Statelessness, Ethnic Cleansing, and Genocide: The

Situation in Myanmar

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"The ethnic cleansing of Rohingya from Myanmar continues. I don't think we can draw any other conclusion from what I have seen and heard in Cox's Bazar," Andrew Gilmour, the UN Assistant Secretary-General for Human Rights, declared after a four day visit to Bangladesh in August 2017.¹ Gilmour is referring to the world's largest refugee settlement located in Cox's Bazar, Bangladesh, where severe overcrowding has been an ongoing issue, with only 10.7 square metres of land per person.² Despite efforts to alleviate the strain of these refugees, the situation has only continued to escalate. More than 700,000 Rohingya have fled severe persecution from Myanmar into Bangladesh over the past two years, joining an existing 200,000 refugees.³ Mass exodus of the Rohingya people has caused a variety of human rights crises and an unmistakable need for action from the international community. Behavior both by the government of Myanmar and the surrounding countries inundated by refugees violate standards laid out in the Universal Declaration of Human Rights, as well as binding components of international law such as the Convention on the Prevention and Punishment of Genocide. In order to remedy the situation, the United Nations must recognize the action taken against the Rohingya people as genocide, thereby placing it under the jurisdiction of the International Court of Justice through the Genocide Convention. As party to the convention, the United States must then take sufficient action to enforce it through sanctions and other methods of deterrence.

³ "One Year after Their Forced Exodus from Myanmar, Rohingya Refugees Remain Trapped in Dire Conditions," MSF USA, August 23, 2018, , accessed November 26, 2018, https://www.doctorswithoutborders.org/what-we-do/news-stories/story/one-year-after-their-forced-exodus-myan mar-rohingya-refugees-remain.

¹ "No Other Conclusion,' Ethnic Cleansing of Rohingyas in Myanmar Continues – Senior UN Rights Official | UN News," United Nations News, March 6, 2018, , accessed November 26, 2018, https://news.un.org/en/story/2018/03/1004232.

² Kristine Kolstad, "Cox's Bazar: The World's Largest Refugee Settlement," Norwegian Refugee Council, August 24, 2018, , accessed November 26, 2018, <u>https://www.nrc.no/news/2018/august/coxs-bazar-the-worlds-largest-refugee-settlement/</u>.

History of the Conflict:

Myanmar gained independence from Great Britain in 1948, immediately undergoing a series of rapid regime changes. In 1962, General Ne Win lead a military coup that placed the country under authoritarian rule.⁴ Economic unrest and protests grew until pro-democracy sentiments peaked in a massive demonstration on August 8th 1988, leading the government to kill thousands of citizens.⁵ Ne Win resigned shortly after, and Myanmar shifted to martial law. A year later, the governing council allowed a democratic election, but refused to actually turn over power and annulled the election completely twenty years later.⁶ Under military rule, governments at all levels in Myanmar passed increasingly restrictive laws against Rohingyas.

Shortly after gaining independence, Myanmar passed the 1948 Union Citizenship Act, listing 135 specific ethnicities that were granted citizenship in the new state. This list did not include the Rohingya.⁷ Myanmarese law still does not recognize the Rohingya as one of its national races, nor the Rohingya language, Chittagonian, as a national language.⁸ Initially, many Rohingya were able to receive government identification documents due to the provision that families who had lived in Myanmar for more than two generations were able to

⁴ *Persecution of Rohingya Muslims: Is Genocide Occurring in Myanmar's Rakhine State? A Legal Analysis*, Allard K. Lowenstein International Human Rights Clinic, Yale Law School, Yale Law School, October 2015, accessed November 2018, <u>https://law.yale.edu/system/files/documents/pdf/Clinics/fortifyrights.pdf</u>.

⁵ "As Myanmar Opens Up, A Look Back On A 1988 Uprising," NPR, August 08, 2013, accessed November 26, 2018, <u>https://www.npr.org/2013/08/08/209919791/as-myanmar-opens-up-a-look-back-on-a-1988-uprising</u>.

⁶ Persecution of Rohingya Muslims: Is Genocide Occurring in Myanmar's Rakhine State? A Legal Analysis, Allard K. Lowenstein International Human Rights Clinic, Yale Law School, Yale Law School, October 2015, accessed November 2018, https://law.yale.edu/system/files/documents/pdf/Clinics/fortifyrights.pdf.

⁷ "Muslims and Rohingya," Minority Rights Group, accessed November 26, 2018, <u>https://minorityrights.org/minorities/muslims-and-rohingya/</u>.

⁸ "III. DISCRIMINATION IN ARAKAN," Human Rights Watch, 2000, accessed November 26, 2018, <u>https://www.hrw.org/reports/2000/burma/burm005-02.htm</u>.

apply for identity cards.⁹ After the military coup, however, they stopped supplying identity cards to those with full Rohingya heritage.¹⁰ While they were able to receive identification, even these Rohingyas were considered "resident foreigners" by government authorities.¹¹ Lack of citizenship rights enabled authorities in Myanmar to abuse the Rohingya in a variety of ways in the following years.

Limitations from lack of citizenship:

In order to enroll in government sponsored schools, citizens of Myanmar needed National Registration Cards, which the Rohingya were denied. Because they were unable to access sufficient identification, the Rohingya had few educational or job opportunities.¹² In order to apply for full citizenship rights, all residents of Myanmar needed to prove fluency in one or more of the national languages, which excluded Chittagonian.¹³ With such limited learning opportunities, most Rohingya did not have the chance to study a national language, much less reach the required level of proficiency. It was a carefully planned catch-22, without language they could not learn, but without education they had no language, so even if the laws gave an opening for applying for citizenship, Rohingyas were unlikely to be successful.

⁹ Persecution of Rohingya Muslims: Is Genocide Occurring in Myanmar's Rakhine State? A Legal Analysis, Allard K. Lowenstein International Human Rights Clinic, Yale Law School, Yale Law School, October 2015, accessed November 2018, https://law.yale.edu/system/files/documents/pdf/Clinics/fortifyrights.pdf.

¹⁰ Persecution of Rohingya Muslims: Is Genocide Occurring in Myanmar's Rakhine State? A Legal Analysis, Allard K. Lowenstein International Human Rights Clinic, Yale Law School, Yale Law School, October 2015, accessed November 2018, https://law.yale.edu/system/files/documents/pdf/Clinics/fortifyrights.pdf.

¹¹ "III. DISCRIMINATION IN ARAKAN," Human Rights Watch, 2000, accessed November 26, 2018, https://www.hrw.org/reports/2000/burma/burm005-02.htm.

¹² Persecution of Rohingya Muslims: Is Genocide Occurring in Myanmar's Rakhine State? A Legal Analysis, Allard K. Lowenstein International Human Rights Clinic, Yale Law School, Yale Law School, October 2015, accessed November 2018, <u>https://law.yale.edu/system/files/documents/pdf/Clinics/fortifyrights.pdf</u>.

¹³ "III. DISCRIMINATION IN ARAKAN," Human Rights Watch, 2000, accessed November 26, 2018, <u>https://www.hrw.org/reports/2000/burma/burm005-02.htm</u>.

Restriction of movement is another challenge that the Rohingya face. According to article 13 of the Universal Declaration of Human Rights (UDHR), "everybody has the right to freedom of movement and residence within the borders of each state."¹⁴ Without citizenship, Rohingya are prevented from accessing the necessary permits to even move between townships, rendering them in many cases unable to seek healthcare, to pursue higher education, to visit family members, or to flee violent conflicts.¹⁵ They are also prevented from making religious pilgrimages, such as the Islamic Hajj, by these measures. Clearly, Myanmar is continuously committing a serious human rights violation. Before considering outright measures of violence and persecution, the situation should be taken seriously in the international realm as a repeat offense to the UDHR.

Measures of violence and responses:

The military in Myanmar began taking direct action in 1978 with Operation *Naga Min* ("Dragon King") to find those deemed illegal immigrants, specifically targeting the Rakhine State where the majority of Rohingya reside. More than 200,000 Rohingya crossed into Bangladesh, fleeing rape and murder from the military.¹⁶ The Bangladeshi government attempted to deter the influx of refugees by preventing food aid from accessing refugee camps. 12,000 refugees died of starvation as a result, but they continued to pour across the border in the face of relentless persecution.¹⁷ Thousands of Rohingya have fled to other

¹⁴ "Universal Declaration of Human Rights," United Nations, December 10, 1948, accessed November 26, 2018, <u>http://www.un.org/en/universal-declaration-human-rights/</u>.

¹⁵ Michael Caster, "The History of Statelessness," The Daily Star, September 09, 2017, accessed November 26, 2018, https://www.thedailystar.net/star-weekend/the-history-statelessness-1458850.

¹⁶ Persecution of Rohingya Muslims: Is Genocide Occurring in Myanmar's Rakhine State? A Legal Analysis, Allard K. Lowenstein International Human Rights Clinic, Yale Law School, Yale Law School, October 2015, accessed November 2018, https://law.yale.edu/system/files/documents/pdf/Clinics/fortifyrights.pdf.

¹⁷ Persecution of Rohingya Muslims: Is Genocide Occurring in Myanmar's Rakhine State? A Legal Analysis, Allard K. Lowenstein International Human Rights Clinic, Yale Law School, Yale Law School, October 2015, accessed November 2018, https://law.yale.edu/system/files/documents/pdf/Clinics/fortifyrights.pdf.

neighboring countries by boat, leaving them vulnerable to exploitation by human traffickers. General Ne Win was forced to repatriate these refugees, in the face of international backlash, but the poor treatment continued.¹⁸ Due to sovereignty, the concept that all states can behave how they wish within their own borders, there was not much more that the international community could have done.

Refugees have arrived in waves since 1978, as members of the international community step forward to condemn and discourage Myanmar and then become lax and disengage again. One of the strongest waves was in 2010 during the first general election. Because the Rohingya do not have voting rights, it can not be reasonably inferred that the results of the election directly caused the wave, but a 2011 Centre for Peace and Conflict Studies report noted many complaints in the Rakhine State about restricted access to polls and votes being counted unfairly.¹⁹ There is likely a correlation, therefore, between the political unrest and the raised number of Rohingya fleeing.

More interesting, however, was the reaction of neighboring states to the 2010 influx. Both the Bangladeshi and Thai governments made forceful attempts to block the incoming refugees. Bangladeshi security forces beat and expelled Rohingya refugees, and blocked humanitarian aid to 30,000 refugees in the Kutupalong camp.²⁰ Any who tried to leave in search of food were arrested, therefore residents were effectively imprisoning them to die of

¹⁸ Persecution of Rohingya Muslims: Is Genocide Occurring in Myanmar's Rakhine State? A Legal Analysis, Allard K. Lowenstein International Human Rights Clinic, Yale Law School, Yale Law School, October 2015, accessed November 2018, <u>https://law.yale.edu/system/files/documents/pdf/Clinics/fortifyrights.pdf</u>.

¹⁹ "2010 MYANMAR GENERAL ELECTIONS: Learning and Sharing for Future," Centre for Peace and Conflict Studies, April 2011, accessed November 26, 2018, http://www.centrepeaceconflictstudies.org/wp-content/uploads/2010-Myanmar-Observer-report.pdf.

²⁰ Persecution of Rohingya Muslims: Is Genocide Occurring in Myanmar's Rakhine State? A Legal Analysis, Allard K. Lowenstein International Human Rights Clinic, Yale Law School, Yale Law School, October 2015, accessed November 2018, <u>https://law.yale.edu/system/files/documents/pdf/Clinics/fortifyrights.pdf</u>.

starvation or sickness.²¹ This act could be inferred as an act of genocide, as it was clearly targeting one ethnic group, however as stateless refugees, the Rohingya were not able to advocate for reasonable treatment. Thailand responded to boats of asylum seekers, or persons who have left their home countries as a political refugee seeking protection in another, by towing them back to sea and leaving hundreds of people to die.²² This act was a clear violation of article 14(1) of the Universal Declaration of Human Rights, which states that "Everyone has the right to seek and to enjoy in other countries asylum from persecution."²³ Article 14(1) can be interpreted in this situation to mean that Thailand should have allowed the boats of Rohingya to arrive on shore, and given them due process to apply for asylum.

Unfortunately for the Rohingya, the UDHR is not yet considered customary international law under the International Court of Justice, as countries do not accept all of its provisions as law. This means that states are not required to comply with the measures laid out, as nobody can enact punishment solely based on the UDHR.²⁴ However, the right of asylum could be appealed through a subsidiary source like the writings of legal scholars or regional agreements, such as the American Convention on Human Rights and the African (Banjul) Charter on Human and Peoples' Rights, which recognize and respect article 14(1) of the UDHR.²⁵ There is a definite possibility that Thailand could hbe held accountable for their

²¹ Persecution of Rohingya Muslims: Is Genocide Occurring in Myanmar's Rakhine State? A Legal Analysis, Allard K. Lowenstein International Human Rights Clinic, Yale Law School, Yale Law School, October 2015, accessed November 2018, https://law.yale.edu/system/files/documents/pdf/Clinics/fortifyrights.pdf.

²² Persecution of Rohingya Muslims: Is Genocide Occurring in Myanmar's Rakhine State? A Legal Analysis, Allard K. Lowenstein International Human Rights Clinic, Yale Law School, Yale Law School, October 2015, accessed November 2018, <u>https://law.yale.edu/system/files/documents/pdf/Clinics/fortifyrights.pdf</u>.

²³ "Universal Declaration of Human Rights," United Nations, December 10, 1948, accessed November 26, 2018, http://www.un.org/en/universal-declaration-human-rights/.

²⁴ "International Human Rights Law: Non-Treaty Standards," Lawyers' Rights Watch Canada, July 28, 2013, accessed November 26, 2018, <u>https://www.lrwc.org/education/international-law/non-treaty-standards/</u>.

²⁵ "Asylum & the Rights of Refugees," International Justice Resource Center, March 28, 2018, , accessed November 26, 2018, <u>https://ijrcenter.org/refugee-law/</u>.

violation of article 14(1) in an international court if the Rohingya had a strong champion for their cause. Once again, statelessness prevents their access to basic human rights.

Statelessness, nationalism, and why Myanmar might be behaving this way:

Statelessness and nationalism are complex, interrelated subjects that often hinder groups such as the Rohingya. To begin to understand them, one must first see the state and the nation as two separate entities. A state is a society in which enforceable government authority can be distinguished from other forms of authority, within clear boundaries, and must have territory, citizens, a sovereign government, and an economy to function.²⁶ No state is required to recognize another state, as recognition is a sovereign right. States often choose not to recognize each other for various political reasons, but most often so that they can disregard that state's sovereign rights. A nation, however, is a society in which people identify on the basis of linguistic, ethnic, cultural or other commonalities.²⁷ Homogenous nation-states, like Japan, rarely exist, as nations have no defined boundaries. Multistate nations like Jews exist across a wide span of states, and singular multinational states like Myanmar can contain hundreds of nations. When multiple nations with differing values and interests are being controlled by one state government, the will always be the potential for conflict.

When Myanmar gained independence from Great Britain in 1948, they did not have a comprehensive plan for uniting and managing all of the nations that had previously been held together by British rule. As a result, they suffered several unsuccessful regimes before

²⁶ Juliet Kaarbo and James Lee Ray, *Global Politics*, 10th ed. (Cengage Learning, 2010), 97.

²⁷ Juliet Kaarbo and James Lee Ray, *Global Politics*, 10th ed. (Cengage Learning, 2010), 98.

ultimately being vulnerable to an authoritarian coup.²⁸ While it is impossible to assume the motivations of the military rulers, it is indisputable that they have deliberately stoked and acted on hostilities toward the Rohingya people with the justification that they are outsiders. Nationalism spread throughout East Asia in the 20th century, drawing heavily on ideas of race as a major uniting factor in a state.²⁹ It would have been a rational decision for the militant leaders of Myanmar to unite the nations with strongest ties to the land and the most commonalities under a new attitude of nationalism around their state. They may have intentionally chosen the Rohingya as an easy target due to their physical isolation in the Rakhine State and their largely muslim religious practices. While this tactic is strategically logical, and has been seen in many hegemonic leaders (leaders that pursue total power), such as Adolf Hitler, it ignores the important fact that protection against genocide has been at the heart of international humanitarian law since the end of World War II.

Ethnic Cleansing, Genocide, or Both?:

With Gilmour's 2017 declaration that the situation in Myanmar is a matter of ethnic cleansing, the UN has taken a clear stance, but it may not be strong enough for the extremity of the situation. There is no officially adopted definition for the concept of ethnic cleansing, or the actions that qualify, but UN bodies have made a few statements on the matter. In a 1993 report to the UN on humanitarian violations in the former state Yugoslavia, a UN Commission of Experts defined ethnic cleansing as "... *rendering an area ethnically*

²⁸ Persecution of Rohingya Muslims: Is Genocide Occurring in Myanmar's Rakhine State? A Legal Analysis, Allard K. Lowenstein International Human Rights Clinic, Yale Law School, Yale Law School, October 2015, accessed November 2018, <u>https://law.yale.edu/system/files/documents/pdf/Clinics/fortifyrights.pdf</u>.

²⁹ Rana Mitter, "Nationalism in East Asia, 1839–1945," Oxford Handbooks, June 17, 2017, accessed November 26,

^{2018,} http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199209194.001.0001/oxfordhb-97801992 09194-e-14.

*homogeneous by using force or intimidation to remove persons of given groups from the area.*³⁰ By this definition, Gilmour certainly did not misspeak when he declared the Rohingya Muslim Crisis a matter of ethnic cleansing. This claim is not to be taken lightly, the same report places ethnic cleansing under the Genocide Convention, which is an instrument of international law.³¹ While the Rohingya Muslim Crisis has not officially been declared a breach of the genocide convention by the UN Secretary General, it has strong potential to become one should Myanmar continue with persecution.

At the request of Fortify Rights, a human rights organization based in Southeast Asia, Yale Law School's Allard K. Lowenstein International Human Rights Clinic has conducted a legal analysis of the human rights situation in regard to the Rohingya in Myanmar's Rakhine State.³² The report has found a number of human rights violations that satisfy the following three legal requirements to constitute a situation of genocide as detailed by Yale Law: "1) whether the Rohingya are a protected group under the terms of the Genocide Convention; 2) whether any of the acts enumerated in the Convention's definition of genocide have been committed; and 3) whether these acts were performed with the intent to destroy the Rohingya group "in whole or in part."³³ In this case, despite the statelessness of the Rohingya, they are protected by the Genocide Convention, because they recognize ethnic groups. ³⁴

³¹ "The Convention on the Prevention and the Punishment of the Crime of Genocide, 1948-2018," 2018, accessed November 26, 2018, <u>http://www.un.org/en/genocideprevention/documents/Appeal-Ratification-Genocide-FactSheet_final.pdf</u>.

http://www.un.org/en/genocideprevention/documents/Appeal-Ratification-Genocide-FactSheet_final.pdf.

³⁰ "Interim Report of the Commission of Experts Established Pursuant to Security Council Resolution 780," January 26, 1993, accessed November 26, 2018, <u>https://undocs.org/S/25274</u>.

³² "Clinic Study Finds Evidence of Genocide in Myanmar," Yale Law School, October 29, 2015, accessed November 26, 2018, <u>https://law.vale.edu/vls-todav/news/clinic-study-finds-evidence-genocide-myanmar</u>.

³³ "Clinic Study Finds Evidence of Genocide in Myanmar," Yale Law School, October 29, 2015, accessed November 26, 2018, <u>https://law.yale.edu/yls-today/news/clinic-study-finds-evidence-genocide-myanmar</u>.

³⁴ "The Convention on the Prevention and the Punishment of the Crime of Genocide, 1948-2018," 2018, accessed November 26, 2018,

Conclusion and Recommendations:

Myanmar has engaged in genocide of the Rohingya people. Numerous human rights organizations have conducted comprehensive investigations that show a crisis situation, and that Lowenstein Clinic has collected all of these findings and organized them into a concise and convincing case. According to their report, "The acts committed against the Rohingya, individually and collectively, meet the criteria for finding acts enumerated in the Genocide Convention and have been perpetrated against a protected group."³⁵ While the intent of the authorities in Myanmar cannot be confirmed, there is reasonable evidence to suggest that they are acting with intent to destroy the Rohingya ethnicity. The UN needs to declare a situation of genocide, thereby allowing member states to interfere and end the dire conditions. The Rohingya people deserve access to their basic human rights, such as freedom of movement, education, medical care, and clean drinking water. In a clever suggestion for moving forward, the Lowenstein Clinic also advocates for the creation of a Human Rights Council commission of inquiry to complete an independent investigation, enabling the UN to easier declare a situation of genocide.³⁶ The commission would also be able to recommend appropriate measures for accountability to prevent Myanmar from continuing the human rights abuses. The UN should follow these recommendations, they are presented well and argued by a reputable law institute. Inaction from the international community on behalf of the Rohingya is no longer an option, they have continuously violated basic human rights in extreme and gross measures.

³⁵Persecution of Rohingya Muslims: Is Genocide Occurring in Myanmar's Rakhine State? A Legal Analysis, Allard K. Lowenstein International Human Rights Clinic, Yale Law School, Yale Law School, October 2015, accessed November 2018, <u>https://law.yale.edu/system/files/documents/pdf/Clinics/fortifyrights.pdf</u>.

³⁶ Persecution of Rohingya Muslims: Is Genocide Occurring in Myanmar's Rakhine State? A Legal Analysis, Allard K. Lowenstein International Human Rights Clinic, Yale Law School, Yale Law School, October 2015, accessed November 2018, https://law.yale.edu/system/files/documents/pdf/Clinics/fortifyrights.pdf.

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