

55 MUN VI

ICJ



STUDY GUIDE

TABLE OF CONTENTS

1. Introduction to the committee
2. Background of the Issue: The Rohingya Genocide
3. Timeline
4. Key Terms and Definitions
5. Myanmar coup d'état 2021
6. Gambia vs Myanmar ICJ Case
7. Provisional Measures Ordered by the ICJ
8. Myanmar's Compliance with these Measures
9. International Monitoring and Response
10. Myanmar's Defense Case
11. Stakeholder Analysis
12. Other ICJ Cases Regarding the Violation of the Genocide Convention
13. Relevant Laws
14. "Violations or Not?"
15. Key UN and International Actions
16. QARMA (Questions a Resolution Must Answer)
17. Bibliography



INTRODUCTION TO THE COMMITTEE:

The International Court of Justice, established in 1945, is an essential part of the United Nations which is also mentioned in the 14th chapter of the UN charter. The two primary responsibilities of the ICJ are: resolving conflicts and advising legal questions per the UN. One main contrast between the ICJ and the ICC is that the ICJ supervises state-based legal matters rather than individuals specifically, unlike the ICC. States are permitted to seek advice and rulings from the ICJ against other states as well, under the condition that those states have ratified the jurisdiction of the ICJ. The proceedings of the ICJ adhere to international law, treaties, and principles adopted by a majority of the nations. The fifteen judges that make up the International Court of Justice (ICJ) are chosen for nine-year terms by the UN General Assembly and Security Council.



BACKGROUND OF THE ISSUE: THE ROHINGYA GENOCIDE

Myanmar, also known as Burma, is a Southeast Asian country, bounded by the Bay of Bengal, Bangladesh, and India to the west, and China, Laos, and Thailand to the east. Myanmar's population is predominantly Buddhist (88–90%), with small minority groups whose members practice other faiths, including a small Muslim minority (4%). The population of the western coastal province of Rakhine State is predominantly Buddhist Rakhine (4% of Myanmar's total population, about 2 million people) while the Rohingya (2% of Myanmar's total population, about 1 million people) are predominantly Muslim.

Tensions between Buddhist and Muslim communities have frequently led to violence in Rakhine State, with nationalist Buddhists often targeting Rohingyas. The Rohingya people have been described as "amongst the world's



least wanted" and "one of the world's most persecuted minorities" by the UN. The Rohingya are deprived of the right to move freely as well as the right to receive a higher education. They have officially been denied Burmese citizenship since 1982 when the Burmese nationality law was enacted.

However, the persecution and marginalization of them predated the passage of this law (which only formalized the legal discrimination against them) which included the denial of their right to receive all essential services and means of support. They are not allowed to travel without official permission.

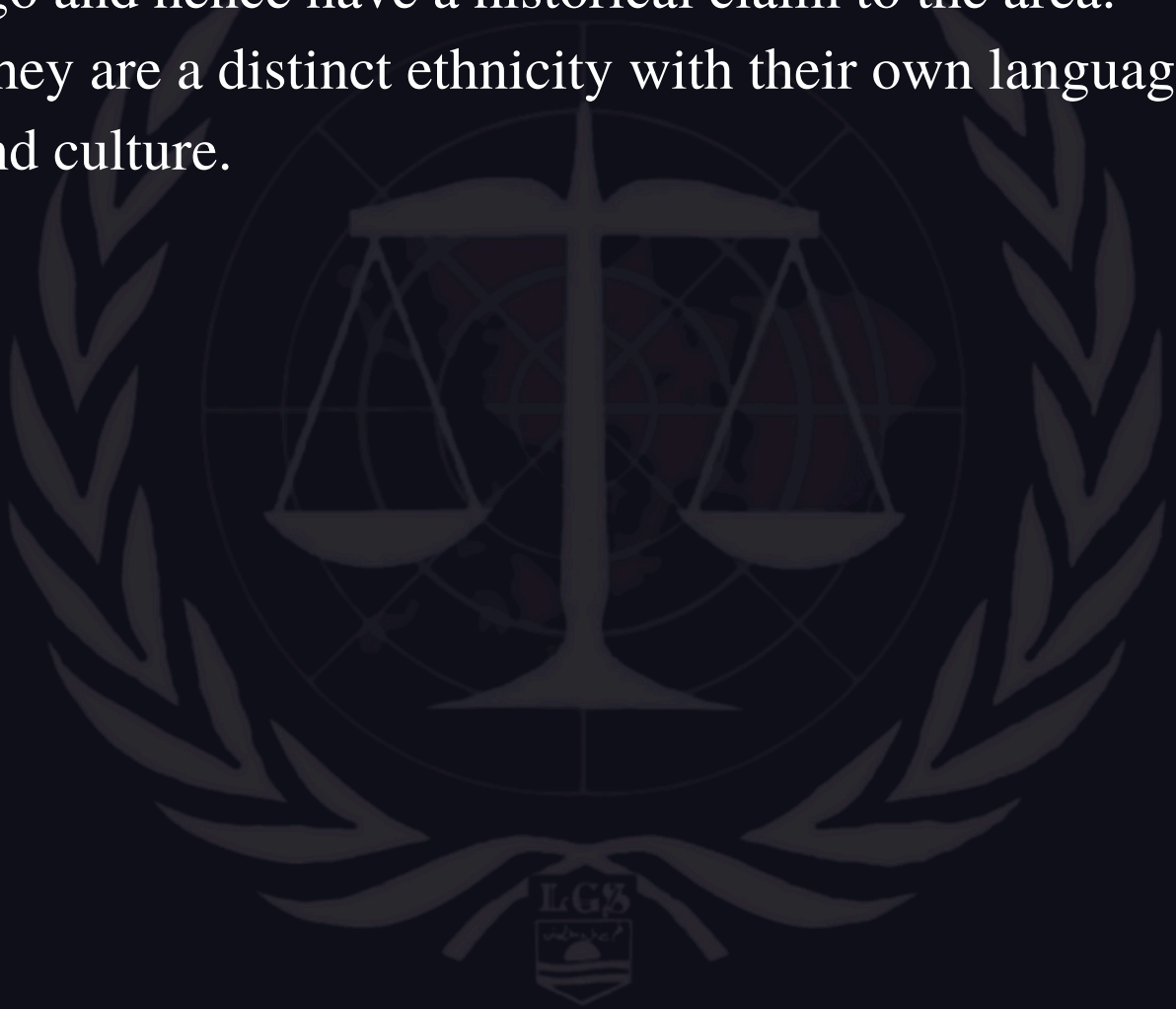
Previously, they were required to sign a commitment not to have more than two children; however, this law was not strictly enforced. They may be subjected to routine forced labor, during which a Rohingya man will typically have to give up one day a week to work on military or government projects and give up one night a week to perform sentry duty. The Rohingya have also lost much of their arable land to the military; land was later distributed to



Buddhist settlers who have migrated there from other regions of Myanmar.

The Rohingya claim to be the descendants of Arab traders, who settled in the region many generations ago and hence have a historical claim to the area.

They are a distinct ethnicity with their own language and culture.



TIMELINE:

1970: The persecution of the Rohingya people dates back to the 70s, where they were persecuted on a regular basis by the Buddhists and the government. Tensions between religious groups in Myanmar were also exploited by the military leaders.

1974: Myanmar's military-run government enacts a new constitution. It establishes one-party rule. Later this year, Parliament passes the Emergency Immigration Act. The law limits the rights of individuals seen as "foreigners" from Bangladesh, China, and India. Authorities begin confiscating Rohingyas' national registration cards.

1978: Myanmar authorities launch Operation Naga Min, or "Dragon King," to register and verify the status of citizens and people viewed as "foreigners." Soldiers begin assaulting and terrorizing the Rohingya

1982: The Myanmar government limits



Rohingya Citizenship with a Parliamentary law that bases citizenship on ethnicity, therefore excluding the Rohingya and other minorities.

1988: Pro-democracy protests flourish throughout Myanmar, including in Rakhine State. This leads to a brutal crackdown by the military across the country.

1989: The government requires everyone to apply for new identification cards (The Citizenship Scrutiny Cards), the Rohingya never receive these cards.

1991- The Violence Begins: The Burmese military launches Operation Pyi Thaya, meaning “Clean and Beautiful Nation,” during which soldiers commit widespread violence in the Northern Rakhine state, officially as a response to the military expansion of the Rohingya Solidarity Organisation (RSO). This results in 250000 Rohingya fleeing to Bangladesh

1991-1992: Rohingya began to return from Bangladesh in 1992, for which reason the



Myanmar Authorities created a special border force called NaSaKa for their exclusive persecution. Now forced labor, restrictions on marriage, land seizure, and physical abuse were part of the daily life of the Rakhine State.

Forced labor resulted in Rohingya men working without pay with many suffering injuries and dying as a result. The Rohingya were prevented from marrying and often had to bribe security forces to allow them to marry, and if caught, the husband would be thrown into jail. Furthermore, the Rohingya land was seized by the government to make way for the Buddhist communities. Rohingya women were harassed, beaten, made to stand in water up to their neck for hours, forced to stare straight at the sun while forces pelted them with mud.

1994: The government now begins to deny Rohingya children birth certifications.

1995: A white card, also known as the temporary registration card, is introduced for the



Rohingya as a new identification form that does not serve as proof of citizenship.

2008-2010: Myanmar's constitution was revised in 2008, paving way for democratic reforms all the while ignoring input from minority groups. In 2010, the military backed political party wins Myanmar's first general elections with general Thein Sein as president. The opposition party begins boycotting.

June and October 2012: Clashes between Buddhist and Muslim Communities in the Rakhine state now erupt in state supported violence against the Rohingya. 10000 Rohingya in Nazir Muslim Quarter were forced to leave their homes which were then leveled with bulldozers by the government. Many were segregated into Internment Camps, with families of six or more living in one makeshift barrack, forbidden to work and forced to rely on humanitarian assistance. Restriction of movement, restriction on healthcare, denial of right to education, stem from the aftermath of 2012.



2012: Buddhist monks and communities also establish the “969”, a Buddhist nationalist movement, which is later banned for encouraging violence against Muslims in Myanmar.

January 2014: The MaBaTha, the most prominent anti-muslim and anti-rohingya movement in Myanmar, is started by nationalist Buddhist monks.

April 2014: The national census is conducted for the first time in 30 years, and the Rohingya are excluded.

March 2015: The Rohingya white cards are now also invalidated. The Rohingya are required to obtain national verification cards. These cards incorrectly identify Rohingya as immigrants from Bangladesh, and are hence rejected by most Rohingya.

August 2015: The Race and Religion Laws, a series of 4 controversial laws, are passed after getting pushed by the MaBaTha, also known now as the Committee for the Protection of Nationality and Religion.



November 2015: Rohingya are denied the right to vote or run for office in this year's national elections.

October 2016: A small group of Rohingya men attack several Burmese police posts in Rakhine State, and nine officers are killed. In response, the Burmese military launches a "clearance operation," killing people, raping women, and destroying Rohingya villages throughout northern Rakhine. The violence forces roughly 86,000 Rohingya to flee to Bangladesh.

March 2017: The United Nations Human Rights Council establishes an Independent International Fact Finding Mission to investigate human rights abuses in Burma. The Burmese government refuses to cooperate.

August 2017: After the Rohingya rebel group, ARSA, attacks several military posts in Rakhine, Burma's military launches an attack on Rohingya. Soldiers destroyed several hundred Rohingya villages and more than 700,000 Rohingya



fled to Bangladesh. They massacred men and women, slaughtered children in front of their parents, and burned homes, schools, and mosques. More than 9,000 Rohingya are estimated to have been killed during the violence.

2017-2019: The United States imposes sanctions on military leaders and other officials overseeing military attacks throughout Rakhine. A global pro bono law firm, the Public International Law & Policy Group, conducts an investigation into the 2017 assault on the Rohingya with a grant from the US Department of State. It finds reasonable grounds to believe that crimes against humanity, genocide, and war crimes were committed against the Rohingya.

2019: The United Nations High Commissioner for Refugees estimates that more than a million Rohingya are living in refugee camps around Cox's Bazar in Bangladesh.

2019-2020: Gambia brings a case against Burma before the International Court of Justice,



asserting that Burma violated its obligations under the Genocide Convention. In January 2020, the Court issues a preliminary ruling, which includes ordering Burma to prevent future acts of genocide.

2021: Myanmar's military seizes power in a coup, further complicating international engagement and the situation in Rakhine State. The legal process at the ICJ continues despite the military government taking control.

2022: Myanmar's junta submits objections to the ICJ case, arguing that The Gambia lacked jurisdiction to file the suit.

2023: The ICJ rejects Myanmar's objections, ruling that The Gambia can proceed with the case, and hearings on the case's merits are expected to follow.

2024: Ongoing legal proceedings continue at the ICJ, with Myanmar defending itself against accusations of genocide. International pressure remains on Myanmar amid further documentation of human rights abuses against the Rohingya.



KEY TERMS AND DEFINITIONS:

1. Ethnic cleansing:

Ethnic cleansing refers to the killings of masses and suppression in general through force or intimidation against a specific religious community in an area.

2. Military Junta:

The authoritarian military regime seized power after the coup and controls Myanmar's state functions, including representation in international courts.

3. Arson:

A form of vandalism and malicious mischief that is a deliberate attempt to burn personal property such as houses, buildings, and cars.

4. Genocidal acts:

Genocidal acts are the ones where an attempt is made to destroy and specific national or religious group in deliberation. Genocidal acts include killing, serious injuries, and harsh living conditions that can cause the group's disintegration.



5. Infanticide:

Infanticide is the murder of children, specifically under the age of one year.

6. Military dictatorships:

Military dictatorship refers to the overthrow of a democratically elected government by the military. The military takes over control of the state and has the autonomy to make rules without any input from other bodies.

7. Provisional Measures:

Temporary legal orders were issued by the ICJ in January 2020, requiring Myanmar to protect the Rohingya from further harm during the course of the genocide trial.

8. Harakh al Yaqin (insurgent group)

Insurgent groups are small, lightly armed groups that indulge in violent armed rebellion, including the practice of guerilla warfare, against larger authorities. They avoid large scale battles and often blend into civilian populations and gradually expand territorial control.



The Harakh al Yaqin, now known as the Arakhan Rohingya Salvation Army is one of the most successful ethnic armed armies in Myanmar in the war against the military's junta State's Administration Council

9. Extrajudicial killings:

An extrajudicial killing is the deliberate murder of a person without being permitted by any lawful authority.

10. Rakhine Buddhists:

The Rakhine Buddhists are a religious community, originated from Theravada Buddhists. The community is a majority in Myanmar with 63.3% population being Rakhine. The Rakhine groups have been seen as the most prevalent in communal violence and genocide against the Rohingya. The groups have also shown active support against the military violence against the Muslim minority groups.



11. Genocidal intent: Genocidal Intent is the mens rea (mental intentional element) for the commitment of the crime of genocide. One of the main elements of the crime of genocide is the Intent to Destroy (and has to be proven to convict a state for genocide).

12. Civil Disobedience Movement (CDM):
The widespread civilian protests and strikes in Myanmar following the coup, opposing the military's rule.



MYANMAR COUP D'ÉTAT 2021

In 2021, Myanmar's military, led by General Min Aung Hlaing, orchestrated a coup that significantly impacted the genocide case brought by The Gambia against Myanmar at the International Court of Justice (ICJ). This coup ousted the civilian government of Aung San Suu Kyi, who had previously defended Myanmar's actions concerning the Rohingya crisis at the ICJ. After gaining power, the military junta assumed control of the country's operations, including its defense in the ICJ case. This shift further damaged Myanmar's global reputation, as the regime's brutal response to protests and ongoing violations of human rights weakened its credibility. Despite Myanmar's efforts to delay the case, the ICJ ruled in 2023 that The Gambia could continue pursuing genocide charges. Although the case is a critical step in seeking justice for the Rohingya, the coup has made it harder to hold Myanmar accountable, as the military government is unlikely to comply with ICJ rulings or cooperate with international legal obligations



Additionally, the coup put an end to the efforts to repatriate Rohingya refugees who had fled to Bangladesh. The military regime showed no real interest in enabling safe or voluntary returns, and the worsening security situation in Myanmar made it far too dangerous for refugees to go back. With the junta controlling Rakhine State, the ability of the international community to guarantee the safety of any returning refugees became severely restricted.



GAMBIA VS MYANMAR

ICJ CASE

In November 2019, Gambia, backed by the OIC (Organisation for Islamic Cooperation), filed a case against Myanmar, *The Gambia v. Myanmar*, before the International Court of Justice alleging that Myanmar was violating numerous provisions of the Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention). Gambia, which had ratified the Genocide Convention in 1978, brought the case under Article 9 of this convention, which allows for disputes between parties “relating to the responsibility of a State for genocide” and relevant acts to be submitted to the ICJ.

In December 2019, the court held hearings on Gambia’s request for provisional measures to protect the Rohingya remaining in Myanmar from genocide, which the court unanimously adopted in January 2020. In January 2021, Myanmar, then under the government led by Aung San Suu Kyi’s



National League for Democracy, filed preliminary objections challenging the court's jurisdiction and Gambia's standing to file the case.



PROVISIONAL MEASURES ORDERED BY THE ICJ (2020)

Temporary measures imposed on Myanmar

In 2020, the ICJ introduced the provisional temporary measures imposed on Myanmar in response to the Rohingya conflict. This encompasses three key measures: preventing genocide, preserving evidence, and reporting to the ICJ.

1. Preventing genocide: Under this measure, the ICJ ordered the Myanmar government to end all activities leading to genocide and the genocide itself. The ICJ ordered the government to keep a strict check on the military or police committing any acts of genocide and put them to cease in case of any. Apart from the police or the military, the prevention also included any groups or individuals under the military or the police from doing any acts of genocide.



2. Preserving evidence: The ICJ commanded the Myanmar government to prevent the loss or destruction of all sorts of evidence against the allegations of genocide which would be helpful in future proceedings.

3. Reporting to the ICJ: Under this measure, Myanmar is obliged to submit consistent reports to the ICJ, reporting the measures that it has taken against the genocide. The first deadline to submit the report was due exactly four months after the order along with subsequent reports, every six months.



MYANMAR'S COMPLIANCE WITH THESE MEASURES

The compliance of Myanmar has been deeply criticized and largely mixed due to the inadequate action taken by the government.

1. Myanmar did submit the reports that they were initially required to submit to the ICJ, reporting all the measures that the government took to abide by the measures ordered by the ICJ but since these reports were not made public, there has been skepticism about the measures described within these reports.

2. The ICJ emphasized greatly on the end of violence and genocide in their orders and measures. However, regardless of these efforts, the reports submitted by the Myanmar government show that the violence and human rights abuse against Rohingya still prevails.

3. The ICJ is persistent in monitoring the situation and the Myanmar government is still required to



submit regular reports on its compliance with the order by the ICJ.



INTERNATIONAL MONITORING AND RESPONSE

The military junta has imposed new movement restrictions and blocked aid to Rohingya camps and villages, exacerbating issues like water scarcity, food shortages, disease, and malnutrition. The UN has been actively involved in monitoring the situation and providing humanitarian aid to displaced Rohingya. They have also called for accountability and justice for the atrocities committed. The U.S. has imposed sanctions on several top Myanmar military officials and military units responsible for human rights violations against the Rohingya. These sanctions include asset freezes and travel bans. Both the EU and Canada have also imposed sanctions on Myanmar military officials. These measures include freezing assets and banning travel to European and Canadian territories. The UN has called for comprehensive sanctions, including arms embargoes, to pressure Myanmar into ending the violence and ensuring accountability.



MYANMAR'S DEFENSE CASE

In response to Gambia's request for provisional measures, Myanmar argued that the case was filed by Gambia as a proxy for the OIC, a regional body when the purpose of the ICJ is to preside over disputes between states.

Secondly, as required by Article 9 of the Convention, there was no direct dispute between Gambia and Myanmar over the interpretation, application or fulfillment of the Convention.

Thirdly, Myanmar brought forward its reservation to Article 8 of the Convention of Genocide "Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III." and argued that this prevents states from pursuing actions against Myanmar as the ICJ itself is a UN organ.



The final argument presented by Myanmar is that Gambia has not been affected by the allegations of breaches of the Genocide Convention and hence lacks the legal right to bring a claim.

Myanmar also dismissed the findings of the Fact-Finding Mission backed by the UN, labeling them as 'biased'. After the ICJ imposed its provisional measures that direct Myanmar to prevent genocidal acts in the state, they are to submit implementation reports, which, despite the call from the Rohingya to be made public, are only reviewed by the ICJ and parties to the case.

The UNSC is also deadlocked on the case, and cannot take action as China and Russia have threatened to veto any resolution calling for action against Myanmar.

In response to the genocidal allegations, Myanmar has always referred to its militaristic operations in the Rakhine as intended to tackle threats of extremism there. Furthermore, Myanmar's



Ministry of Foreign Affairs set its commission called the Independent Commission of Inquiry which finds that there is no genocide in the Rakhine state.

Myanmar's leader, Aung San Suu Kyi, in her defense statement to the court, describes the issue as an internal armed conflict that was triggered by attacks on government security posts by the Rohingya militant groups. She argued that there was no rape, mass murder, or arson committed against the Rohingya and the Rakhine State



STAKEHOLDER ANALYSIS

The Gambia-Myanmar Issue leads out to various nations and international organizations playing a critical role in shaping the case before the International Court of Justice. Understanding the role of the key actors involved in this case will assist in providing greater clarity and context regarding the issue. The most notable among them are as outlined below:

GAMBIA:

On November 11, 2019; Gambia filed a case against Myanmar for violating Article 9 of the 1948 Genocide Convention through its treatment of the Rohingya population, particularly during the military's crackdown in 2017, which led to widespread displacement, killings, and human rights abuses, making them the complaint of the case. Being a member of the Organisation of Islamic Corporation since 1974, Gambia has been acting as a spokesperson for justice and human rights.



This led to them requesting the court to hold hearings for ensuring provisional measures to protect the Rohingya remaining in Myanmar from genocide, which the court unanimously adopted in January 2020. Though challenged by Myanmar on the legality of filing the case, Gambia still stands its ground and justifies its legal standing to file the case against Myanmar at the International Court of Justice (ICJ) by invoking the principle of ‘erga omnes obligations’, which refers to obligations owed by states towards the international community as a whole. Their footing in the case was further strengthened when the decision for Gambia to lead the case on behalf of the OIC was formally backed during the 45th Session of the OIC Council of Foreign Ministers held in Dhaka, Bangladesh, in May 2018.

MYANMAR:

Despite being accused of committing genocide against the Rohingya population, Myanmar continues to deny any violations of human rights conventions.



The Myanmar military's welldocumented abuses against the Rohingya and other ethnic minority groups in Myanmar span decades, but until Gambia brought a case before the ICJ, the government's atrocities within Myanmar had been almost completely beyond the reach of justice. Hoever, Myanmar defends itself against accusations of genocide by claiming that its military actions were legitimate counterinsurgency efforts rather than genocidal campaigns. They declared that it was a measure to ensure the sovereignty, reputation and national security of the country. Myanmar defends itself by denying intent to destroy the Rohingya, framing its military actions as a counterterrorism effort against Arakan Rohingya Salvation Army (ARSA), not ethnic violence. At the ICJ, it argues its actions don't meet the legal definition of genocide and claims it can handle any crimes internally through its own justice system. On the contrary however, Myanmar's Buddhist majority has been a domestic stakeholder, with nationalist sentiments sometimes fueling anti-Rohingya sentiment



within the country leading to motivating the military to also carry out crackdowns such as those carried out in 2017 which lead to great international backlash. This resulted in many international organisations and countries imposing economic sanctions on Myanmar such as the European Union, United States of America, Canada and the United Kingdom. States like Australia have also imposed travel bans on them which reflects the disappointment of the international community.

ROHINGYA COMMUNITY:

The Rohingya community has been undergoing persecutions for many decades, regarding them as the victims in the case. Their systematic persecution began to intensify in 1962, when Myanmar's military junta took power. The Rohingya community seek recognition of the atrocities committed against them and redress through justice, security, and the right to return to their homeland in Myanmar. They demand full citizenship, legal rights, and protection from further violence and discrimination. Despite their marginalized status, the Rohingya have drawn



significant international attention, due to the advocacy by human rights groups, their case run in ICJ by Gambia and widespread media coverage. Their influence stems from their position as the primary victims, whose suffering has been the driving force behind the global call for justice. The case stems back to the 1982 Citizenship Law which stripped the Rohingya of citizenship, rendering them stateless and denying them basic rights like freedom of movement, education, and healthcare. Ever since, mass killings have been carried out, especially in 2012 and 2017 which has led to over 700,000 Rohingya being forced to flee Myanmar during the 2017 crackdown, seeking refuge in Bangladesh and other countries, leading to one of the largest refugee crises in recent history. Their case still remains unsolved in the ICJ.

BANGLADESH:

Bangladesh being members of the OIC not only supported Gambia's actions opposing the Myanmar government but also offered essential assistance to the displaced and fleeing Rohingya community.



Bangladesh hosted more than one million refugees who fled Myanmar during the military operations. Furthermore, it also advocates greatly for international intervention as a means of protecting and ensuring the security of the neglected community residing in Myanmar. This became a major reason why Bangladesh supported Gambia in filing the case petition when discussed in the OIC, as an initial step towards voluntary repatriation of the Rohingya and resolving the ongoing crisis. Only recently, Bangladesh in an attempt to resolving the issue agreed with Myanmar and the Bangladesh government has proposed a "pilot" or trial run, leaving the resolution of rights issues to Myanmar's military regime. Though contrasting to their previous policies, in early 2023, Bangladesh and Myanmar agreed to a pilot project to repatriate 1,176 Rohingya refugees to Rakhine State.

THE ORGANIZATION OF ISLAMIC COOPERATION:

The Organization of Islamic Cooperation (OIC) has played a key role in supporting Gambia's case



against Myanmar, reflecting its broader mandate to protect all of the Muslim communities worldwide. The OIC backing of Gambia in filing the ICJ case solidified the international community's legal and moral support for the Rohingya. During the 45th Session of the OIC Council of Foreign Ministers in 2018, held in Dhaka, the organisation formally endorsed Gambia's leadership in the case, marking a significant step in the fight for justice for the Rohingya. The OIC still continues to advocate for the protection of the Rohingya and press for international accountability measures against Myanmar, maintaining a central role in the case through legal, diplomatic, and humanitarian efforts. The case, however, still remains unsolved but the OIC has made their support to the Muslim community in Myanmar clear to the international community.

CHINA:

China has taken a strategic position in the Rohingya crisis, supporting Myanmar in international forums, including blocking more punitive actions at the United Nations Security Council.



China's economic and geopolitical interests in Myanmar, particularly through the Belt and Road Initiative, heavily influence its stance. In 2019, China brokered talks between Bangladesh and Myanmar aimed at facilitating the repatriation of Rohingya refugees, although little progress was made. China's involvement is driven by its desire to maintain regional stability and secure its investments in Myanmar, particularly in the Rakhine State, where key infrastructure projects are located. While China's support for Myanmar has drawn criticism, particularly from human rights groups, its influence remains a significant factor in shaping the international response to the crisis.

UNITED STATES AND EUROPEAN UNION (EU):

Both the United States and the European Union have been vocal in their condemnation of Myanmar's actions against the Rohingya, imposing sanctions and supporting humanitarian efforts. The EU, for instance, suspended all trade preferences for Myanmar under its "Everything But Arms" initiative,



directly impacting Myanmar's economy. Similarly, the United States has imposed targeted sanctions on senior Myanmar military officials and supported international investigations into human rights abuses. Both entities have also been key donors in supporting the humanitarian needs of the Rohingya refugees in Bangladesh, with the U.S. contributing over \$1 billion in aid since 2017. The U.S. and EU continue to push for accountability and justice through diplomatic pressure and economic sanctions, while also providing critical support to address the ongoing refugee crisis.



OTHER ICJ CASES REGARDING THE VIOLATION OF THE GENOCIDE CONVENTION

to be discussed (in order to draw parallels, discuss reasons for such cases and acts of violence as well as use past ICJ rulings and reasonings to apply to the current case).

BOSNIA AND HERZEGOVINA V. SERBIA AND MONTENEGRO:

Bosnia and Herzegovina filed this case in 1993 against Yugoslavia (after Yugoslavia's dissolution, its successor, Serbia, became the case addressee) alleging that Serbia had attempted to exterminate their Bosnian Muslim population.

The ICJ, in 2007, decided that there was no violation of Article 2 of the Convention on the grounds that the applicant state (Bosnia and Herzegovina) could not prove the “special intent to destroy” (*dolus specialis*) exclusive to the crime of genocide except for the massacre conducted in Srebrenica.



South Africa v Israel (ongoing) :

South Africa alleged that Israel had committed and was committing genocide against Palestinians in the Gaza Strip, contravening the Genocide Convention, including what South Africa described as Israel's 75-year apartheid, 56-year occupation, and 16-year blockade of the Strip. South Africa requested that the ICJ indicate provisional measures of protection, including the immediate suspension of Israel's operations.

South Africa requested the ICJ to order Israel's complete halt in its operations in Gaza, which was not upheld. Instead, the court instructed Israel to instruct its military to refrain from committing acts that could be considered genocidal, prevent the incitement to genocide and provide humanitarian assistance to the people in Gaza. It was also ruled that the court had a legal right to proceed with the genocide case.

NICARAGUA V. GERMANY (ONGOING):



On 1 March 2024, Nicaragua filed an application against Germany before the ICJ for its alleged violations of the Genocide Convention, the Geneva Conventions, “intransgressible principles of the International Humanitarian Law”, and other general international law relevant to the ongoing developments in Palestine, in particular, Gaza.



RELEVANT LAWS

1. Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention): defines and criminalizes acts of genocide.

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

- i. Killing members of the group;
- ii. Causing serious bodily or mental harm to members of the group;
- iii. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- iv. Imposing measures intended to prevent births within the group;
- v. Forcibly transferring children of the group to another group."

b. Article III: "The following acts shall be punishable:



- i. Genocide;
- ii. Conspiracy to commit genocide;
- iii. Direct and public incitement to commit genocide;
- iv. Attempt to commit genocide;
- v. Complicity in genocide."

2. International Covenant on Civil and Political Rights (ICCPR): protects fundamental civil and political rights.

- a. Article 6 (Right to Life): "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."
- b. Article 7 (Prohibition of Torture): "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."
- c. Article 26 (Equality Before the Law): "All persons are equal before the law and are entitled without any discrimination to the



equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

3. International Covenant on Economic, Social and Cultural Rights (ICESCR): ensures the protection of economic, social, and cultural rights.

a. Article 11 (Right to an Adequate Standard of Living): “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”



b. Article 12 (Right to Health): “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”

4. Convention on the Elimination of All Forms of Racial Discrimination (CERD): aims to eliminate racial discrimination and promote understanding among all races.

a. Article 2 (Condemnation of Racial Discrimination): "States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

i. (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation."



b. Article 5 (equality before the law): “In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law...”

5. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT):

a. Article 1 (definition of torture): “For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him



or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

b. Article 16 (prevention of other acts of cruel, inhuman, or degrading treatment or punishment): “Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.”



“VIOLATIONS OR NOT?”

1. Acts committed with intent to destroy, in whole or in part, the Rohingya ethnic group, including killings, causing serious bodily or mental harm, and deliberately inflicting conditions of life calculated to bring about their physical destruction.

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

- i. (a) Killing members of the group;
- ii. (b) Causing serious bodily or mental harm to members of the group;
- iii. (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- iv. (d) Imposing measures intended to prevent births within the group;
- v. (e) Forcibly transferring children of the group to another group."



b. Article III: "The following acts shall be punishable: i. (a) Genocide; ii. (b) Conspiracy to commit genocide; iii. (c) Direct and public incitement to commit genocide; iv. (d) Attempt to commit genocide; v. (e) Complicity in genocide."

2. International Humanitarian Law (IHL)

a. Violation: War crimes and crimes against humanity, including murder, extermination, enslavement, deportation, imprisonment, torture, rape, and other inhumane acts.

b. Key Components:

i. Geneva Conventions (1949) and their Additional Protocols

ii. Customary International Humanitarian Law

3. International Covenant on Civil and Political Rights (ICCPR)

a. Violation: Right to life (Article 6), prohibition of torture and cruel, inhuman or degrading treatment (Article 7), and protection against discrimination (Article 26).



4. International Covenant on Economic, Social and Cultural Rights (ICESCR)

a. Violation: Right to an adequate standard of living (Article 11) and right to health (Article 12).

i. Article 11 (Right to an Adequate Standard of Living): “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”

ii. Article 12 (Right to Health): “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.



5. Convention on the Elimination of All Forms of Racial Discrimination (CERD)

a. Violation: Acts of racial discrimination and failure to guarantee equality before the law (Articles 2 and 5).

i. Article 2 (Condemnation of Racial Discrimination): "States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

1. Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation."



6. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

a. Violation: Discrimination against Rohingya women, including gender-based violence and denial of basic human rights and fundamental freedoms (Articles 2 and 3).

i. Article 2: “States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.”

ii. Article 3: “States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”



7. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

a. Violation: Acts of torture and other cruel, inhuman, or degrading treatment or punishment (Articles 1 and 16).

i. Article 1: “For the purposes of this Convention, the term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person.”

ii. Article 16: “Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1.”

8. Rome Statute of the International Criminal Court (ICC)

a. Violation: Genocide (Article 6), crimes against humanity (Article 7), and war crimes (Article 8).



- i. Article 6 (Genocide): “For the purpose of this Statute, ‘genocide’ means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.”
- ii. Article 7 (Crimes Against Humanity): “For the purpose of this Statute, ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”
- iii. Article 8 (War Crimes): “The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.”



KEY UN & INTERNATIONAL ACTIONS:

Actions taken by the International Court of Justice (ICJ): In January 2020, two months after the case filed by Gambia, the ICJ commanded the Myanmar government to take measures to protect the Rohingya from genocide.

Resolutions by the United Nations Human Rights Council:

1. Resolution A/HRC/53/L.30/Rev.1 (2023): The resolution addresses the grave concern of serious human rights violations against the Muslims in the Rohingya specifically, along with other minorities. The resolution calls for immediate action which includes transparent investigation against abuses in Myanmar, reconciliation with the will of the Muslims and other ethnic minorities and emphasizes on the ceasefire of violence and the conflict in general.



2. Resolution A/HRC/RES/46/21 (2021): This resolution condemns the violence of the military coups against the civilians including the Rohingya community from Rakhine state. The resolution emphasizes the restoration of democracy in Myanmar as well as the protection of human rights.

3. Resolution A/HRC/RES/39/2 (2018): The resolution strictly condemns the violation of any sort of humanitarian rights violations and mainly focuses on urging the Myanmar government to cooperate with the UN and its mandate holders and calls for the Myanmar government to ensure accountability against the abuse and genocide.



QARMA

1. What is the historical background of the Rohingya people, how does it link to the Rakhine state and what protections should be provided to safeguard their historical claim to reside there?
2. How can Myanmar's government resolve the issues between the Buddhist and Muslim communities, provide them their due rights and combat militant groups without resolving violent measures that breach relevant international law and conventions and how can other countries assist them in achieving this?
3. How valid are the genocidal claims made by Gambia against Myanmar, and how valid is the evidence provided by them for their allegations?
4. What accountability measures should be placed for the militant groups operating in and around Myanmar?
5. What role can countries and regional organizations like the ASEAN play in resolving the issue?



6. How should international legal bodies ensure Myanmar's compliance with provisional measures and ICJ rulings, considering the current political control by the military junta?

7. What diplomatic and economic sanctions can be legally justified under international law to pressure Myanmar into complying with international human rights standards without exacerbating the humanitarian crisis in the country?

8. What reparations, if any, should be mandated for the Rohingya population if Myanmar is found guilty of genocide, and how should such reparations be implemented given the ongoing internal conflict?

9. How can the ICJ address the jurisdictional and admissibility challenges posed by Myanmar's non-recognition of certain international treaties and conventions, while ensuring the protection of vulnerable populations like the Rohingya?



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