state, such as the use of excessive military force, the obstacles on the delivery of humanitarian assistance, the necessity of guaranteeing the return of the displaced populations, the facilitation of the fact-finding Mission of the UN Human Rights Council, the issue of statelessness etc.

The final version of the Resolution 72/248(2017)⁵¹ was adopted by the UNGA in 24th December 2017, since it was voted by the vast majority of the UN members, without however being supported by Russian Federation and China.

6.1.3. UN Specialised bodies

6.1.3.1. UN Human Rights Council (HRC)

The main UN treaty-based body dedicated to the protection of human rights has been constantly addressing the situation of human rights in Myanmar. In March 2017, before the rise of the tensions in Rakhine state, the Human Rights Council

⁵⁰ United Nations Security Council, *Records of the 8133rd meeting (12 December 2017)*, [Online], 2017, S/PV.8133. Available from: <http://undocs.org/en/S/PV.8133>.

⁵¹ United Nations General Assembly, *Resolution 72/248: Situation of human rights in Myanmar (24 December 2017)*, [Online], 2018, A/RES/72/248. Available from: <http://undocs.org/A/RES/72/248>.

adopted Resolution 34/22⁵². The most important provision of the latter is the creation of an Independent International Fact-Finding Mission on Myanmar, which has already started its work.

Notwithstanding the fact that HRC recognized the positive steps taken by the Government of Myanmar to cope with the human rights violations and to lower the degree of violence exercised, it had expressed its concern for the increase of the tension level in Rakhine state and the deterioration in terms of respect towards international humanitarian law and maintenance of security and stability. Actually, those concerns were proven to be well-founded in light of the situation in Myanmar from August until now.

In addition, the HRC highlights the problems caused due to the 1982 Citizenship Law which excludes Rohingyas from the adoption of a nationality, as well as it deems the return of IDPs and refugees back to their home as an issue of utmost importance.

The HRC has also called the Special Rapporteur of the Human Rights Council on the situation in Myanmar to conduct a Report, which has been delivered to the UN Secretary General and transmitted to the UNGA in due to time, namely while the crisis has trespassed the threshold of seriousness.

6.1.3.2. *Fact-Finding Mission in Myanmar*

Pursuant to Resolution 34/22 of the UN Human Rights Council, the mandate of that specialized mission encompasses the research and reporting on facts and circumstances regarding the alleged encroachment of human rights of ethnic and religious minorities residing in Rakhine state by officers of the Myanmar military and security forces. Among other, the Mission shall examine allegations on torture, cruel and inhumane treaty, arbitrary deprivation of life, enforced disappearances, rapes and other forms of sexual assaults, forced displacement and arbitrary detention. It has proceeded to an oral update during the 36th session of HRC⁵³ and to the submission of a comprehensive report during its 37th session.

The Mission has already concluded visits in Bangladesh and Malaysia and, according to press releases issued, its findings are more than alarming. In the meantime, Myanmar has not yet granted permission to the Mission in order that the latter visit and conduct investigations in its territory.

⁵² United Nations Human Rights Council. *Resolution 34/22: Situation of human rights in Myanmar* (24 March 2017), [Online], 2017, A/HRC/RES/34/22. Available from: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/081/98/PDF/G1708198.pdf?OpenElement>.

⁵³ United Nations Human Rights Office of the High Commissioner, *Statement by Mr Marzuki Darusman, Chairperson of the Independent International Fact-Finding Mission on Myanmar* (19 September 2017), [Online], 2017 [Accessed 6 January 2018]. Available from: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22099&LangID=E>.

6.2. European Union (EU)

The EU stance towards Myanmar could be separated in two different phases; the first lasted from 1988 to early 2011, when the government was exercised by the military junta, whilst the second one begun in 2011, as the democratic transition commenced. Given the multidimensional framework of external relations between EU and Myanmar, the former could not remain stagnant ahead of the outburst of the crisis in summer of 2017, insisting on being retroactive than being proactive.

In early 1990s, EU was denouncing the human rights violations within the territory of Myanmar, whilst in 1996, it adopted a Common Policy providing for certain restrictive measures, including, but not limited to, arms embargo, prohibition of exporting from EU member states equipment that could be used for repression purposes, freezing on funds owned by Burmese regime officers and their families etc. The USA, as well as other western states (p.ex. Canada) followed similar models of sanctioning Myanmar.

Despite Myanmar's adhesion in ASEAN and the simultaneous developments in the EU-ASEAN relations, the former's relations with Myanmar remained fierce in terms of imposing sanctions until 2011. During the recent years, the democratic transition under the aegis of a civilian government led to gradual decrease and now the termination of the EU sanctions against Myanmar, exempt from the arms embargo which will be active at least until August 2018. Besides, EU played a significant role concerning the signing of the Nationwide Ceasefire Agreement in 2015⁵⁴. Nevertheless, EU maintained a suspicious behavior claiming that there are still a lot of challenges to be dealt with.

By virtue of the aforementioned, in light of the new round of violence in Rakhine state, the Council of the European Union proceeded to certain conclusions in order to address the crisis and shape the stance of the Union towards Myanmar, following the principles posed by the UN.

In particular, the Council stressed out the necessity of all forms of violence to be terminated, regardless by whom they are conducted. Furthermore, it called for the protection of civilians and human rights, as well as it reiterated the obligation of the Government of Myanmar to safeguard the unperturbed return of the refugees and IDPs, as well as to allow the delivery of humanitarian assistance by the UN, ICRC and international NGOs⁵⁵. In the same context, EU

⁵⁴ European External Action Service, *Factsheets: EU-Myanmar Relations (21 September 2017)*. [Online], 2017, Brussels. Available from: https://eeas.europa.eu/headquarters/headquarters-homepage_en/4004/EU-Myanmar%20relations.

⁵⁵ Press Office- General Secretariat of Council of the European Union, Myanmar/Burma: Council adopts Conclusions (16 October 2017). [Online]. 2017, Press Release 578/17. Available from:

increased its humanitarian assistance to Bangladesh and it declared its willingness to expand it within the Rakhine state. The Council of the EU reiterated -among others- its serious concerns regarding the “*ongoing widespread, systematic grave human rights violations committed by Myanmar/Burma military and security forces*” by issuing in February “Conclusions” so as to address the humanitarian crisis and the situation regarding human rights in Myanmar and to call upon the latter to search for all those accountable⁵⁶.

It is also of utmost importance to mention that the Council of the European Union concluded on suspending any invitation towards military officers of Myanmar and to reassess any form of defensive cooperation due to the excessive use of military force by the Myanmar forces. In addition also to the already existent restrictive measure of arms embargo, it declared that the EU may assess its stance in terms of imposing additional measures against Myanmar if no improvement takes place.

Ahead of the recent developments, Federica Mogherini, EU High Representative for Foreign Affairs and Security Policy, welcomed the signing of the MOU between Myanmar and Bangladesh on the return of refugees and expressed its will to monitor its implementation in accordance to the standards of international law⁵⁷.

6.3. Association of Southeast Asian Nations (ASEAN)

ASEAN, being the unique regional international organization in which Myanmar participates, has adopted a very mild stance towards the ongoing crisis in Rakhine state.

According to the ASEAN Chairman’s Statement issued on the 24th September of 2017, the ASEAN Foreign Ministers denounced the attacks conducted against Myanmar security forces as well as any form of violence which has led to deaths of civilians, destruction of properties and the fleeing of a huge number of people.

<http://www.consilium.europa.eu/en/press/press-releases/2017/10/16/myanmar-burma-conclusions/>.

⁵⁶ Press Office- General Secretariat of Council of the European Union, Myanmar/Burma: Council adopts Conclusions (26 February 2018). [Online]. 2018, Press Release 87/18. Available from: <http://www.consilium.europa.eu/en/press/press-releases/2018/02/26/myanmar-burma-council-adopts-conclusions/pdf>. The whole document of the Council of EU Conclusions could be retrieved from: <http://data.consilium.europa.eu/doc/document/ST-6418-2018-INIT/en/pdf>.

⁵⁷ European Union External Action Service, *Statement by High Representative/Vice-President Federica Mogherini on the signing of a bilateral repatriation agreement between the governments of Myanmar and Bangladesh* (23 November 2017). [Online]. 2017. Available from: https://eeas.europa.eu/headquarters/headquarters-homepage/36113/statement-hrvp-federica-mogherini-signing-bilateral-repatriation-agreement-between-governments_en.

Furthermore, they pinpointed the inter-communal character of the conflict taking place, whilst they expressed their support on the initiatives of the Government of Myanmar to cope with the situation and achieve peace and stability in the area⁵⁸.

Nevertheless, the Statement issued following the Summit held in Manila in November 2017 did not include more than a single paragraph on the situation in the Rakhine state, reiterating the necessity of providing humanitarian assistance to those affected, as well as welcoming once more the steps taken by Myanmar authorities in order to stabilize the area and re-establish peace and the rule of law⁵⁹.

Notwithstanding the aforementioned, ASEAN is criticized for its silence towards the alleged atrocities against Rohingyas⁶⁰, even by its own members. In fact, Malaysia distinguished its view from the Statement of the 24th of September, whilst its representatives declared that there is no reference to Rohingyas and they considered the actions of the Myanmar military forces to be acts of clearance⁶¹.

6.4. Regional Organisations of Islamic/Arab world

Organization of Islamic Cooperation: OIC has condemned the alleged atrocities committed against the Rohingya⁶², whilst its Contact Group on Rohingya Muslim of Myanmar issued a Declaration in September 2017. The latter fully addresses the crisis in the Rakhine state. Specifically, the Meeting of the OIC Foreign Ministers blames the Myanmar security forces for conducting ethnic cleansing against Rohingyas, whilst it calls upon the Government of Myanmar to adopt a series of different measures aiming to ensure the protection

⁵⁸ Association of Southeast Asian Nations, *Chairman's Statement on the Humanitarian Situation in Rakhine State (24 September 2017)*. [Online]. 2017. [Accessed 14 February 2018]. Available from: <http://asean.org/asean-chairmans-statement-on-the-humanitarian-situation-in-rakhine-state/>.

⁵⁹ Association of Southeast Asian Nations, *Chairman's Statement of the 12th East Asia Summit (14 November 2017)*. [Online]. 2017, Manila, Philippines. Available from: http://asean.org/storage/2017/11/Final-Chairmans-Statement-of-the-12th-EAS_2.pdf.

⁶⁰ Reuters.com, *Southeast Asia Summit draft statement skips over Rohingya crisis*. [Online] 13 November 2017. [Accessed 18 January 2018]. Available from: <https://www.reuters.com/article/us-asean-summit-myanmar/southeast-asia-summit-draft-statement-skips-over-rohingya-crisis-idUSKBN1DD0CP>.

⁶¹ Channelnewsasia.com, *Malaysia disassociates itself from ASEAN statement on Myanmar's Rakhine State*. [Online]. 25 September 2017. [Accessed 18 January 2017]. Available from: <https://www.channelnewsasia.com/news/asiapacific/malaysia-disassociates-itself-from-asean-statement-on-myanmar-s-9246494>.

⁶² Arabnews.com, *OIC condemns abuses against Rohingya in Myanmar*. [Online]. 5 September 2017. [Accessed 20 December 2017]. Available from: <http://www.arabnews.com/node/1155966/saudi-arabia>.

of the affected people's human rights. In addition, the member states of OIC have been fully operating so as the crisis in Myanmar to be addressed⁶³. Notably, they played a crucial role by sponsoring the adoption of the Draft Resolution on the situation of human rights in Myanmar by the 3rd Committee of the UNGA.

League of Arab States: the Arab world has also taken the stand to defend the rights of Rohingya and condemn Myanmar for its actions against them in light of the recent military crackdown in the Rakhine state. The Secretary General of the Arab League has given a press conference on 6th September of 2017. He called upon the Myanmar authorities to cease the use of violence against Rohingyas, to seek for all those responsible for the alleged atrocities and to ameliorate the living conditions of the Muslim minorities living in the Rakhine state⁶⁴.

6.5. International Committee of the Red Cross (ICRC)

The ICRC has been providing humanitarian assistance in regions where refugees and IDPs are residing, in Bangladesh and Myanmar respectively, since 2012. Following the outburst of the tension and the exercise of high-level military violence, ICRC, in cooperation with the local branches in Myanmar and Bangladesh⁶⁵, has managed to provide humanitarian assistance to more than 40,000 people in less than two months. Among others, ICRC officials stress out the necessity of being supported by further organizations of humanitarian aid and of being granted access to the areas of the plight⁶⁶, as well as the importance of establishing an environment of peaceful co-existence among the different ethnic and religious groups of the Rakhine state⁶⁷.

⁶³ Organisation of Islamic Cooperation, *Declaration of the Contact Group on Rohingya Muslims of Myanmar (19 September 2017)*. [Online]. 2017, OIC/ACM/CG-ROHINGYA/REPORT -2017. Available from: https://www.oic-oci.org/upload/documents/acm_2017_rohingya_rep_en.pdf.

⁶⁴ Egypttoday.com, *Arab League denounces violence against Rohingya Muslims*. [Online]. 6 September 2017. [Accessed 21 December 2017]. Available from: <https://www.egypttoday.com/Article/1/21311/Arab-League-denounces-violations-against-Rohingya-Muslims>.

⁶⁵ International Committee of the Red Cross, *ICRC scales up the humanitarian response in Bangladesh*. [Online]. 3 November 2017. Available from: <https://www.youtube.com/watch?v=92LIHX7dz8U>.

⁶⁶ Aljazeera.com, *Buddhist protesters block aid to Rohingya*. [Online]. 21 September 2017. [Accessed 18 December 2017]. Available from: <http://www.aljazeera.com/news/2017/09/buddhist-protesters-block-aid-muslim-rohingya-170921062521668.html>.

⁶⁷ Icrc.com, *Myanmar: Law and Order community trust needed to overcome humanitarian crisis*. [Online]. 2 November 2017. [Accessed 18 December 2017]. Available from: <https://www.icrc.org/en/document/myanmar-law-and-order-community-trust-needed-overcome-humanitarian-crisis>.



(ICRC volunteers give oral rehydration solution to exhausted Rohingya Muslim children, who spent four days in the open after fleeing from Myanmar into Bangladesh, near a relief distribution centre at Kutupalong refugee camp, Bangladesh, Oct. 19, 2017. Source: AP Photo)

7. Legal Implications arisen in the light of the Myanmar crisis

7.1. Status of the Conflict and the applicability of International Humanitarian Law

International Humanitarian Law (hereinafter: IHL), also defined as “Law of Armed Conflicts” or “Law of War”, is a set of rules which “seek to limit the effects of armed conflicts”, either of international or of non-international character. In particular, rules of IHL protect persons that are not taking part in hostilities or persons that are no longer considered to be part of the hostilities, whilst it restricts the means and methods of warfare which are entitled to be used by belligerents⁶⁸.

Given that war is deemed as a plague for international community, since it breaches the core of peace and security around the globe, violations of IHL constitute major encroachments of international legality and in many cases they end up being characterized as “war crimes”, provoking always condemnation by

⁶⁸ ICRC Advisory Service on International Humanitarian Law. *What is International Humanitarian Law?*. [Online]. July 2004. Available from: https://www.icrc.org/eng/assets/files/other/what_is_ihl.pdf.

the international community, as well criminal responsibility can be attributed to those committing them.

Nevertheless, the applicability of IHL is activated in cases an “Armed Conflict” is taking place. Concerning the conflict in Myanmar, it shall be defined whether it could be considered as a “Non-International Armed Conflict” (hereinafter NIAC), namely a conflict of internal character, known also as “civil war”⁶⁹.

Basic legal framework: the four Geneva Conventions of 1949 and the two Additional Protocols of 1977 relating to the protection of victims of armed conflicts.

Although NIACs seem to be a domestic issue, since only International Armed Conflicts refer to use of armed forces between two states, the former pertains within the scope of IHL, since it recognized by Common Article 3 of the Geneva Conventions and Additional Protocol II.

Concerning the criteria establishing a NIAC, they could be classified as follows:

- I. The parties involved in the fighting must be, on the one hand, governmental armed forces and, on the other hand, one or more non-state organized armed groups, which also must be organized up to a certain extent, namely to be able to confront their adversaries by military means.
- II. The armed confrontation must have reached a certain level of intensity, in particular the one of “protracted armed violence”.

Of course, the conflict must take place within the territory of a single state.

In case the aforementioned criteria are met and a NIAC is ongoing, the state armed forces, as well as the non-state armed group(s) fighting against it, shall conduct their military operations in accordance to the norms and standards set out by Common Article 3 of the Geneva Conventions and all other IHL rules referring to NIACs⁷⁰. Myanmar is bound by Common Article 3 of the Geneva Conventions which poses specific obligations to the belligerents in a conflict of non-international character.

⁶⁹ Hadjikonstantinou K., *Approaches to International Humanitarian Law*, Thessaloniki, I.Sideris Publications, 2009, pp. 135-142

⁷⁰ International Committee of the Red Cross, *International Humanitarian Law and the Challenges of contemporary armed conflicts*. In: *31st International Conference of the Red Cross and the Red Crescent, 28 November-1 December 2011, Geneva, Switzerland*. Geneva, the International Committee of the Red Cross. [Online]. Available from: http://www.rulac.org/assets/downloads/2011_Contemporary_Challenges_report.pdf.

Parties of the conflict in Myanmar: as it has been already mentioned in previous parts of the current Study Guide, Myanmar governmental armed forces have been involved in continuous conflicts against ethnic groups residing in various regions of the country⁷¹.

In light of the long-lasting situation of conflict in Rakhine state where Rohingya Muslims are residing and of the recent outburst of the crisis, the most serious conflict within Myanmar seems to have emerged between the national armed forces and an Arakan Rohingya Salvation Army (hereinafter: ARSA).

The latter insurgency group has started operating under this form within last year. It is considered to be trained by international terrorist groups and to be linked with jihadist groups. Myanmar authorities characterize them as “terrorists”, but their representatives denounce any such accusation. Actually, all those opposing to those militia groups within or outside Myanmar (including major superpowers friendly to the Myanmar government) call them “terrorists”, whilst their supporters consider them to be “freedom fighters”.

According to their messaging campaigns, their goal is to “defend, salvage and protect” Rohingya people in Rakhine state. In context of its insurgency operations, ARSA conducts attacks against national security forces⁷², as well as their attack against a police station in August 2017 which led to the death of at least 21 police officers has provoked the cruel response of the Myanmar forces and the grave outburst of the crisis and the numerous persons fleeing Rakhine state.

⁷¹ Chowdury A.F., The extent to which International Humanitarian Law provides protection for civilians: a brief discussion with reference to Myanmar. *Journal of Humanities and Social Sciences*. [Online], 2016, 21 (8), pp. 34-42. Available from: <http://www.iosrjournals.org/iosr-jhss/papers/Vol.%2021%20Issue8/Version-5/G2108053442.pdf>.

⁷² Bbc.com, *Who are the Arakan Rohingya Salvation Army?*. [Online]. 6 September 2017. Available from: <http://www.bbc.com/news/world-asia-41160679>.



(Myanmar security officials with flag-draped coffins bearing nine bodies of border guards killed during tensions held in Maungdaw, Rakhine State on October 9, 2016. Source: AFP/Khine Htoo Mrat)

7.2. The question on the existence of Genocide and Ethnic Cleansing

Basic Legal Framework: Convention on the Prevention and Punishment of the Crime of Genocide and the Statute of the International Criminal Court (Statute of Rome)

Genocide and Ethnic Cleansing constitute atrocious practices mainly committed in the context of armed conflicts, putting specific groups of people in huge jeopardy. Notwithstanding the fact that both terms are sometimes used without distinction in international politics, they are different in terms not only of content but also of legal importance.

In particular, “Genocide”, contrary to Ethnic Cleansing, is recognized and codified as an international crime in a narrower context than the one perceive by the common view⁷³. According to Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide:

“In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

⁷³ Un.org, United Nations Office on Genocide Prevention and the Responsibility to Protect, *Genocide*, [Online]. Available from: <http://www.un.org/en/genocideprevention/genocide.html>.

- I. *Killing members of the group;*
- II. *Causing serious bodily or mental harm to members of the group;*
- III. *Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*
- IV. *Imposing measures intended to prevent births within the group;*
- V. *Forcibly transferring children of the group to another group."*

On the other hand, "Ethnic Cleansing" is a recent term, strongly related with the conflicts in former Yugoslavia in early 1990s. Although there is no precise legal definition, since it does not constitute a war crime itself, it could be considered to have the following characteristics, given also a report conducted by a UN Commission of Experts mandated to seek for IHL violations in former Yugoslavia. In particular, it could be defined as a conduct⁷⁴:

".....rendering an area ethnically homogeneous by using force or intimidation to remove persons of given groups from the area", "a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas", as well as it could "constitute crimes against humanity and can be assimilated to specific war crimes. Furthermore, such acts could also fall within the meaning of the Genocide Convention".

The situation in Myanmar: According to UN officials, atrocities and dire violations of international humanitarian law are taking place in Myanmar. Besides, UN High Commissioner for Human Rights has stated before the UN Human Rights Council that the practice of the Myanmar authorities in Rakhine state fall into the scope of what is considered as "ethnic cleansing", while there is a well-established opinion within the international law specialists that the practices held may end up to amount to genocide⁷⁵.

Specifically, Myanmar authorities are accused of conducting a series of gross and systematic violations of the human rights of Rohingyas in Rakhine state.

⁷⁴ Un.org, United Nations Office on Genocide Prevention and the Responsibility to Protect, *Ethnic Cleansing*, [Online]. Available from: <http://www.un.org/en/genocideprevention/ethnic-cleansing.html>.

⁷⁵ United Nations High Commissioner for Human Rights, *Opening Statement in Human Rights Council 36th session*. [Online]. 11 September 2007. Video available at: http://www.un.org/apps/news/story.asp?NewsID=57490#.WlkiSahl_IU and the whole statement available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22041&LangID=E>.

Specialized UN officers refer not only to the stagnancy on providing them citizenship, as well as to arbitrary killings, firing of properties, indiscriminate shooting against civilians trying to flee, rapes, accumulation in concentration camps, destruction of public places and worship areas, provision of waste. In addition to the systematic and widespread violence, worries are also expressed on the difficulties faced by impartial bodies on investigating and confirming what exactly is happening in the Rakhine state and, above all, there are allegations that Myanmar security forces are cooperating with local Buddhist armed individuals so as to implement organized, severe and coordinated attacks against Rohingyas with the aim to force them flee Myanmar or prevent them from returning to their homes, constituting thus the so-called effort to achieve “Burmanization”⁷⁶.

7.3. The issue of statelessness

Basic legal framework: 1954 New York Convention relating to the Status of Stateless Persons, UN Declaration on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities (even the latter not of a binding force)

Definition: According to the definition provided by international law, a stateless person is a person who is not considered as a national by any State under the operation of its law”. Stateless persons do not have a single nationality. The status of statelessness can be acquired or be attributed by birth⁷⁷.

The situation in Myanmar: Since the date that Myanmar gained independence in 1948, Rohingya people, namely those persons of Muslim origin residing in the Rakhine state of Myanmar, has not yet been entitled to acquire citizenship and they are deemed as illegal Bengali migrants. In particular, following the adoption of the so-called “Citizenship Act of 1982”, Rohingyas were clearly excluded from the ethnic group to which the then Myanmar government had decided to provide citizenship. It is quite indicative that the term: “Rohingya”, despite its dominance in terms of political and modern terminology, is not accepted by the Muslims of Rakhine state, given that it refers mainly to a legal status and less to an ethnic group. Hence, all those persons belonging to the Rohingya community are not permitted to hold national identification documents, suffering thus a series of breaches of fundamental human rights. For example, a major legal implication in terms of the stance of the Myanmar authorities towards them in domestic level is

⁷⁶ Geneva International Centre for Justice, *Human Rights in Myanmar: Ethnic Cleansing* with reference to the speech of Ms Gudoz Saydaminova, Side event to the 36th Session of the Human Rights Council. [Online]. 15 September 2017, Geneva. Available from: http://www.gicj.org/images/2016/pdfs/HRC36_Side-event_Human-rights-in-Myanmar_Ethnic-Cleansing-15-Sept-2017-Report.pdf.

⁷⁷ Unhcr.org, *Ending Statelessness*. [Online]. Available from: <http://www.unhcr.org/stateless-people.html>.

that they are not granted neither access nor utilization of the services provided by the state authorities⁷⁸.

In addition to the aforementioned stance of the official Myanmar authorities, the latter have also conducted a series of propaganda practices in order that Rohingyas be seen as foreigners or even as a threat by the predominant Buddhist population of the country.



(Radical Buddhist nationalists protest against the international pressure exercised in 2015 on Myanmar so as to accept the repatriation of persecuted Rohingya boat refugees. Source: Jonas Gratzer/Getty Images)

As far as the issue of statelessness is concerned, notwithstanding the progress made so far within the UN by the adoption of conventions and declarations providing specific norms and rules so as to eradicate that unpleasant phenomenon, Myanmar has not yet ratified any of the “Statelessness conventions”, neither the International Covenant on Civil and Political Rights.

⁷⁸ Kovács-Zsankó G., Rohingyas, a Non-existing Nation. *Pécs Journal of International and European Law*. [Online]. 2017, 1, pp. 37-48. Available from: http://ceere.eu/pjiel/wp-content/uploads/2017/07/201701_04.pdf.

7.4. Human rights abuses committed against Rohingyas

Basic Legal Framework: All basic international human right treaties and the customary law deriving from the Universal Declaration on Human Rights. Actually, Myanmar has not signed neither ratified the majority of them and it is of high importance that it is not a state party to the International Covenant on Civil and Political Rights.

The situation in Myanmar: Notwithstanding the serious concerns related to the issue of statelessness, Rohingyas are suffering also from grave abuses of basic human rights, mainly caused by practices conducted by the official Myanmar authorities. Reports held in the context of the UN Human Rights Council by the Office of the High Commissioner for Human Rights are quite indicative of this important aspect of the Myanmar crisis, especially during the last two years⁷⁹.

To begin with, as far as the violation of basic human rights in Rakhine state is concerned, reports held in Myanmar prove the conduction of state practices jeopardizing life, liberty and security. The aforementioned are put at great stake due to arbitrary detention, torture, ill-treatment and extra-judicial killings committed by state security officers against Rohingya and other Muslim people residing in Rakhine state. In parallel, those people are denied their right to health, since Myanmar authorities have restricted their access to public health services⁸⁰.

In addition, there are well-established indications that Rohingya women are subject to excessive sexual and gender-based violence. Unfortunately, according to testimonies of Rohingya persons gathered in Cox's Bazar District in Bangladesh, where they are constantly fleeing from the Rakhine state, rapes and other forms of sexual violence are committed by members of the Myanmar military against Muslim women in Rakhine state. Besides, these allegations have not yet been investigated and no accountability has been held to those responsible⁸¹.

In the same context, Rohingya having fled from Rakhine state blame the Myanmar authorities for leading them to forced displacement either within the territory of Myanmar, creating thus huge populations of internally displaced persons (IDPs), or to Bangladesh or other neighboring countries. During last

⁷⁹ United Nations General Assembly, *Report of the Special Rapporteur of the Human Rights Council on the situation of human rights in Myanmar (8 September 2017)*, submitted by the UN Secretary General. [Online]. 2017, A/72/382. Available from: <http://undocs.org/A/72/382>.

⁸⁰ Ibid.

⁸¹ United Nations Human Rights Office of the High Commissioner, *Mission Report of OHCHR to Cox's Bazar, Bangladesh*. [Online]. 13-24 September 2017. Available from: <http://burmacampaign.org.uk/media/OHCHR-Mission-Findings-October-2017.pdf>.

semester of 2017, more than 500,000 refugees have fled and found a shelter to Cox's Bazar District only. That influx has led to the deterioration of the humanitarian crisis and many infections and diseases are spread among the people trapped in Bangladesh and in regions of Bangladesh where the IDPs have found a temporary shelter. Actually, Myanmar authorities are accused of destroying the properties of those fleeing in order to render their return impossible or extremely difficult. For the same purpose, there are suspicions that Myanmar has planted landmines across the borders with Bangladesh after the 25th of August, namely when the recent turmoil emerged. Furthermore, the aforementioned reports held by UN officers have concluded that many Rohingyas are also subject to forced labour situation, to forced disappearances (involving not only men but also women) and to practices of torture, cruel and degrading treatment against them.



(Woman among debris after the destruction shelters at a camp for internally displaced Rohingyas Muslims in the western Rakhine State near Sittwe, Myanmar, May 3, 2016 Source: Reuters)

Nevertheless, the Myanmar authorities have been also proceeding to the adoption of measures breaching further basic human rights, giving thus birth to inter-communal hatred and to the political and economic marginalization of Rohingyas and other Muslim communities of the country.

More specifically, severe restrictions posed to the freedom of movement, referring only to Muslim people across the country, deprives these people from basic rights and goods, as well as it is combined with the cultivation of religious hatred which is the main cause of the violence not only between governmental forces and Muslim armed groups, but also to violence executed by radical Buddhist groups which are very often collaborating with the Myanmar security

forces in Rakhine state. Hence, the aforementioned practices seem to deteriorate the situation, as well as the chances of any peace-building process to achieve.

8. Challenges Ahead

8.1. Deal signed on the return of Rohingya Muslims within two months

With at least 623.000 Rohingya being now refugees in Bangladesh, since the last violence wave that stroke the West of Myanmar in August, the agreement signed between the two involving states raises questions. According to the agreement the two countries are to work together in order to achieve a viable resolution of the refugee crisis that has galloped in the region.⁸²

The deal was signed on the 23rd of November and the repatriation was scheduled to take place in two months. It was signed after the meeting of Augn San Suu Kvi, the de facto leader of Myanmar and Abul Hassan Mahmood, the foreign minister of Bangladesh in Naypyidaw. As it was stated, the deal was based on a 1992/1993 repatriation pact between Myanmar and Bangladesh that was signed after a previous violence outbreak that had taken place.⁸³

Regarding the deal, Myanmar agreed that there should be no restriction regarding the repatriation number. There should be no limit in the number of Rohingya that will be allowed to come back to Myanmar. Everyone that wishes to, can return and as the agreement describes, there should be no prosecution of refugees unless they had been involved with terrorists before leaving the country.⁸⁴

Myanmar is supposed to work towards incorporating the refugees. For that to happen, the government has claimed that the temporary camps will be an “as short as possible” solution towards a repatriation. But this repatriation will always need to take place considering the existing laws and regulations of the

⁸²Ben Westcott, C. (2017). *Bangladesh-Myanmar agreement on Rohingya refugees revealed*. [online] CNN.

⁸³Holmes, O. (2017). *Myanmar signs pact with Bangladesh over Rohingya repatriation*. [online] the Guardian.

⁸⁴Ben Westcott, C. (2017). *Bangladesh-Myanmar agreement on Rohingya refugees revealed*. [online] CNN.

state.⁸⁵ Furthermore, the two countries agreed on accepting assistance by the UNHCR regarding the repatriation process.⁸⁶

8.2. Main questions: its applicability, efficiency and concerns expressed

During the last months of 2017 satellite images have come to surface. Those images show a destruction of more than 40 Rohingya villages in Rakhine. It is revealing that the destruction kept up even while the Myanmar-Bangladesh deal was signed concerning the repatriation of the refugees. While the deal has been signed there are no indications that a secure and welcoming environment has been created for all those that tried to leave Myanmar in the first place.⁸⁷ More than 354 villages have been destroyed since August.⁸⁸

Even as late as the 2nd of December there are data showing that Rohingya villages are still being destroyed. Nonetheless the agreement that was signed in the 23rd of November and the assurances that the Burmese government gave regarding the safe repatriation of the refugees, the conditions in Rakhine don't look that promising according to Human Rights Watch. Thus the agreement has often been characterised as a public relations "stunt"⁸⁹, as a way for the Burmese government to get rid of international pressure that has been brought upon it.⁹⁰

Simultaneously Bangladesh seeks to avoid the perpetuation of the refugee camps that have appeared in the Cox's Bazaar region in the recent months.⁹¹ The camps have been a pressure point for Bangladesh that needs to confront the situation of having to deal with hundreds of thousands of refugees that need to be taken care of.

Another question is how long those people are going to be kept in temporary camps until they can finally be permanently repatriated in Myanmar. They are supposed to be kept in the camps until villages will be built near their previous

⁸⁵Ben Westcott, C. (2017). *Bangladesh-Myanmar agreement on Rohingya refugees revealed*. [online] CNN.

⁸⁶U.S. (2017). *Bangladesh says agreed with Myanmar for UNHCR to assist Rohingya's ret.* [online]

⁸⁷Human Rights Watch. (2017). *Burma: 40 Rohingya Villages Burned Since October*. [online]

⁸⁸Safi, M. (2017). *Myanmar burned Rohingya villages after refugee deal, says rights group*. [online] the Guardian.

⁸⁹Safi, M. (2017). *Myanmar burned Rohingya villages after refugee deal, says rights group*. [online] the Guardian.

⁹⁰Agerholm, H. (2018). *Burma and Bangladesh agree deal to repatriate Rohingya Muslims*. [online] The Independent.

⁹¹Agerholm, H. (2018). *Burma and Bangladesh agree deal to repatriate Rohingya Muslims*. [online] The Independent.

residences.⁹² The mistrust that has been knitted into the society makes the agreement a brackish matter.⁹³

8.3. Stabilisation of the area

Myanmar has a long history of communal distrust. Until today the government does not seem to take active steps towards resolving the deep causes of the problems. On the contrary it seems like often the tension has been supported and built up by the state.⁹⁴ How many refugees would willingly choose to return after the experience of the atrocities that drove them away in the first place?⁹⁵

While the situation is being escalatory for long, the deal between Myanmar and Bangladesh puts another pin on the future map of Rohingya. Many have argued that the deal is essentially deriving from the need to ease the international pressure that has been put on Myanmar regarding the recent crisis outburst.⁹⁶

Meanwhile, in late November the Burmese authorities deny the allegations of atrocities that drove more than 600.000 Rohingya to flee their homes.⁹⁷

9. Conclusion

Looking into the situation in Myanmar, the Security Council has yet to come up with a Resolution regarding the issue. It is critical to examine the variety of solutions and answers that could possibly be proposed and implemented. Nonetheless, as it has been thoroughly presented in the previous pages, the threat posed to the very essence of fundamental principles of humanity and international community by the situation in Myanmar is immense and it spreads out in a long period of time.

Having in mind the historical context combined with the recent events and the international community answers on the topic, the crisis Myanmar poses a pressing threat for peace, security and stability. Hence, the SC is called to come up with a robust and immediate response to an issue that has drove almost a million people to seek refugee in less than half a year. On this context, all delegations that proceeding to this new round of negotiations regarding

⁹²U.S. (2017). *Bangladesh says agreed with Myanmar for UNHCR to assist Rohingya's ret.* [online]

⁹³Ben Westcott, C. (2017). *Bangladesh-Myanmar agreement on Rohingya refugees revealed.* [online] CNN.

⁹⁴BBC News. (2017). *Why is there communal violence in Myanmar?.* [online]

⁹⁵Ben Westcott, C. (2017). *Bangladesh-Myanmar agreement on Rohingya refugees revealed.* [online] CNN.

⁹⁶Agerholm, H. (2018). *Burma and Bangladesh agree deal to repatriate Rohingya Muslims.* [online] The Independent.

⁹⁷U.S. (2018). *Myanmar military denies atrocities against Rohingya, replaces general.* [online]

Myanmar within the UN Security Council, shall take into considerations the complexity of the issue with all its dimension. Looking into conflicted environments, it would not be bold for someone to support that Myanmar is balancing on the edge of conflict. The timer seems to be ticking on a well hidden “bomb” in South-East Asia. It is pivotal to recognise that the latter is about to explode -if not yet exploded.

10. Further Reading/Useful Links

- [https://ash.harvard.edu/files/ash/files/rakhine state - dangers and opportunities 5-1-2017.pdf](https://ash.harvard.edu/files/ash/files/rakhine_state_-_dangers_and_opportunities_5-1-2017.pdf)
- <https://asiafoundation.org/wp-content/uploads/2017/10/Myanmar-TStateofConflictandViolence.pdf>
- <http://www.searo.who.int/publichealthsituationaanalysis29092017.pdf?ua=1>
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