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PREVENTING GENOCIDAL THREATS AGAINST THE ROHINGYAS: UNITED NATIONS IN PERSPECTIVE

Abstract

The United Nations (UN) has uttered the words “never again!” repeatedly throughout history after failing to prevent genocidal threats in different parts of the world. Unfortunately, this pledge has been broken again through the grave human rights abuse of the ethnic Rohingya community in Myanmar. With genocidal intent, Myanmar authority has continued violating their human rights. As a result, these persecuted Rohingyas have fled to neighbouring countries. Moreover, in Rakhine State, the Rohingya community is continuously facing a genocidal threat. Though the UN and its agencies have presented in Myanmar since the 1950s, genocidal threats are visible till now. Against this backdrop, the paper argues that though the UN has been at the forefront of the response, it has yet to undertake proper initiatives to prevent genocidal threats and protect the Rohingya population in the Rakhine State. Thus, conceptualizing the atrocities against Rohingya as genocidal threats, the paper analyzes the responses and identifies the fault lines of the UN to prevent it.

Keywords: United Nations, Rohingya, Genocidal Threat, Human Rights.

1. Introduction

While the Myanmar authority has been gravely violating international norms for a long time by not protecting the Rohingyas, the United Nations (UN) has yet to prevent the genocidal threats in the Rakhine State for years. With genocidal intent, the Myanmar authority has engaged in massive human rights violations for decades. The martial campaign on the Rohingya has been so brutal that it is said, “a river in Myanmar named Kaladen got a crimson colour with the blood of the ethnic Rohingya people after the Pogrom of 1942 known as *Biyallisher Khara Khari*. And the fish of the river could not be eaten due to the rotten corpse for the following two to three years”.¹

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The history of Rohingyas' sufferings begins with the Burmese annexation of Arakan in 1784.² With the support of the government, military, and Buddhist monks, numerous organized and systematic military-launched operations have been carried out aiming at the Rohingya's oust since the 1940s.³ Among these operations, the Pogrom of 1942, Operation Dragon King of 1978, Operations of 1991-1992 known as *Pyi Thaya* and *Na-Sa-Ka* Campaign, Security Operation of 2012 are the most dreadful ones that the world has ever witnessed.⁴ Decades of military operations have been intensified with the violent pogrom of 2017 to drive out the entire community. As a result, with gunshot, machete wounds, burns, sexual violence, and injuries, people who somehow could save their lives, known as "boat people", mostly fled to neighbouring countries. More than one million Rohingya live in Bangladesh, and around 600,000 live in an alarming situation in Rakhine State.⁵ Thus, they are at continuous threat of genocide.

The Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG) acknowledges Myanmar's and the UN's responsibility to protect the Rohingyas from the crime of genocide. Thus, to eradicate genocidal threats on the Rohingyas, the UN is a legitimate international organization. However, though the UN has been there since 1950, genocidal threats on the Rohingyas are still visible. Hence, it has yet to undertake proper initiatives to prevent genocidal threats and protect the Rohingyas in the Rakhine State.

Scholars and human rights activists studied the failure of the UN in preventing genocide in different parts of the world. However, it is seen that the case of Rohingya is understudied. Some academics like Bahar, Ibrahim, Karim and Zarni pedagogically proved the actions undertaken against the Rohingyas as "genocide". However, they overlooked that a situation cannot be considered genocide officially until a court determines it.⁶ In contrast, other studies tried to highlight the involvement of the UN

¹ Abid Bahar, *Burma's Missing Dots: The Emerging Face of Genocide*, Chicago, USA: Xlibris Corporation, 2010, p. 236.

² Azeem Ibrahim, *The Rohingyas: Inside Myanmar's Genocide*, London, UK: C Hurst & Co Publishers Ltd, 2016.

³ Sabyasachi Basu Ray Chaudhury and Ranabir Samaddar, *The Rohingya in South Asia: People Without a State*, India: Routledge, 2018; Akm Ahsan Ullah, "Rohingya Refugees to Bangladesh: Historical Exclusions and Contemporary Marginalization", *Journal of Immigrant & Refugee Studies*, Vol. 9, No. 2, 2011, pp. 139-161.

⁴ Tun Khin, "International Community's Role in Rolling Back Rohingya Plight", in Imtiaz Ahmed (ed.), *The Rohingya Refugee Crisis: Towards Sustainable Solutions*, Dhaka, Bangladesh: Centre for Genocide Studies, 2019, pp. 101-110.

⁵ Rohini J. Haar, Karen Wang, Homer Venters, Satu Salonen, Rupa Patel, Tamaryn Nelson, Ranit Mishori and Parveen K. Parmar, "Documentation of human rights abuses among Rohingya refugees from Myanmar", *Conflict and Health*, Vol. 13, No. 42, 2019, pp. 1-14; Hossain Ahmed Taufiq, "Rohingya Refugee Crisis and the State of Insecurity in Bangladesh", in Imtiaz Ahmed (ed.), *Genocide and Mass Violence: Politics of Singularity*, Dhaka, Bangladesh: Centre for Genocide Studies, 2019, pp. 147-203; Owen Bowcott, "War crimes court approves inquiry into violence against Rohingya", *The Guardian*, 14 November 2019.

⁶ Abid Bahar, op. cit; Azeem Ibrahim, op. cit; Mohd Aminul Karim, *Genocide and Geopolitics of the Rohingya Crisis*, New York: Nova Science Publishers, 2020; Maung Zarni and Alice Cowley, "Slow-burning Genocide of

particularly, the United Nations Security Council (UNSC) in Myanmar. There is no published study that extensively analyzes the UN's roles in preventing genocidal threats against the Rohingyas. However, identifying genocidal threats and the fault lines of the UN is crucial to realize its promise, "Never Again!". This paper attempts to fill that gap by focusing on the case of the Rohingyas in Myanmar.

Against this backdrop, the paper aims to conceptualize the atrocities against the Rohingyas as genocidal threats, analyze responses and identify the fault lines of the UN to prevent it. For that purpose, it endeavours to find out two lingering questions: How has the UN responded so far to prevent the genocidal threats on the Rohingyas? Why has not the UN been more vigorous in its attempts to prevent genocidal threats on the Rohingyas?

The paper is qualitative in nature. It examines existing literature from different sources, e.g., government and non-government documents, academic journals, books, and newspaper articles. The paper comprises six sections, including introduction and conclusion. Section two comprehensively explores the "genocidal threat" concept and also provides a conceptual framework. Based on the framework, section three explains how the atrocities against the Rohingyas fulfil the criteria of genocidal threat. Section four highlights the responses of the UN to prevent it, while section five identifies the fault lines of the UN. Section six concludes the paper.

2. Conceptualizing Genocidal Threat and the Responsibilities of the UN

It is essential to understand genocidal threats to safeguard human beings from heinous crimes like genocide. Unfortunately, scholars from Genocide Studies are yet to shed light on the core area: genocidal threats. However, the threats of genocide can be identified within the concept of genocide. The term "genocide" evolves from Greek and Latin words *genos* (race) and *cide* (killing), respectively.⁷ Raphael Lemkin, a Polish lawyer and academic of Jewish descent, with his experience of Nazi brutality, first minted the concept "genocide" at the Madrid Conference in 1933 and in his book *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*.⁸ Later, the term was used in the closing argument of the Nuremberg Charter. After a dedicated effort of Raphael Lemkin, the UN General Assembly (UNGA) adopted Genocide Convention on 09 December 1948. It came into force on 12 January 1951.

Two crucial aspects of the Genocide Convention are prevention and punishment. Article I states, "the Contracting Parties confirm that genocide, whether

Myanmar's Rohingya", *Pacific Rim Law & Policy Journal Association*, Vol. 23, No. 3, 2014, pp. 683-687; Maung Zarni and Alice Cowley, op. cit.

⁷ Raphael Lemkin, "Genocide", *American Scholar*, Vol. 15, No. 2, 1946, pp. 227-230.

⁸ Raphael Lemkin, *Axis Rule in Occupied Europe*, New Jersey: The Law book Exchange, 1944, pp. 79-82.

committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish". It prioritizes prevention over the punishment of atrocity crimes. However, most of the articles (III, IV, V, VI, VII, and IX) deal with punishment rather than prevention. For instance, Article II refers to genocide as "any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group". In the subsequent articles, it is also elaborated that after a thorough analysis of the evidence against relevant legislation, genocide determination is made. The objective of this examination is to establish the responsibility of the state as well as individuals for atrocity crime. This determination has to be undertaken by a competent international or national court having jurisdiction to try such cases. Only the Article VIII calls upon the "competent organs of the UN to take such action under the Charter of the UN as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article III".⁹

Identifying the acts that constitute genocide mentioned in Article II is essential to undertake proactive and reactive measures to prevent and punish genocide crimes. However, to accommodate the crimes' changing nature, scholars have enriched the list of genocidal acts (Table-1). According to some scholars, murder is the most used tool in genocide. They tried to define 'murder' in different ways. For instance, Katz referred to it as 'murder' where Harff et al. highlighted the gravity of murder and pointed it as "mass murder" or "mass killing".¹⁰ Bloxham, Powell, and Peristerak is renamed it physical destruction¹¹. Besides murder, Fein and Porter discussed suppression of biological and social reproduction, starvation, forced displacement, political and economic subjugation.¹² Some scholars tried to understand genocide through different stages. For instance, Genocide Watch identified ten phases of genocide, i.e., classification, symbolization, discrimination,

⁹ Ibid.

¹⁰ Steven T. Katz, *The Holocaust in Historical Context: The Holocaust and Mass Death before the Modern Age*, New York: Oxford University Press, 1994, p. xv; Barbara Harff, "No Lessons Learned from the Holocaust? Assessing Risks of Genocide and Political Mass Murder since 1955", *The American Political Science Review*, Vol. 97, No. 1, 2003, pp. 57–73; Barbara Harff and Ted Robert Gurr, "Toward Empirical Theory of Genocides and Politicides: Identification and Measurement of Cases since 1945", *International Studies Quarterly*, Vol. 32, No. 3, 1988, pp. 359–371; Frank Chalk and Kurt Jonassohn, *The History and Sociology of Genocide: Analyses and Case Studies*, London, UK: Yale University Press, 1990; Manus I. Midlarsky, *The Killing Trap: Genocide in the Twentieth Century*, New York: Cambridge University Press, 2005

¹¹ Jurgen Matthaues, Martin Shaw, Omer Bartov, Doris Bergen and Donald Bloxham, "Donald Bloxham, The Final Solution: A Genocide", *Journal of Genocide Research*, Vol. 13, No. 1-2, 2011, pp. 107-152; Christopher Powell and Julia Peristerakis, "Genocide in Canada: A Relational", in Jeff Benvenuto, Andrew Woolford and Alexander Laban (eds.), *Colonial Genocide in Indigenous North America*, USA: North Carolina, USA: Duke University Press, 2014.

¹² Helen Fein, op. cit.; Jack Nusan Porter, op. cit.

dehumanization, polarization, preparation persecution, extermination and denial.¹³ Daniel Feierstein pointed six-stage: “stigmatization and dehumanization; harassment, violence, and terror; isolation and segregation; systematic weakening of the target group; mass annihilation; erasure of the target group from collective history.”¹⁴

Table 1: Enlisted Genocidal Acts by Scholars (Chronological Order)

Decades	Authors	Acts of Genocide
1950-1969	Peter Drost	Destruction of physical life
1970-1989	Vahakn Dadrian, Irving Louis Horowitz, Leo Kuper, Jack Nusan Porter, Yehuda Bauer, John L. Thompson, Gail A. Quets, Helen Fein, Michael N. Dobkowski, and Isidor Wallimann.	Coercion or lethal violence; structural and systematic destruction; massacre; annihilation; mass murder; starvation; forced displacement; economic, political, physical subjugation; selective mass murder; prevention of national (racial, ethnic) culture, economic and religious life; restriction on reproduction, destruction of a social collectivity, and systematic rape
1990-2009	Frank Chalk, Kurt Jonassohn, Steven T. Katz, Israel Charny, Irving Louis Horowitz, Barbara Harff, Manus I. Midlarsky, Jacques Sémelin, Daniel Chirot, Clark McCauley, and Donald Bloxham	Direct or indirect physical destruction; suppression of biological and social reproduction; murder; mass killing; structural and systematic destruction; government’s policies; systematic mass murder, and total eradication of a group.
2010-Present	Uğur Ümit Üngör, Adrian Gallagher, and John Cox	Murder, systematic persecution, annihilation, and destruction of socio-cultural cohesion.

Source: Authors’ compilation

According to the UN Convention, after the careful examination of these acts, a court rules out the event to be genocide and punishes the perpetrators. Till now, competent judicial bodies have denoted few events to constitute genocide. For instance, an internationally established court, International Criminal Tribunal for Rwanda (ICTR), determined the killings of around 800,000 Tutsi as genocide in Rwanda. Likewise, the International Criminal Tribunal for the former Yugoslavia

¹³ M. Amir-UI Islam, “Recurrence of Systematic and Widespread Persecution of Rohingya: A Thorn on the Global Conscience”, in Imtiaz Ahmed (ed.), *Genocide and Mass Violence: Politics of Singularity*, Dhaka: Centre for Genocide Studies, 2019, pp. 121-124.

¹⁴ Ibid.

(ICTY) in 1995 ruled that genocide was committed in Srebrenica.¹⁵ On the other hand, genocidal acts can be traced out in several cases that the competent court still has not considered genocide. For example, Genocide Watch identified some instances, e.g., Rohingya community of Myanmar, Darfur genocide of Sudan, Yazidis in Iraq, Uyghur in the Xinjian state of China, where signs of genocide are visible. According to the Convention, these cases cannot be considered genocide due to the absence of the court verdict. When the court declares genocide, there is hardly anything to prevent because the concept of genocide interprets an action. In other words, there is a possibility to prevent the threats of genocide and facilitate relevant UN organs and agencies to take action according to the Article VIII of the CPPCG. Unfortunately, convention and scholarly works do not explicitly explore the concept of genocidal threats. However, for prevention, it is crucial to identify the threats of genocide.

The paper provided an operational definition of genocidal threats. Genocidal threats refer to hostile actions that adversely affect the wellbeing of an individual or ethno-religious or a racial group. Alternatively, it refers to a possibility that genocide might occur unless hostile actions prevent. Thus, the paper frames the genocidal threats within the first four acts of the Genocide Convention mentioned in Article II, focusing on the other scholars' enlisted actions. The paper identifies four parameters of genocidal threats. Systematic erasure of group identity is the first parameter because it establishes the basis on which assault and abuse have invalidated their existence. It tracks the second act of genocide: causing severe physical and psychological abuse mentioned in the convention. The second parameter, namely physical assault, traces three foremost acts incorporated in the CPPCG: a) killing, b) physical and psychological abuse, and c) intentionally impose requirements to destruct physically. The third parameter of discriminatory treatment marks the fourth act, d) undertaking initiatives to control births within the group. The last two parameters demonstrate the intent to eradicate the community fully or partially through systemic structural damage and forced displacement.

Indeed, genocidal threats always hamper the well-being of humans. It is noteworthy that to prevent the threats of genocide and punish perpetrators by enacting relevant legislation, the Convention (Article VI) highlights the state's responsibility. Though the state is primarily responsible for mitigating the threat, the international community cannot avoid its responsibility. According to the UN Convention prelude, "all periods of history, genocide has inflicted great losses on humanity; and being convinced that, to liberate mankind from such an odious scourge, international

¹⁵ United Nations Office on Genocide Prevention and the Responsibility to Protect, "When to Refer to a Situation as 'Genocide'", available at <https://www.un.org/en/genocideprevention/documents/publications-and-resources/GuidanceNote-When%20to%20refer%20to%20a%20situation%20as%20genocide.pdf>, accessed on 14 April 2021.

cooperation is required.”¹⁶ Similarly, the “Responsibility to Protect” principle stipulates that the state must prevent threats and cease mass atrocities. Moreover, the international community has to stimulate and give assistance to states in fulfilling this responsibility. If a country neglects its duty, the international community must undertake unified action to protect people, befitting the UN Charter.¹⁷ Hence, these documents acknowledge the responsibility of states and the UN to prevent the threats of genocide. The fundamental objective of the UN is to uphold global peace as well as security (Preamble and Article 1(1)). It compels to undertake collective steps to suppress aggressive actions and mitigate threats to the peace. The UNSC has an obligation to ensure global peace and security in consonance with the Charter’s principles. Thus, the genocidal threats on the Rohingyas fall into the boundary of the UN’s responsibilities. Based on this framework, the subsequent sections analyze how the atrocities against the Rohingyas constitute genocidal threats and the role of the UN to prevent them.

3. Understanding Genocidal Threats on the Rohingyas

Five parameters are essential to identify genocidal threats. The elements of genocidal threats have been visible over the years and continued to date in the Rohingya case. The Rohingyas have been suffering due to their ethno-religious identity even before the independence of Myanmar. Like other genocidal incidents, the Rohingya Muslim community is the target group- an ethno-religious group in Myanmar. The nationalist Buddhists-led Myanmar government authorities, military, Arakan State authorities, Rakhine Moghs, Immigrant Police, and newly settled hill tribes are the perpetrators. In the subsequent sub-sections, the paper discusses the presence of genocidal threats against the Rohingyas.

3.1 *Systematic Erasure of Group Identity*

The Rohingyas were recognized as a legitimate ethnic community after the independence of Myanmar and enjoyed full citizenship. Since the inception of military rule in 1962, initiatives toward eradicating the Rohingya identity have begun. Through the Citizenship Law of 1982, the Myanmar authority legally refutes the ethnic identity of the Rohingyas. Though the 1948 Act provides equal rights, the Citizenship Law of 1982 classifies the citizens into three categories, e.g., full citizens, associate citizens, and naturalized citizens.¹⁸ It also recognizes 135 ethnic groups and gives full citizenship rights in Myanmar. However, individuals not belonging to these groups require obtaining nationality through fulfilling different criteria. Such

¹⁶ Ibid.

¹⁷ Office on Genocide Prevention and the Responsibility to Protect, “Responsibility to Protect”, available at <https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml>, accessed on 23 June 2020.

¹⁸ Ken MacLean, “The Rohingya Crisis and the Practices of Erasure”, *Journal of Genocide Research*, Vol. 21, No. 1, 2019, pp. 83-95.

categorization disqualifies the majority of Rohingyas from getting citizenship. The census of 1983 also excluded the Rohingyas as it considered the Rohingyas as “Bengalis” who came to Myanmar from Bangladesh after 1823.¹⁹

Myanmar’s media, school textbooks, and government policies have considered the Rohingyas a “national security threat”²⁰ resulting in a denial of identity in several contexts. In three townships of Northern Rakhine State, e.g., Rathedaung, Maungdaw, and Buthidaung, they had to undergo identity verification yearly and were compelled to enlist as Bengali. Later, this process expanded to other conflict-prone areas in Rakhine State. An empirical study highlighted the experience of a Rohingya boy. Police brought him to a local police station for inquiry. They asked the name of the boy and his ethnic group. When he confessed his Rohingya ethnic identity, police tortured him brutally while saying, “You are not Rohingya. You are Bengali. Say, I am Bengali.” This account demonstrates the forceful registration of Rohingya as Bengali.²¹

Besides, the Myanmar government has introduced several citizenships verification measures, e.g., various “identification cards” to wipe out Rohingya identity. The National Verification Cards (NVC) is one of the processes. A report titled “Tools of Genocide: National Verification Cards and the Denial of Citizenship of Rohingya Muslims in Myanmar” by Fortify Rights highlights a pilot project of Myanmar authority in 2017. Under this project, to mark the Rohingyas as ‘foreigners’ and refute full citizenship rights, they forced them to accept NVCs.²²

By undermining the long-standing evidence of the origin of the Rohingyas in the Rakhine territory before British colonial rule, Myanmar has denied their ethnic identity. The erasure of identity proves the presence of genocidal threats on the Rohingya.

3.2 *Physical Assault*

Myanmar authority has killed the Rohingya population indiscriminately. The practice of killing the Rohingyas started even before the independence of Myanmar. In 1942, almost one lakh Muslims were killed by the Buddhists Moghs during a riot. Burma Territorial Force (BTF) murdered hundreds of Muslim intellectuals, village elders, ulema, men, women, and children in 1949.²³ During the Operation Nagamin, the Myanmar military killed 50 Rohingyas. From 1992 to 2013, the Nay-Sat Kut-

¹⁹ Maung Zarni, op. cit.

²⁰ Ken MacLean, op. cit.

²¹ Maung Zarni and Alice Cowley, op. cit.

²² Fortify Rights, “Tools of Genocide: National Verification Cards and the Denial of Citizenship of Rohingya Muslims in Myanmar”, 03 September 2019.

²³ Muhammad Yunus, *A History of Arakan: Past and Present*, Chittagong: University of Chittagong, 1994, p. 67.

kwey ye (NaSaKa), a law enforcement agency operating in the Rakhine region under the Ministry for Border Affairs, killed almost 6,700 Rohingyas and 730 children.²⁴ The religious violence of 2012 took the lives of more than 200 Rohingyas.²⁵ Human Rights Watch (HRW) found several mass graves after 2012 violence. It was also reported that in a massacre, around 70 Rohingyas were killed.²⁶ Almost 139 suspected graves of Rohingyas were identified on the border of Thailand and Malaysia in 2015.²⁷ The military force murdered more than 100 Rohingya in 2016 due to the murder of a security force's member by Rohingya militants.²⁸ Responding to Arakan Rohingya Salvation Army's (ARSA) attack on a security outpost in 2017, Tatmadaw killed more than 1,000 armless Rohingyas.²⁹ According to the estimation of Médecins Sans Frontières (MSF), around 8,170 Rohingya and 1,273 children lost their lives during the early month of the clearance operation.³⁰

Myanmar authorities are also involved in harming the Rohingyas physically and mentally. The United Nations High Commissioner for Refugees (UNHCR) in 2016 informed that security forces and Rakhine miscreants sexually assaulted numbers of women as well as girls.³¹ During the "security operations" of 2017, around 58,700 women were abused sexually.³² This sexual violence caused pregnancies of approximately 40,000 Rohingya women.³³ The UN's Special Representative on Sexual Violence in Conflict found that sexual assaults and rapes against women and girls served "as a calculated tool of terror seemingly aimed at the extermination and removal of the Rohingya as a group." The fact-finding mission also revealed that they also harassed men and boys sexually.³⁴ Human rights organizations and the UN reports the evidence of Myanmar authorities' pogrom against the Rohingya.

3.3 *Discriminatory Treatments*

Myanmar has refuted fundamental rights, e.g., working, studying, travelling, practising religion, accessing public health, and exercising voting rights, of the

²⁴ Haradhan Kumar Mohajan, "History of Rakhine State and the Origin of the Rohingya Muslims", *The Indonesian Journal of Southeast Asian Studies*, Vol. 2, No.1, 2018, pp. 19-46.

²⁵ John P. J. Dussich, "The Ongoing Genocidal Crisis of the Rohingya Minority in Myanmar", *Journal of Victimology and Victim Justice*, Vol. 1, No. 1, 2018, pp. 4-24.

²⁶ Human Rights Watch, "Burma: End 'Ethnic Cleansing' of Rohingya Muslims", 22 April 2013.

²⁷ Todd Pitman and Jocelyn Gecker, "Malaysia migrant graves reveal 139 human skeletons at site where Rohingya Muslims 'kept by traffickers'", *The Independent*, 26 October 2015.

²⁸ Haradhan Kumar Mohajan, op. cit.

²⁹ "At Least 270,000 Rohingya Flee Myanmar Violence in 2 Weeks", *Al Jazeera*, 08 September 2017.

³⁰ "Rohingya crisis - a summary of findings from six pooled surveys", *Médecins Sans Frontières*, 09 December 2017.

³¹ Haradhan Kumar Mohajan, op. cit.

³² Annkathryn Goodman and Ifkher Mahmood, "The Rohingya Refugee Crisis of Bangladesh: Gender Based Violence and the Humanitarian Response", *Journal of Political Science*, Vol. 9, No. 03, pp. 490-501.

³³ Ibid.

³⁴ Women's Refugee Commission, *It's Happening to Our Men as Well: Sexual Violence Against Rohingya Men and Boys*, New York: Women's Refugee Commission, 2018, p. 18.

Rohingya community after the enactment of the 1982 Citizenship Law. The ration distribution system also excluded the Rohingyas.³⁵ For movement, they also required permission from the immigration office. To get permission, the Rohingyas had to fill up a form by paying up to US\$8 each time.³⁶ In the Kyauktaw Township of Northern Rakhine State, the Rohingyas have been restricted to visit markets and hospitals since the 2012 violence. To visit a hospital, they required police escort and approval from the township and immigration authority.³⁷

The Myanmar authorities also turned the Rohingyas into forced labour. The NaSaKa force inflicted two alternatives for Rohingyas: either they have to pay a high weekly charge to escape from manual labour or engage in physical labour, i.e., construction work, pottering, agricultural work, and serving as guards.³⁸ In 2004, the court penalized three Rohingyas to death sentence for communicating with the International Labor Organization (ILO) against forced labour.³⁹ According to the 2008 report of the UN Special Rapporteur, the perpetrator group murdered Rohingyas for disagreeing in labour force.⁴⁰ In 2009, the Myanmar authority ordained the Rohingya community to send at least one member from each family once or twice to carry out the duties of a nightguard without payment.⁴¹

The Myanmar authority also imposed several measures to restrict marriage and control population growth. In 1993, the NaSaKa directed the civil administration of Rakhine State by issuing a two-page regulation to implement Myanmar's policy to check the Rohingya population.⁴² It referred to the newborns of the Rohingya community as 'future criminals' posing threats to the security, rule of law, and peace.⁴³ Besides, for marriage, they have to take official approval from the township authority.⁴⁴ Complying with the requirement when they asked for a marriage license, the NaSaKa personnel claimed high bribes that were equivalent to three months'

³⁵ Muhammad Yunus, op.cit., p. 74.

³⁶ Alina Lindblom, Elizabeth Marsh, Tasnim Motala, and Katherine Munyan, *Persecution of the Rohingya Muslim: Is Genocide Occurring in Myanmar's Rakhine State*, New Haven: Yale Law School for Fortify Rights, 2015, p. 37.

³⁷ Ibid., p. 38.

³⁸ Irish Centre for Human Rights, "Crimes Against Humanity in Western Burma: The Situation of the Rohingyas", 2010.

³⁹ International Labour Organization, "Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)", available at https://www.ilo.org/gb/WCMS_091341/lang--en/index.htm, accessed on 15 November 2020.

⁴⁰ United Nations Human Rights Office of the High Commissioner, "Special Rapporteur on the situation of human rights in Myanmar", available at <https://www.ohchr.org/en/hrbodies/sp/countriesmandates/mm/pages/srmyanmar.aspx>, accessed on 15 November 2020.

⁴¹ Ibid., p. 50.

⁴² Fortify Rights, "Policies of Persecution: Ending Abusive State Policies Against Rohingya Muslims in Myanmar", 2014.

⁴³ Maung Zarni and Alice Cowley, op. cit.

⁴⁴ Fortify Rights, op. cit., p. 24.

wages.⁴⁵ Alternatively, in 2005, they opted to issue marriage licenses to Rohingyas contingent upon not having more than three children and it reduced to two in 2007.⁴⁶ Myanmar authority also decided to imprison up to ten years if a woman has more than two children.⁴⁷ In 2008, the Rakhine State authority adopted another policy titled, “Population Control Activities”. According to the policy, Rohingyas have to use different birth control methods.⁴⁸

The Rohingyas are also deprived of education. Since the 2012 violence, most of the schools have not been opened in Rakhine State. A study found that, sixty per cent of Rohingya children never attended any school. Moreover, they do not have the scope to study professional subjects.⁴⁹ Likewise, they are deprived of equal health services. For instance, according to the UN reports, in Rohingya majority areas, such as in Maungdaw and in Buthidaung, the doctor-patient ratio is 1:75,000 and 1:83,000 respectively, where the average ratio of Myanmar is 1:375.⁵⁰ Through these discriminatory treatments and policies, Myanmar has deprived the Rohingyas of public and educational services.

3.4 *Systematic Structural Damage*

Different reports and satellite imageries provide evidence of structural destruction of Rohingya village. Myanmar authority set to fire in 13 townships out of 17 between June and October 2012.⁵¹ Through analyzing the recorded high-resolution satellite imagery from 10 November to 18 November 2016, HRW traced the demolition of 866 villages in Maungdaw, Rathedaung, and Buthidaung townships. Severe damage took place in Maungdaw township, accounting for about 90 per cent of the areas. Moreover, Myanmar Army and Moghs also destroyed nearly 820 buildings of the Maungdaw district’s five villages. Of those destroyed buildings, 265 were from Dar Gyi Zar; 255 were from Yae Khat Chaung Gwa Son; 220 from Wa Peik; 65 were from Pwint Hpyu Chaung and 15 were from Myaw Taung.⁵² Based on satellite footage of 31 August 2017, HRW also identified 700 damaged buildings in Chein Khar Li. Likewise, photos of 23 May 2020 reported the destruction of approximately 70 per cent of Let Kar village.⁵³ Since 2017, the Myanmar government has demolished 362 villages entirely or partially by heavy equipment.⁵⁴ Map 1 shows the destruction of a Rohingya village in contrast with an untouched Rakhine village

⁴⁵ Irish Centre for Human Rights, op. cit., pp. 127-28; Fortify Rights, op. cit., p. 31.

⁴⁶ Maung Zarni and Alice Cowley, op. cit.

⁴⁷ Fortify Rights, op. cit., p. 24.

⁴⁸ Ibid., p. 29.

⁴⁹ Maung Zarni and Alice Cowley, op. cit.

⁵⁰ Ibid.

⁵¹ Alina Lindblom, Elizabeth Marsh, Tasnim Motala, and Katherine Munyan, op. cit.

⁵² Human Rights Watch, “Burma: New Wave of Destruction in Rohingya Villages”, 2016.

⁵³ Human Rights Watch, “Myanmar: Imagery Shows 200 Buildings Burned”, 26 May 2020.

⁵⁴ Human Rights Watch, “Burma: Scores of Rohingya Villages Bulldozed”, 23 February 2018.

in Maungdaw township. Alarming satellite images displaying the burnt villages, homes, and properties confirm that the Rohingyas are experiencing genocidal threats.

Map 1: Satellite Image Showing Destruction of a Rohingya Village⁵⁵



3.5 *Forced Displacement*

Unceasing violence, institutionalized discrimination, exclusionary citizenship laws, including rape, killing, and structural destruction, triggered the forceful displacement of the Rohingyas both externally and internally, with marked spikes following the violence in 1978, 1991-1992, 2012, and 2017.

Since the 1970s, several military-launched operations in the Rakhine State have forced vast numbers of the Rohingyas to flee to neighbouring countries, e.g., Bangladesh, Malaysia, and Thailand. In 1978, around 200,000 fled to Bangladesh during a census operation called Nagamin.⁵⁶ During 1991–1992, about 260,000 Rohingya were persecuted and escaped from Myanmar.⁵⁷ Due to the violence between the Buddhists and the Rohingyas in 2012, around 200,000 Rohingyas fled from their residence. Again, around 87,000 Rohingyas fled to Bangladesh during the violence of August 2014.⁵⁸ The alleged Rohingya belligerent attack in three Border Guard Police (BGP) outposts on 09 October 2016 triggered a fierce crackdown responsible for

⁵⁵ “HRW satellite images show destruction of 288 Rohingya villages”, available at <https://www.trtworld.com/asia/hrw-satellite-images-show-destruction-of-288-rohingya-villages-11443>, accessed on 06 May 2021.

⁵⁶ Carl Grundy-Warr and Elaine Wong, “Sanctuary under a Plastic Sheet–The Unresolved Problem of Rohingya Refugees”, *IBRU Boundary and Security Bulletin*, 1997, pp.79–91

⁵⁷ Ibid.

⁵⁸ Haradhan Kumar Mohajan, “The Rohingya Muslims in Myanmar are Victim of Genocide”, *ABC Journal of Advanced Research*, Vol. 7, No. 1, 2018, p. 262.

roughly 87,000 Rohingyas' flights to Bangladesh. Around 742,000 Rohingyas left the Rakhine because of a single incident occurred on 25 August 2017.⁵⁹

In 2012, a Rakhine woman was allegedly assaulted sexually and killed by some Rohingya men in Ramri township. As a result, conflict erupted, and 120,000 Rohingyas were displaced internally. Moreover, the inter-communal conflict also forced 140,000 to move to Rakhine's Internally Displaced Persons (IDP) camps. The UN Office for the Coordination of Humanitarian Affairs (UNOCHA) noted that 143,500 Rohingyas were displaced internally till the third quarter of 2015.⁶⁰ Likewise, violence in northern Rakhine in 2017 drove around 126,000 Rohingya to live in camps without fundamental rights, e.g., freedom of movement and access to work.⁶¹

Based on the documented evidence concerning the oppressions, this section infers that all five elements of genocidal threat have been visible against the Rohingyas for decades. Moreover, these genocidal threats have destroyed the ethno-religious identity and hampered the physical and mental wellbeing of the Rohingyas.

4. The UN's Responses to Prevent the Genocidal Threats on the Rohingyas

Bringing together member states, the UN obliges to intervene and prevent genocidal threats, protect the Rohingya people, prosecute the perpetrators and bring them to justice. The UN, along with different agencies, has been present in Myanmar since the 1950s. However, in preventing genocidal threats, its involvement has been reflected through the resolutions, discussions, and meetings of the three core organs, e.g., the United Nations General Assembly (UNGA), UNSC, and International Court of Justice (ICJ). Moreover, it tries to engage in the crisis through the operations of specialized bodies and offices, e.g., the UNHRC, Office of the United Nations High Commissioner for Human Rights (OHCHR), and UN Office of the Prevention of Genocide and the Responsibility to Protect (UNOPGRP).

4.1 The UNGA

Since 2007, the UNGA has been observing the human rights abuses of the Rohingyas through a series of resolutions titled 'Situation of Human Rights in Myanmar' on the basis of the findings of specialized UN bodies and mechanisms and the works of the third Committee. Nevertheless, resolutions A/RES/47/144 and A/RES/48/150 adopted in 1992 and 1993 mentioned an exodus of 250,000 Rohingyas to the neighbouring countries. These resolutions called upon Myanmar's government

⁵⁹ UNHCR, "Rohingya emergency", available at <https://www.unhcr.org/rohingya-emergency.html>, accessed on 12 May 2021.

⁶⁰ Haradhan Kumar Mohajan, op. cit.

⁶¹ European Commission, "European Civil Protection and Humanitarian Aid Operations: Myanmar/Burma", 2021.

to cease the persecution and influx of refugees to neighbouring countries and accelerate Rohingya community's safe repatriation. Referring to the severe human rights violations of the Rohingyas, resolutions A/68/456/Add.3 (2013), A/RES/68/242 (2014), and A/RES/70/233 (2016) express concern about several issues, e.g., communal violence, violence against Muslim minorities, respect for human rights, e.g., fundamental freedom, freedom of movement and full citizenship.⁶²

After the violence in August 2017, the UNGA has adopted three resolutions. Of these, the Organisation of Islamic Cooperation (OIC) and the European Union (EU) put forth two resolutions, e.g., A/RES/72/248 (2017) and A/RES/73/264 (2018).⁶³ Considering the situation in Rakhine State, these include several issues, e.g., excessive military force, facilitation of the fact-finding mission, statelessness, etc.⁶⁴ Giving ample focus on the Rohingya issue, the 74th session of UNGA in 2019 first adopted a resolution entitled 'Situation of human rights of Rohingya Muslims and other minorities in Myanmar'. It urged Myanmar to show authentic cooperation, ensuring Rohingya Muslims' dignified and viable repatriation. It also appealed to the Myanmar authority to assess the Citizenship Act of 1982 that deprived minorities, mainly the Rohingya, of fundamental rights.⁶⁵ To initiate the Independent Investigative Mechanism for Myanmar (IIMM) under the UNHRC Resolution 39/2 in September 2018, it also sanctioned a regular budget. With three resolutions after the events of 2017, the UNGA condemned Myanmar for its atrocities against the Rohingyas.

4.2 *The UNSC*

The UNSC, from June 2012 to September 2017, reviewed Rakhine State's human rights condition several times under the agenda point "any other business". It first came to the limelight of the UNSC in 2017 after the hostility of security forces on the Rohingyas in August 2017. Following the request of Britain and Sweden, warnings by the UNHRC's chief and Secretary General's letter based on the "deteriorating situation", a formal meeting on the Rohingya issue first took place on 23 September 2017.⁶⁶ Since then, meetings have been held regularly, and several briefers kept the UNSC updated on the situation.⁶⁷ From August 2017 to July 2018, it

⁶² UN General Assembly, available at <https://www.refworld.org/publisher/UNGA,,MMR,,0.html#SRTop11>, accessed on 30 April 2020.

⁶³ "UN resolution condemns Myanmar's rights violation", *The Daily Star*, 17 November 2018.

⁶⁴ United Nations General Assembly, "Situation of human rights in Myanmar", available at <https://undocs.org/pdf?symbol=en/A/RES/73/264>, accessed on 30 April 2020.

⁶⁵ "U.N. Resolution Condemns Myanmar's Abuse of Rohingya", *The New York Times*, 28 December 2019; United Nations General Assembly, "Situation of human rights of Rohingya Muslims and other minorities in Myanmar", available at <https://undocs.org/pdf?symbol=en/A/RES/74/246>, accessed on 30 April 2020.

⁶⁶ "Sweden, Britain seek U.N. meeting on situation in Myanmar", *Reuters*, 12 September 2017.

⁶⁷ Security Council Report, "Chronology of Events", available at <https://www.securitycouncilreport.org/chronology/myanmar.php>, accessed on 03 May 2020.

reviewed the Rohingya issue several times.⁶⁸ From the beginning of the discussion, the UNSC has admitted that the Rohingya crisis generated a humanitarian emergency.

In October 2017, Britain and France came up with a draft resolution and disseminated it to the UNSC members in the following year.⁶⁹ The six-page document points out several concrete demands. Accusing Myanmar security forces of violating human rights and abusing the Rohingyas, it demands the UN investigators' entry to the Rakhine State to examine the allegations of atrocity crime. Besides, it requires Myanmar to execute Annan Commission's recommendations and fix a timeframe for repatriating the Rohingyas from Bangladesh.⁷⁰ However, these initiatives brought two considerable outcomes. Firstly, it issued a Presidential Statement on 06 November 2017 by condemning the cruelty in Rakhine and emphasizing the secure, deliberate, and viable repatriation of Rohingya.⁷¹ Secondly, between April and May 2018, the UNSC's members visited Bangladesh as well as Myanmar. The UNSC's members met with the Rohingyas in Cox's Bazar and visited the Northern Rakhine State to observe the situation. After the visit through a press statement, it summoned the Myanmar authority to create a favorable environment for Rohingya extradition and identify the actual causes of the crisis.⁷²

4.3 *The ICJ*

The ICJ, the UN's prime legal body, examining a case filed by the Gambia accusing Myanmar of carrying out 'an ongoing genocide' against the Rohingya community, thus, violating the Genocide Convention. On 11 November 2019, the Gambia sought legal proceedings against Myanmar for committing genocide. After hearing the case, the court ruled out four specific "provisional measures" as suggested by the Gambia. These measures require Myanmar,

- To initiate actions to mitigate genocidal acts against the Rohingya;
- To confirm that the security force and other stakeholders do not undertake genocidal acts;
- To ensure the preservation of evidence regarding the allegations of atrocities;

⁶⁸ Mohammad Tanzimuddin Khan and Saima Ahmed, "Dealing with the Rohingya crisis: The relevance of the general assembly and R2P", *Asian Journal of Comparative Politics*, Vol. 5, No. 2, 2020, pp. 1-23.

⁶⁹ Michelle Nichols, "U.N. Security Council mulls Myanmar action; Russia, China boycott talks", *Reuters*, 18 December 2018.

⁷⁰ "UNSC weighing draft resolution", *The Daily Star*, 27 October 2017.

⁷¹ United Nations Security Council, "Statement by the President of the Security Council", available at https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_prst_2017_22.pdf, accessed on 03 May 2020.

⁷² United Nations Security Council, "Security Council Press Statement on Security Council Visit to Bangladesh, Myanmar", available at <https://www.un.org/press/en/2018/sc13331.doc.htm>, accessed on 03 May 2020.

- To present compliance report between four-month and, subsequently, after every six-month till the ultimate verdict.⁷³

Provisional measures were a preliminary ruling, and a final judgment has not yet come. It has not been determined whether atrocities against the Rohingyas by the Myanmar authorities in 2016-17 fall into the category of genocide or who should be punished.⁷⁴ Despite these facts, these provisional measures continue the UN's multidimensional effort to establish liability for mass atrocities on the Rohingyas.

4.4 *The UNHRC*

The UNHRC is the leading specialized body responsible for protecting human rights. Since 1992, it has regularly addressed Myanmar's human rights situation. Following resolution 58, in 1992, for human rights, UNHRC first set Special Rapporteur in Myanmar.⁷⁵ Since then, Special Rapporteurs travelled Myanmar until the authority stopped cooperating and denied entry in December 2017.⁷⁶ Immediately after the atrocities on 25 August 2017, the Special Rapporteur, Yanghee Lee, visited the neighbouring countries. Hearing the cruelty from the Rohingyas, she stated that mass violence had been committed in Northern Rakhine since August 2017. It marked the possibility of genocide. She also recommended the UNHRC to set up a commission for inquiry and a mechanism to ensure accountability.⁷⁷

Moreover, on 24 March 2017, prior to the instability in the Rakhine region, HRC passed the 34/22 Resolution. It had expressed concern for the degradation of human rights conditions in the Rakhine State and established the Independent International Fact-Finding Mission on Myanmar (IIFMM).⁷⁸ IIFMM aimed to research and submitted reports regarding minority groups' human rights violations in Rakhine.⁷⁹ Based on the 875 in-depth interviews of Rohingya residing in different

⁷³ "Top UN court orders Myanmar to protect Rohingya from genocide", *UN News*, 23 January 2020.

⁷⁴ Angshuman Choudhury, "What Does the ICJ Preliminary Ruling Really Mean for the Rohingya?", *The Diplomat*, 04 February 2020.

⁷⁵ United Nations Human Rights, Office of the High Commissioner, "Special Rapporteur on the situation of human rights in Myanmar", available at <https://www.ohchr.org/en/hrbodies/sp/countriesmandates/mm/pages/srmyanmar.aspx>, accessed on 05 May 2020.

⁷⁶ United Nations Human Rights, "Myanmar: UN expert to carry out her final mission by visiting Bangladesh and Thailand", available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25462&LangID=E>, accessed on 27 October 2020.

⁷⁷ Human Rights Council, "Report of the Special Rapporteur on the situation of human rights in Myanmar", available at <https://reliefweb.int/sites/reliefweb.int/files/resources/un%20hrc%20myanmar.pdf>, accessed on 04 May 2020.

⁷⁸ Human Rights Council, "Resolution 34/22: Situation of human rights in Myanmar", 2017.

⁷⁹ United Nations Human Rights Council, "Independent International Fact-Finding Mission on Myanmar", available at <https://www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/Index.aspx>, accessed on 05 May 2020.

countries, satellite imagery and documents, video clippings, and photographs,⁸⁰ it submitted two extensive reports on the 39th and 42nd sessions of the UNHRC in August 2018 and September 2019, respectively. These reports recorded a multitude of outrages and found the component of ‘genocidal intent’. IIFFMM’s mandate ended in September 2019. It handed over the evidence of severe crimes to IIMM established by the council on 27 September 2018. It became operational on 30 August 2019. By paying a visit to Bangladesh in November 2019, IIMM conducted its first mission.

4.5 *The OHCHR*

By examining the human rights situation of Rohingya and other minority groups, OHCHR has submitted several reports and recommendations to the UNHRC. These reports have appraised several times the threat of atrocity crimes in Rakhine State. On 11 March 2019, it prepared a thorough report on the Rohingya human rights situation. It identified five main thematic areas:

- Citizenship;
- Involvement in civic activity;
- Basic rights and liberties;
- Relocation and entitlement to repatriate;
- Responsibility for the abuse of human rights to trace advantages and disadvantages relating to human rights protection.

The report concluded that the UN entities’ recommendations made so far mostly remain unaddressed. It also recommended Myanmar to initiate effective measures to identify critical issues preventing the Rohingyas from enjoying human rights.⁸¹ Recently, OHCHR has welcomed the issued order of the ICJ on 23 January 2020 and asked Myanmar to implement it entirely, urgently, and unconditionally.

4.6 *The UNOPGRP*

The idea of ‘Responsibility to Protect (R2P)’ is relatively newer in academia, and scholarly debates surround the concept. However, in the context of the paper, R2P refers to the UN’s obligation as a representative of the global community to prevent genocidal threats by undertaking effective diplomatic, humanitarian, legal, and other peaceful measures based on the Charter (chapter VI and VIII). Following OHCHR’s report of 2017, the UNOPGRP stated that “if people are being persecuted based on their identity and killed, tortured, raped and forcibly transferred in a widespread or systematic manner, this could amount to crimes against humanity and other egregious

⁸⁰ “U.N. Urges War Crimes Investigation in Myanmar”, *KCW London*, 22 September 2018.

⁸¹ Human Rights Council, “Situation of human rights of Rohingya in Rakhine State, Myanmar”, available at https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_40_37.pdf, accessed on 06 May 2020.

international crimes”.⁸² To evaluate the situation, Adama Dieng, the Special Adviser of the Secretary-General to UNOPGRP, came to Bangladesh in March 2018. Following the visit, in a statement he said, “... the intent of the perpetrators was to cleanse northern Rakhine State of their existence, possibly even to destroy the Rohingyas as such, which, if proven, would constitute the crime of genocide”.⁸³

In light of the UN’s responses, the Myanmar authority has established more than eight investigation commissions.⁸⁴ However, the overarching recommendations of the UN body remain largely unaddressed as none of those mechanisms punished the perpetrators of atrocities against the Rohingya community. Besides, Myanmar has repeatedly refuted the UN investigators’ findings. Although genocidal actions towards the Rohingyas have been visible, no notable development has been seen on human rights affairs as conveyed by the UNGA, UNSC, UNHRC, IIFFMM, and OHCHR earlier. The Myanmar authority does not recognize the ethnic identity of the Rohingyas and denied citizenship. Indeed, to date, the UN’s responses have not been appropriate in preventing genocidal threats, protecting the Rohingyas in Rakhine State and tracking down the offenders.

5. Understanding Fault Lines

Despite different initiatives of the UN, severe breaches of human rights have been continuing by Myanmar authorities. The responses of the UN so far have made no visible progress. It infers that the UN’s promise of “Never Again!” and its commitment under the UNCPPG to prevent genocide has become futile. Any discussions on why the UN’s initiatives are not appropriate to prevent the genocidal threats on the Rohingyas indeed require an analysis of the fault lines. This section identifies the following fault lines of the UN.

5.1 Unable to Label the Atrocities

Despite committing the prohibited acts articulated in the Genocide Convention for decades, the debate over labelling the atrocities against the Rohingyas by the UN has come slowly. It is the limitation of the UN and raises questions over the applicability of the human rights laws. To describe the Rohingya crisis, it has put forward different terminologies that do not mention in any legal document. In

⁸² United Nations, Statement by Adama Dieng, United Nations Special Adviser on the Prevention of Genocide following OHCHR’s report on the situation in northern Rakhine State, Myanmar 06 February 2017.

⁸³ United Nations Secretary-General, Statement by Adama Dieng, United Nations Special Adviser on the Prevention of Genocide, on his visit to Bangladesh to assess the situation of Rohingya refugees from Myanmar, 12 March 2018.

⁸⁴ A 27-member Commission of Inquiry on Sectarian Violence in Rakhine after the 2012 violence, Rakhine State Investigation Commission and Investigation Commission on Maungdaw in Rakhine State after the October 2016 violence, Advisory Commission on Rakhine State and New Commission of Inquiry after the August 2017 violence.

February 2017, issuing a report confirming the widespread violation of human rights in Rakhine, the UN High Commissioner for Human Rights, Zeid Ra'ad al-Hussein blamed the Myanmar government for displaying “devastating cruelty” against the Rohingyas. In September 2017, the OHCHR stated that the Rohingya persecution seemed to be a textbook example of ethnic cleansing.⁸⁵ This scenario is not unique. In Rwanda and Bosnia, the UN first termed the mass atrocities “ethnic cleansing”. They agreed to name the atrocities as genocide after 800,000 Rwandans were killed in 1994 and the Srebrenica massacre took place in July 1995. Likewise, the debate over defining the atrocities against the Rohingyas eventually came after the murders, and massive dislocations had reached optimal levels in the recent history of the Rohingya crisis.

The UN officials’ references to genocidal threats begin to appear from December 2017. On the one hand, some UN bodies identified the threats of genocide but professed the court’s responsibility to determine genocide. For instance, in December 2017, the high commissioner for human rights stated that identifying the acts of genocide in the military clampdown against the Rohingyas by a court would not surprise him.⁸⁶ After visited in Cox’s Bazar in March of 2018, the special envoy apprehended that crimes against humanity had been carried out. Still, a court could finally determine whether the atrocities accounted for genocide. Likewise, the fact-finding mission report identified the evidence of ‘genocidal intent’ in the Myanmar government’s actions.

On the contrary, the UNSC and UNGA had not considered the presence of genocidal threats while examining the Rohingyas issue and yet to adopt an official resolution to label the violence perpetrated on the Rohingyas. These responses leave the impression that, for the UN, whether genocide is taking place has become more crucial than initiating actions to reverse the situation and avert further violations. Hence, not labelling the acts against the Rohingya crisis as genocidal threats, the UN has again disregarded its obligation to prevent genocide before it occurs.

5.2 *Reactive rather than Proactive*

Despite the presence of the UN since the 1950s, it has remained unable to be proactive to prevent genocidal threats. Even before the recent genocidal operation in 2017, the UNSC’s response to what was happening in the Rakhine State was one of indifference. The early warning regarding the persecution of the Rohingyas by the different human rights organizations was available, but the UN had not undertaken any preemptive measures. For instance, Genocide Watch has issued Genocide

⁸⁵ Michael Safi, “Myanmar treatment of Rohingya looks like ‘textbook ethnic cleansing’, says UN”, *The Guardian*, 11 September 2017.

⁸⁶ Justin Rowlett, “Could Aung San Suu Kyi face Rohingya genocide charges?”, *BBC News*, 18 December 2017.

Emergency Alert for Myanmar annually since its inception in 1999. It continued to send warnings in 2006, 2012, 2013, 2015, and 2017.⁸⁷

Similarly, examining satellite photographs documented on 22 October, 03 November, and 10 November 2016, HRW found around 430 devastated houses in Maungdaw district.⁸⁸ Besides, the HRC resolution of 24 March 2017 highlighted the deteriorating human rights condition of the Rakhine region. Being aware of the intensive atrocities underway, the UNSC did not respond on time. The presidential statement of 2007 did not mention the reported attacks against the Rohingyas and other minority groups in the Rakhine State. Moreover, the UNSC only appraised the matter in unofficial meetings and under the theme ‘any other business’ between June 2012 and September 2017. After the atrocities of 2017, it also delayed responding despite being urged by the Secretary-General Guterres to undertake necessary steps to prevent further proliferation of the crisis on 02 September. It was briefed by the three civil society representatives about satellite evidence and eyewitness reports on 08 September and attended an Arria formula meeting on 13 October about the underlying sources of conflict and persecution in Rakhine State. It took fourteen days to hold a formal meeting to address the issue and more than two months to come up with a presidential statement.⁸⁹

In terms of actions, these pointless deliberations on the Rohingya crisis produced no result. On the contrary, such reactive posture of the UNSC had negative consequences on the response of the other bodies as it is the sole organ of the UN that has the power to take preemptive actions against genocide. Consequently, they have done nothing to stop the perpetrators. Since the 2017 attacks, through several resolutions, declarations, and statements, other UN bodies have not taken enough steps to safeguard the Rohingyas. Despite that, these endeavours were limited to the discussion that had no influence on the perpetrator group. Hence, the UN has remained unable to undertake any tangible measure to prevent the perpetrators of mass atrocities.

5.3 *Prioritizing the Provision of Aid*

Overemphasis on facilitating the provision of aid rather than concerted actions to remove the threat of genocide after the recurrent occurrence of mass atrocities against the Rohingyas is another drawback of the UN. The robust aid-oriented approach of the UN through the engagement of the UN humanitarian aid agencies has been visible since the military launched operations in 1977 and 1991. For instance, following the signature of a bilateral Memorandum of Understanding

⁸⁷ M. Amir-Ul Islam, op. cit.

⁸⁸ Human Rights Watch, “Burma: Massive Destruction in Rohingya Villages”, 13 November 2016.

⁸⁹ Gert Rosenthal, “A Brief and Independent Inquiry into the Involvement of the United Nations in Myanmar from 2010 to 2018”, 2018.

(MOU) to accelerate the safe return and reintegration of 250,000 Rohingyas, the United Nations High Commissioner for Refugees (UNHCR) established its presence in the northern Rakhine State of Myanmar. Likewise, the United Nations Development Programme (UNDP) started its Human Development Initiative Programme (HDI) in 1994. Through the extensive engagement of these agencies, the UN aimed to ensure a tangible impact on human wellbeing in the health, education/training, food security, HIV/AIDS, and the environment sectors. However, removing genocidal threats, e.g., restrictions on freedom of movement, granting citizenship, and various forms of discrimination, remained problematic.

Consequently, the Rohingyas had gone through repeated mass atrocities in 1997 and 2012. Even after the recent mass atrocities of 2017, it has prioritized the aid-centric approach. In 2018 and 2019, the UN has launched a Joint Response Plan (JRP) seeking US\$951 million and US\$920.5 million for the Rohingya community to provide humanitarian aid, respectively.⁹⁰ However, no intervention from the UN has been visible to eradicate the threats of genocide. Preference for such an approach, the UN has remained unable to break the established genocidal violence cycle from atrocities to the exodus, to repatriation, to mass atrocities again.

5.4 *Prioritizing National Interest over Collective Interests*

Although the UN aims to promote collective interest over national through several articles of the Charter, it provides opportunities for the member states to suppress collective gains for the sake of national interest. As a representative organ of the UN, the UNGA does not have the authority to decide on whether a crisis poses a threat to international peace; rather, it depends on the UNSC. While considering a situation and deciding an action, it follows a consensus-building approach. In other words, if a member of P5 imposes a veto, it will not be able to undertake any enforcement actions.

In the Rohingya crisis, the UNSC's action has been pushed back due to the national interest of the two members. When they have discussed the Rohingya crisis, they perceived every grave situation from the perspective of their interests. Relating to geopolitical and politico-economic interests, the geographic position of Myanmar is crucial for China and Russia. China is the top investor and exporter of Myanmar's products. Chinese trade with Myanmar was nearly US\$168 billion in 2019.⁹¹ Strategically, to challenge Indian influence, it provides China with a gateway to the Indian Ocean and helps to observe external actors, e.g., Japan, the ASEAN states, and

⁹⁰ "JRP for Rohingya Humanitarian Crisis - March to December 2018", available at https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/jrp_for_rohingya_humanitarian_crisis_-_for_distribution_0.pdf, accessed on 25 October 2020.

⁹¹ "China's flourishing economic relations with Myanmar", *CGTN*, 15 January 2020.

the United States competing for ascendancy in the South China Sea.⁹² Moreover, as contemplates in the mega project, “Belt and Road Initiative” (BRI), Myanmar also renders opportunities for connectivity with Europe and Central Asia.⁹³ In terms of energy security, it has a specific motive. For instance, it has erected a 771-kilometre pipeline for oil transportation from Kyaukpyu of Myanmar to Kunming of China.⁹⁴ Additionally, to get the natural gas supply of Rakhine State for Yunnan and Guangxi province, China has constructed a 2,520 kilometer pipeline for gas in Myanmar. To import 10,000 MW of electricity, it has also built six dams on Myanmar’s Salween and Irrawaddy rivers.⁹⁵

Likewise, in terms of arms sales, natural resources, and strategic benefits, Myanmar is particularly significant for Russia. The Defence Minister of Russia visited Myanmar at the beginning of 2018 to advance military cooperation. For selling military equipment and providing military training to Myanmar security personnel, they signed an agreement. For instance, it signed a pact with Myanmar to purchase six Sukhoi Su-30 SM multirole advanced fighter jets amounted to US\$200 million in 2018.⁹⁶ In oil and gas projects, Russia invested US\$38.3 million in 2017.⁹⁷ Strategically, Russia’s backing at the UNSC helps to pursue a “parallel policy effort” to enhance economic and military cooperation with China and create an alliance to counter US-led Western initiatives. Moreover, Russia considers Myanmar an entry point to Asia and an entrance to its appearance in Southeast Asia.⁹⁸

Indeed, China as well as Russia has supported Myanmar politically in the UNSC. In 2007, China and Russia gave a double veto on a draft resolution that called on Myanmar to stop attacking the Rohingyas and other minority communities. Likewise, when the UNSC started to discuss the Rohingya crisis in 2017, they blocked a UNSC press statement in March that condemned genocidal threats on the Rohingyas.⁹⁹ From the initial discussions in the UNSC, both countries supported Myanmar. China urged the other countries to consider Myanmar’s domestic situation.¹⁰⁰ Similarly, Russia clearly stated it is against pressuring the actions of Myanmar as it might further deteriorate the situation. As a result, they have not

⁹² Hak Yin Li and Yongnian Zheng, “Re-interpreting China’s Non-intervention Policy towards Myanmar: leverage, interest and intervention”, *Journal of Contemporary China*, Vol. 18, No. 61, 2009, pp. 617-637.

⁹³ K. Yhome, “Understanding China’s Response to Ethnic Conflicts in Myanmar”, ORF Occasional Paper No. 188, April 2019, Observer Research Foundation.

⁹⁴ Yun Sun, “China’s Strategic Misjudgement on Myanmar”, *Journal of Current Southeast Asian Affairs*, Vol. 31, No. 1, 2012, pp. 73-96.

⁹⁵ Monish Tourangbam and Pawan Amin, “China’s Dynamic Grip on Myanmar”, *The Diplomat*, 07 May 2019.

⁹⁶ “Myanmar to buy Russian fighter jets in deal worth more than \$200m”, *Frontier Myanmar*, 23 January 2018.

⁹⁷ “Myanmar-Russia Ties Reviewed”, *The Myanmar Times*, 27 March 2017.

⁹⁸ Ludmila Lutz-Auras, “Russia and Myanmar – Friends in Need?”, *Journal of Current Southeast Asian Affairs*, Vol. 34, No. 2, 2015, pp. 165-198.

⁹⁹ “China, Russia block U.N. council concern about Myanmar violence”, *Reuters*, 18 March 2017.

¹⁰⁰ Charlotte Gao, “On Rohingya Issue, Both China and India Back Myanmar Government”, *The Diplomat*, 13 September 2017.

participated in any discussion on the draft UNSC resolution circulated to the council in December 2018. Instead, both countries emphasized on initiating a long-term plan to resolve the problem between Bangladesh and Myanmar. Moreover, opposing the UN resolutions to make Myanmar liable for genocidal crimes, Russia and China once called upon the global bodies not to interfere and pressure Myanmar.¹⁰¹ It is evident that it is evident that, about the Rohingya issue, China and Russia are involved in the UN and have strongly opposed the actions and the involvement of the UN in the Rohingya issue.

On the contrary, France, the USA and the UK have advocated the UN's engagement in the Rohingya crisis since 2007. Consequently, it has created polarization among the P5 members. However, considering the little economic and strategic benefits, it is argued that they are not serious on the issue and give verbal statements and concerns. Currently, the USA's 106th trading partner is Myanmar.¹⁰² Strategically, the USA's interests in Myanmar are limited mainly to contain China to maintain the region's existing status quo undistributed. The same goes for Britain. It had a trade deficit of US\$114.9 million.¹⁰³ Likewise, Myanmar is the 106th trading partner of France, with an export of US\$129 million.¹⁰⁴ In this milieu, protection of the Rohingyas has never appeared to be a problem for France, the US and the UK, considering their low strategic and economic interests.¹⁰⁵ Hence, the prevalence of national interest in the UNSC has created a situation whereby this principle organ failed to act timely in preventing genocidal threats through diplomacy, peacekeeping, and the pursuit of international justice.

5.5 *Monopoly of the UNSC*

The UN's sole dependency on the decisions of the P5 has obstructed its actions to prevent genocidal threats in Myanmar. The UN Charter sanctions the UNSC to dictate whether a particular situation creates threats to global peace and stability. The UNSC is also responsible for undertaking economic sanctions and military action to mitigate atrocities and reinstall international peace and order.

On the other hand, other bodies working on human rights and humanitarian issues including UNHRC, ICJ, UNHCHR, and OHCHR, do not have the power to

¹⁰¹ Agence France-Presse, "China and Russia oppose UN resolution on Rohingya", *The Guardian*, 24 December 2017.

¹⁰² Office of the United States Trade Representatives, "Burma", available at <https://ustr.gov/countriesregions/southeast-asia-pacific/burma>, accessed on 26 October 2020.

¹⁰³ House of Commons Library, "Burma: 2018 update", available at <https://researchbriefings.files.parliament.uk/documents/CBP-7901/CBP-7901.pdf>, accessed on 14 July 2019.

¹⁰⁴ Trading Economics, "France Exports by Country", available at <https://tradingeconomics.com/france/exports-by-country>, accessed on 02 May 2021.

¹⁰⁵ Mohammad Tanzimuddin Khan and Saima Ahmed, op. cit.

undertake actions considering humanitarian issues. For instance, despite being the core human rights body of the UN, the UNHRC, with the support of the OHCHR, Advisory Committee, and Fact-Finding mission are mandated to evaluate and recommend on human rights condition of the member states. Though ICJ can rule out specific measures to prevent atrocities, its implementation relies on the decision of the UNSC. Likewise, the UNOPGRP is solely responsible for warning about the threat of genocide and advocating for necessary action by analyzing relevant evidence. Consequently, when the UNSC has remained unable to take initiatives, the UN's humanitarian bodies become inoperative and unable to prevent genocidal threats against the Rohingyas. Without the UNSC's approval, these bodies cannot enter the crisis zone. Hence, resolutions, reports, and meetings of the UNGA and the UNHRC have not been enough to mitigate the genocidal threats. The initiatives of the UNHCHR have become very limited due to the absence of missions conducted by the UNSC. The Secretary General's mediation role in preventing conflicts has remained unexplored. Likewise, the provisional measures of the ICJ are legally binding on Myanmar, but only through resolution the UNSC can enforce them. Hence, the prospect of enforcing their judgments is also tricky due to the deadlock in the UNSC. For instance, according to the ruling of ICJ, the UNSC members arranged a meeting to work out a procedure to ensure compliance. However, China and Russia vetoed it, and therefore, they could not come to a conclusive plan of action. Hence, over-reliance on the UNSC inherent in the Charter has made other humanitarian bodies of the UN motionless.

5.6 *Sovereignty versus Human Rights*

The UN Charter is ambiguous regarding the two concepts, sovereignty and human rights, essential to global peace and order. The preamble and several articles (e.g., 1, 8, 13, 55, 56, 62, 68, and 76) of the Charter promote human rights. At the same time in Articles 2(1), 2(4), and 2(7) emphasize territorial sovereignty and non-interference in the state's internal matters. In the post-Cold War period, due to the changing nature of conflicts, states become the violator of the human rights of their people. Consequently, the UN has redefined sovereignty as a responsibility and invoked Article 51 to safeguard human rights and international peace. However, in such cases, whether the UN prioritizes human rights over sovereignty depends on the decision of the P5 members. The ambiguity in the UN Charter creates scope for the P5 to manipulate decisions according to their national interest. If any of the P5 nationally gains from protecting the perpetrators, the UN falls into a dilemma. As a result, it becomes static despite realizing the importance of safeguarding human rights. In the case of the Rohingya crisis, to oppose different actions and initiatives of the UN, China and Russia have highlighted the principle of sovereignty and non-interference in Myanmar's domestic affairs. Hence, the UN has been in a dilemma considering mass atrocities against the Rohingyas as a threat to international peace.

5.7 *Lack of Coordination with Regional Organization*

Interaction between the UN and regional organizations is essential to maintain international peace and safeguard human beings from genocidal threats. In resolving any conflict, regional organizations are in advantageous positions. As countries of a region share borders, history, culture and customs, regional organizations are well aware of the origin of the conflict. Besides, considering the regional ramification, they are also willing to resolve any conflict. The UN Charter also highlights the importance of these organizations to mitigate the threat to peace. Over the years, regional organizations have also developed different human rights mechanisms and adopted the concept of a security community to ensure regional peace and order. Perceiving the potential of regional organizations in managing conflict and human rights, the UN has coordinated with them over the decades. For example, cooperating with the African Union (AU), the UN resolved several crises and safeguarded human rights in Africa. Likewise, the Association of Southeast Asian Nations (ASEAN) acted as a mediator and facilitator between the UN and Myanmar government and ensured the access of the UN and other agencies to provide humanitarian assistance during the 2008 cyclone. Despite the presence of human rights instruments, e.g., ASEAN Intergovernmental Commission on Human Rights, ASEAN Parliamentarians for Human Rights, and ASEAN Human Rights Declaration, the UN has yet to undertake any measure to cooperate with ASEAN to mitigate the genocidal threats against the Rohingyas.

5.8 *Misguided by Pseudo Democracy*

The flawed democracy in Myanmar also misled the UN. Since the very beginning of its presence, the UN has been concerned more about democracy than human rights. It believes that the civilian government in power will automatically reinforce peace among the ethnic groups in Myanmar. Different resolutions and reports of the UN on Myanmar also showed concern about the restoration of democracy in Myanmar. Though the civilian government came into power with the victory of Aung San Suu Kyi in the 2015 general election, the Constitution gives ample power to the military. They have control over the security issues of the country. Hence, the country had undergone military rule with the label of democracy from 2015 to 2020. Democratic leader Aung San Suu Kyi's commitment to restoring the peace process and resolving conflict between military and ethnic groups proved wrong. When the UN realized the democratic lacuna, it was too late. As a result, the world witnessed the most brutal military campaign against the Rohingyas in 2017. After the operation, the Aung San Suu Kyi government restricted international organizations and media entry, including the special rapporteur and fact-finding mission. Even in the ICJ, she repeatedly supported the military Junta and refused the allegation of genocide being committed against the Rohingyas.

6. Conclusion

With the intent of genocide, Myanmar has continued to involve in mass killings, rapes, sexual assault, homes and farms destruction, forced relocation, summary executions, and other severe human rights abuses. Since the outbreak of violence, the UN has been at the forefront of the response. Its responses have been visible in the resolutions, discussions, and meetings of the UNGA, UNSC, ICJ, and specialized bodies like UNHRC, OHCHR, and UNOPGRP.

However, from the analysis made in this study, it is evident that the UN cannot live up to the vow of “Never Again!” in the Rakhine State of Myanmar. It also represents the UN’s constraints to undertake the proper initiative to prevent genocidal threats and protect the Rohingya population. For a long time, instead of reversing the situation and preventing further violations, it has been wrangling to determine whether genocide occurs in Myanmar. Moreover, despite being aware of the ongoing intensity of the atrocities, it did not undertake any preemptive measure. It mostly remained reactive—showing a lack of service in preventing genocidal threats on the Rohingyas. Such reactive postures have been evident due to the prevailing power politics of the P5 member, particularly China and Russia, in the UNSC.

Consequently, it has prioritized facilitating aid provision without removing the threats of genocide through diplomacy, peacekeeping, and the pursuit of international justice in terms of enforcement actions. These limitations have been further amplified by the inherent structural features of the UN, which only authorizes the UNSC to undertake actions, e.g., economic and military, to prevent genocidal threats. Such features also create opportunities specifically for China and Russia, who have politico-economic and strategic interests in Myanmar, to manipulate every decision on their terms and make the whole UN ineffective in the face of genocidal threats. Hence, further research is needed to identify reforms and resolve these fault lines.