

## Possibility of Establishing a Fact-Finding Commission for the Rohingya Crisis<sup>1</sup>

*“Then you will know the truth, and the truth will set you free”*

John 8:32

*“I discovered at a very early age that if I talk long enough, I can make anything right or wrong. So either I’m God or truth is relative”*

Jeff Winger, “Community: Pilot Episode” (NBC, 2009)

### **I. Introduction**

1. While the recent attacks against the Rohingya (“**Rohingya Crisis**”) were most certainly conducted by the Myanmar Army, the Government (“**Government**”) – under the leadership of Aung San Suu Kyi (“**Aung**”) – has dismissed the Rohingya as Bengali illegals, deemed the crisis as self-inflicted, and characterised media coverage as an “iceberg of misinformation”.<sup>2</sup>
2. When the truth of events is called into question before the more difficult question of liability is engaged, it becomes even more pressing for a comprehensive account of the conflict to be produced. This is not only for loftier reconciliation efforts but to achieve consensus on themes like dignity and the need to eschew violence. Thus, these authors propose the establishment of a fact-finding commission that would produce a historical record addressing:
  - a. Whether the Rohingya are of Burmese descent; and
  - b. The key actors and atrocities behind the Rohingya Crisis.
3. This Report will examine the following in sequence:

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<sup>1</sup> Shriram Jayakumar & Gary Leow, 4th-Year LLB Students, Singapore Management University’s School of Law. The writers would like to thank Professor Mark Findlay for his invaluable guidance on this topic.

<sup>2</sup> Michael Safi, “Aung San Suu Kyi says ‘terrorists’ are misinforming world about Myanmar violence” *The Guardian* (6 September 2017) <<https://www.theguardian.com/world/2017/sep/06/aung-san-suu-kyi-blames-terrorists-for-misinformation-about-myanmar-violence>> (accessed 9 November 2017).

- a. The existing state of counter-narratives that has sprung in resistance to claims of human rights abuses and the impetus for a fact-finding commission (Part II);
- b. The historical record generated by such a commission – accommodating the search for truth in empirical, narrative, and restorative forms (Part III); and
- c. The manner in which such a commission could be created (Part IV).

## II. A Culture of Counter-Narratives and the Need for a Fact-Finding Commission

4. The behaviour of the Government warrants the establishment of this Commission. In particular, the Government has relied on counter-narratives to deny wrongdoing against the Rohingya and to paint them as insurgents and/or illegals.<sup>3</sup> Despite the Government's insistent denouncement of international reports on the Rohingya Crisis,<sup>4</sup> investigative journalism undertaken on the ground revealed a starkly different narrative through the documentation of systemic rape, murder, and forcible transfer of the Rohingya from Rakhine.<sup>5</sup>

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<sup>3</sup> The use of counter-narratives and denials has consistently been the Government's shield against allegations of human rights violations throughout history; Niki Esse de Lang, "The Establishment and Development of the Myanmar National Human Rights Commission and its Conformity with International Standards" (2012) 1 A.P.J.H.R.L. 1 at 9. This strategy is not unique to the Rohingya Crisis – Myanmar had similarly claimed that reports of atrocities committed against its citizens in Shan were the result of a "systematic disinformation campaign"; *Memorandum on the Situation of Human Rights in the Union of Myanmar (Permanent Mission of Myanmar)*, U.N. Doc. A/62/PV.79 (2007) at [33].

<sup>4</sup> Jonah Fisher, "Myanmar's Rohingya: Truth, Lies and Aung San Suu Kyi", *BBC News* (27 January 2017) <<http://www.bbc.com/news/world-asia-38756601>> (accessed 9 November 2017).

<sup>5</sup> See e.g. "Burma: Security Forces Raped Rohingya Women, Girls", *Human Rights Watch* (06 February 2017) <<https://www.hrw.org/news/2017/02/06/burma-security-forces-raped-rohingya-women-girls>> (accessed 23 October 2017). Satellite imagery support the agencies' findings that Rohingya villages have been set ablaze and destroyed; "Satellite Images Show Massive Fire Destruction", *Human Rights Watch* (2 September 2017) <<https://www.hrw.org/news/2017/09/02/burma-satellite-images-show-massive-fire-destruction>> (accessed 9 November 2017). *Al Jazeera*, in particular, has employed consistent interviews of Rohingya to reveal the heart-wrenching plights of the Rohingya; See *Al Jazeera's* coverage of the Rohingya situation at <http://www.aljazeera.com/topics/subjects/rohingya.html>. Further, the evidence gathered by Amnesty International shows that Myanmar has committed crimes against humanity; "Crimes Against Humanity Terrorize and Drive Rohingya Out", *Amnesty International* (18 October 2017) <<https://www.amnesty.org/en/latest/news/2017/10/myanmar-new-evidence-of-systematic-campaign-to-terrorize-and-drive-rohingya-out/>> (accessed 9 November 2017).

5. The Government's employment of counter-narratives and vilification of international journalism<sup>6</sup> appeal to the Buddhist extremists in Myanmar.<sup>7</sup> The deflection appeases Myanmar's citizens who perceive the Rohingya's presence as illegitimate.<sup>8</sup> Similarly, Aung has also pinned the genesis of the 2017 atrocities on Rohingya extremists to justify the mobilisation of the military in Rakhine.<sup>9</sup> This response also detracted from how persecution may have been motivated by the Government's economic desire of selling the Rohingya's arable land to multinational agricultural companies.<sup>10</sup> Additionally, the counter-narratives implied that other issues needed to be resolved before any action could be taken on the Crisis, akin to the Trump administration's response to the 2017 Vegas shooting.<sup>11</sup>

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<sup>6</sup> "Aung San Suu Kyi Denies Ethnic Cleansing of Rohingya Muslims in Myanmar", *The Guardian* (5 April 2017) < <https://www.theguardian.com/world/2017/apr/05/myanmar-aung-san-suu-kyi-ethnic-cleansing>> (accessed 9 November 2017).

<sup>7</sup> Katie Hunt, "How Myanmar's Buddhists actually feel about the Rohingya", *CNN* (20 September 2017) <<http://edition.cnn.com/2017/09/19/asia/myanmar-yangon-rohingya-buddhists/index.html>> (accessed 9 November 2017).

<sup>8</sup> Fergal Keane, "Rohingya Crisis: Meeting Myanmar's Hardline Buddhist Monks", *BBC* (14 September 2017) <<http://www.bbc.com/news/world-asia-41263073>> (accessed 9 November 2017).

<sup>9</sup> Rebecca Wright *et al*, "Aung San Suu Kyi Breaks Silence on Rohingya, Sparks Storm of Criticism", *CNN* (19 September 2017) <<http://edition.cnn.com/2017/09/18/asia/aung-san-suu-kyi-speech-rohingya/index.html>> (accessed 9 November 2017).

<sup>10</sup> Giuseppe Forino *et al*, "The Oil Economics and Land-Grab Politics Behind Myanmar's Rohingya Refugee Crisis" *Quartz* (12 September 2017) <<https://qz.com/1074906/rohingya-the-oil-economics-and-land-grab-politics-behind-myanmars-refugee-crisis/>> (accessed 9 November 2017). In particular, land has been wrestled away from Rohingya smallholders and designated for corporate rural development for which 3.1 million acres of Rohingya-held land has been allocated; Saskia Sassen, "Is Rohingya persecution caused by business interests rather than religion?" *The Guardian* (4 January 2017) < <https://www.theguardian.com/global-development-professionals-network/2017/jan/04/is-rohingya-persecution-caused-by-business-interests-rather-than-religion>> (accessed 9 November 2017).

<sup>11</sup> Henry Giroux, "The Scourge of Illiteracy in Authoritarian Times" (2017) 9(1) *Contemporary Readings in Law & Social Justice* 14 at 16. The political forces concentrated the debate concerning the October 2017 Vegas shooting on the Second Amendment; see e.g. Justin Bank, "Right and Left React to the Las Vegas Shooting and the Gun Control Debate", *The New York Times* (3 October 2017) <<https://www.nytimes.com/2017/10/03/us/politics/right-and-left-las-vegas-shooting-gun-control-debate.html>> (accessed 9 November 2017); This was despite the fact that the shooting was underscored by other salient issues that needed to be discussed; see analysis of the Las Vegas shooting from a sociological perspective in Tristian Bridges & Tara Leigh Tober, "The Sociological Explanation for why Men in America Turn to Gun Violence", *Quartz* (7 October 2017) <<https://qz.com/1095247/the-sociological-explanation-for-why-men-in-america-turn-to-gun-violence/>> (accessed 9 November 2017). Evidently, what the political forces in the United States and Myanmar have in common, is their use of counter-narratives to create an atmosphere that obstruct change and proper discussions.

6. Given the deflections and counter-narratives raised by Aung and the Government, a fact-finding commission is critical to break the regime's shield by unpacking the obfuscations created by the Government.<sup>12</sup> Particularly, a commission is needed to devise a historical record that establishes the truth behind two key concerns underpinning the crisis:
  - a. Whether the Rohingya Muslims are historically of Burmese descent, or whether they had illegally emigrated from present-day Bangladesh; and
  - b. The precise measures taken by the Myanmar military against the Rohingya to date, along with the actions of the alleged Rohingya counterinsurgents.
  
7. However, as will be explored below, a historical record that seeks to forge a pathway to reconciliation must not only focus on such empirical conceptions of truth but also the stories and experiences of all individuals affected by the Crisis.

### **III. Truth in a Historical Record – What Can We Hope For?**

8. Before we turn to examining the nature of truth that a historical record would unveil, it is important to examine what are reasonable expectations from such a record. The lofty aspiration of reconciliation is not to be shied away from – even if it is deeply begrudged, there would be a great improvement to the current climate if the Rakhine majority maintained their views on the Rohingya but expressed regret over the atrocities.

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<sup>12</sup> Past recommendations for a fact-finding commission was made by the previous Special Rapporteur for Human Rights in Myanmar, though it was largely ignored since 2011 before the idea is recently rekindled in late 2017; Audrey Tan, "Myanmar's Transitional Justice: Addressing a Country's Past in a Time of Change" (2012) 85 South California Law Review 1643 at 1653. The International Human Rights Clinic situated in Harvard Law School had pushed for such a commission, arguing that the situation Rakhine has exceeded the atrocities experienced in Darfur and Yugoslavia in International Human Rights Clinic, *Crimes in Burma* (Harvard Law School, 2009).

9. But even if reconciliation is not plausible in the near future, a historical record must at least generate a tolerance of dissent. Admittedly, restoration in its truest form requires a meeting of minds when it comes to responsibility and conciliatory disposition. However, where the interpretation of facts and events are multi-layered, it might be more conducive to seek a coexistence of narratives rather than a hierarchy of one over the other.<sup>13</sup> A culture of tolerance would require agreement between Aung-loyalists and Rohingya members – not on fact *per se*, but on virtues of dignity, respect, and a fundamental agreement on prohibiting violence.<sup>14</sup>
10. With a focus on tolerance and nurturing a pathway to reconciliation, the truth that a historical record reveals must be analysed, first, empirically, to deprive the Government of any justifications for its inactivity and stance against the Rohingya. Following which, narrative and restorative conceptions of the truth can be explored. The healing ability of understanding alternative stories would not only reveal the gluttony of violence that has taken place to date, but would hopefully lead the charge for the normative acceptance of dignity, respect, and rejection of violence.

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<sup>13</sup> For instance, the Balfour declaration spoke of the civil and religious rights of non-Jewish communities in Palestine but not of their political rights – a conscious decision to stress the importance of co-existence without determining the thornier issue of which community had the greater claim to self-determination; Church of Scotland, “Embracing Peace and Working for Justice: A Joint Report of the World Mission Council and Church and Society Council on the Centenary of the Balfour Declaration: May 2017” <[http://www.churchofscotland.org.uk/\\_\\_data/assets/pdf\\_file/0004/39577/A\\_Joint\\_Report\\_on\\_the\\_Centenary\\_of\\_The\\_Balfour\\_Declaration.pdf](http://www.churchofscotland.org.uk/__data/assets/pdf_file/0004/39577/A_Joint_Report_on_the_Centenary_of_The_Balfour_Declaration.pdf)> (accessed 9 November 2017), 9–10.

<sup>14</sup> Indeed, discussions on this type of dissent should have happened a long time ago in the Rakhine region – the failure of which has led to the present gluttony of violence; Audrey Tan, *supra* n 11, at 1653.

A. *The Historical Record and an Empirical Conception of Truth*

11. The national identity of the Rohingya victims can finally be legitimised if these false narratives are shown to be untrue<sup>15</sup> and if an accurate label can be given to the conflict.<sup>16</sup>
12. However, the empirical or forensic truth is only the starting point for reconciliation. Counter-narratives are not silenced merely by forensically-derived facts. Past experiences with historical records have shown that after being exposed to negative information on abuses conducted by their governments, pro-incumbent individuals simply updated their beliefs to reflect even more negative attitudes since more information meant more shared knowledge within the oppressor community.<sup>17</sup> This effect can be explicated by two features of any counter-voice behind a successful narrative: the popular support it draws and the influence it wields in propagating its narrative.<sup>18</sup>
13. On popular support, the counter-voice of Aung is especially strong given she has aligned herself with the military, whose actions against the Rohingya are largely supported by the majority Buddhist population.<sup>19</sup> Further, Aung herself enjoys

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<sup>15</sup> In East Timor, the findings arising from the Commission for Reception, Truth and Reconciliation managed to forge a new national narrative in place of a skewed historical record promulgated under foreign rule.

<sup>16</sup> Tangential to the ability to prove false any allegations that have been levelled by military loyalists is the ability to provide a label to the Rohingya Crisis. Once a situation is properly labelled as a gross violation of human rights, positive obligations will be imposed upon the international community to provide assistance; Alireza Arashpour & Alireza Roustaei, “The Investigation of Committed Crimes against Myanmar's Rohingya and the Invoke Necessity to the Theory of Responsibility to Protect” (2016) 6 *Juridical Tribune* 384. Though top UN human rights official Zeid Ra’ad Al Hussein has labelled the Rohingya Crisis as “textbook ethnic cleansing”, the Government of Myanmar has raised the shield of “fake news”, or claimed that they are the victims of international media’s skewed reporting; see Michael Safi, “Myanmar Treatment of Rohingya Looks Like ‘Textbook Ethnic Cleansing’, says UN”, *The Guardian* (11 September 2017) <<https://www.theguardian.com/world/2017/sep/11/myanmars-treatment-of-rohingya-textbook-example-of-ethnic-cleansing>> (accessed 9 November 2017).

<sup>17</sup> Jacob Ausderan, “How Naming and Shaming Affects Human Rights Perceptions in the Shamed Country” (2014) 51 *J. Peace Res.* 81 at 81.

<sup>18</sup> Fergal Keane, *supra* n 7.

<sup>19</sup> In spite of the onslaught of attacks against the Rohingya, thousands have taken part in marches to express their approval of the military’s conduct; Florence Looi, “Despite Rohingya Crisis, thousands march in support of

popularity amongst the largest ethnic groups in Myanmar as her party, the National League for Democracy, still invokes admiration for relieving the state of decades of violent oppression as well as generating an economic and social revival.<sup>20</sup> On the influence of Aung in controlling the narrative, the need for a historical record to account for the individualised experiences of Rohingya victims can be seen in how the Aung government has been re-contextualising the ongoing violence. Specifically, attacks by Rohingya extremists on police posts have been marshalled by the Aung government as showing why their confrontation of the ethnic group is meant to be a counterterrorism effort.<sup>21</sup>

14. Accordingly, something more than an empirical conception of truth is required to pressurise this counter voice, which draws so much support, to change its tact. Here is where narrative and restorative conceptions of truth can emerge in an historical record – to draw on the personal stories and experiences of victims and perpetrators alike to create united, restored memories.<sup>22</sup>

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military” *Al-Jazeera* (30 October 2017) <<http://www.aljazeera.com/news/2017/10/thousands-rohingya-march-support-army-crisis-171029163411806.html>> (accessed 9 November 2017).

<sup>20</sup> Philip Heijmans, “Aung San Suu Kyi support strong despite denunciations” *Al-Jazeera* (12 September 2017) <<http://www.aljazeera.com/news/2017/09/aung-san-suu-kyi-support-strong-denunciations-170910183725884.html>> (accessed 9 November 2017). Unsurprisingly, hard-line Buddhist monks who can mobilise mass popular support have endorsed Aung’s counterterrorism narrative; Fergal Keane, *supra* n 7.

<sup>21</sup> Oliver Holmes, “Aung San Suu Kyi’s office accuses aid workers of helping ‘terrorists’ in Myanmar” *The Guardian* (28 August 2017) <<https://www.theguardian.com/world/2017/aug/28/aung-sang-suu-kyis-office-accuses-aid-workers-of-helping-terrorists-in-myanmar>> (accessed 9 November 2017). This is why historical records that have taken an overly empirical focus to the truth have been subject to the curse of recontextualization, where highlighting atrocities committed by both parties to a conflict erroneously but invariably suggests equal blameworthiness in the minds of each party. Rosalind Shaw, *Special Report: Rethinking Truth and Reconciliation Commissions: Lessons from Sierra Leone* (United States Institute of Peace, 2005), at p. 3.

<sup>22</sup> Robert I. Rotberg & Denis Thompson (eds), *Truth v Justice: The Morality of Truth Commissions* (Princeton University Press, 2000), at pp. 151–153.

**B. *The Historical Record and a Narrative and Restorative Conception of Truth***

15. Narrative truth allows parties to the conflict to confront the effect of the conflict on the villagers themselves. Raw video footage has revealed how strings of villages were set ablaze in late August, while survivors noted that locals armed with swords, spears, sticks and guns had arrived in their villages just after prayers.<sup>23</sup> Accounting for these experiences in an individualised manner rather than approaching the issue of violence or contempt through statistical means boosts the restorative potential of the process by allowing for an open and free presentation of witness stories.<sup>24</sup>
16. Another normative conception of truth that a historical record should account for is that of restorative truth, which is enabled through public acknowledgment and common memories of the events.<sup>25</sup> Here, the focus is on getting sympathisers of the military as well as those of the Rohingya to acknowledge the fact that atrocities have been committed by the military without prejudice to the legality of such actions.<sup>26</sup> The need for a restorative conception of truth is evident from the unpalatable negotiations between the Aung government and Bangladesh concerning the repatriation of Rohingya

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<sup>23</sup> Michael Safi, *supra* n 1. Further, the fact that the Myanmar military has been laying landmines across its border with Bangladesh to prevent fleeing Rohingya individuals from turning back must have emotionally rattled the refugees who may have interpreted such extreme measures of *refoulement* as a full-throated belittlement of their very existence; Annie Gowen, “Rohingya refugees crossing into Bangladesh face another threat: Land mines” *The Washington Post* (13 September 2017) <[https://www.washingtonpost.com/world/rohingya-refugees-crossing-into-bangladesh-face-another-threat-land-mines/2017/09/13/c0f80239-b9d9-40d6-9179-b9dfa8b0621d\\_story.html?utm\\_term=.fbfb9993bf14](https://www.washingtonpost.com/world/rohingya-refugees-crossing-into-bangladesh-face-another-threat-land-mines/2017/09/13/c0f80239-b9d9-40d6-9179-b9dfa8b0621d_story.html?utm_term=.fbfb9993bf14)> (accessed 9 November 2017).

<sup>24</sup> Mark Findlay *et al*, *International and Comparative Criminal Justice: A Critical Introduction* (Routledge, 2013), pp. 110–111. Such accounts tend to be richer and more cathartic as it enables a diverse range of attitudes, opinions, and interpretations to coalesce and produce a truthful account.

<sup>25</sup> Robert I. Rotberg & Denis Thompson, *supra* n 21, at pp. 151–153.

<sup>26</sup> Since the orthodox pursuit of veracity in long-standing socio-political debates relies heavily on social memory, it makes it difficult to produce a single impartial historical record for a definitive national memory, and to command agreement and heal social divisions; see Patrick Ball & Audrey Chapman, “The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa, and Guatemala” 23 *Hum. Rts. Q.* 1. However, where facts become less threatening for a guilty party by being considered distinctly from the question of legality, there is an increased willingness to admit to certain conduct which can establish that the alleged person’s suffering is not a myth but a reality that deserves to be acknowledged; *Truth and Reconciliation Commission of South Africa Report: Volume 1* (1998), p. 114.



refugees.<sup>27</sup> There is thus a need for a conception of truth that openly acknowledges key facts and events, such as the effect of “identity card” politics on the disenfranchised.<sup>28</sup>

17. The consequence of these narrative and restorative conceptions of truth is that the loyalists of the Aung Government may still maintain their views but may express regret or apologies over the toll of human suffering endured by the Rohingya – statistically and as observed from human stories.<sup>29</sup> Nevertheless, even where narrative and restorative conceptions of truth do not spur oppressor-loyalists to modify their views or attitudes, it can assist in the modified co-existence of conflicting narratives.<sup>30</sup> By giving both Government-loyalists and Rohingya victims the opportunity to present their stories or accounts of events in the Rakhine region, the very purpose of a fact-finding commission – in encouraging productive processes that accommodate the beliefs of various stakeholder groups –<sup>31</sup> can be achieved.<sup>32</sup>

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<sup>27</sup> At first blush, Aung did recognise the need for developmental works in western Rakhine, presumably the mitigation of burnt villages and looted homes by the military; Kyaw Ye Lynn, “Myanmar, Bangladesh negotiating on return of Rohingya” *Anadolu Agency* (12 October 2017) < <http://aa.com.tr/en/asia-pacific/myanmar-bangladesh-negotiating-on-return-of-rohingya/934330>> (accessed 9 November 2017). However, a condition of this repatriation is that refugees would need to furnish Myanmar identity cards and other documents issued by relevant Myanmar authorities in order to be eligible for return; Shehab Sumon, “Bangladesh, Myanmar consider repatriation of Rohingya refugees” *Arab News* (3 October 2017) < <http://www.arabnews.com/node/1171376/world>> (accessed 9 November 2017). Given the main narrative against the Rohingya’s place in Myanmar is the accusation that they are Bengali immigrants, such a requirement not only brings old prejudices back to the fore during a time of supposed reconciliation, but also imposes documentary hurdles for a community comprised largely of humble smallholders of land.

<sup>28</sup> A phenomenon that European Union citizens are facing in the United Kingdom following Brexit; Frederick Studemann, “Brexit and the return of identity card politics” *Financial Times* (28 February 2017) < <https://www.ft.com/content/2801826a-fcdc-11e6-96f8-3700c5664d30>> (accessed 9 November 2017).

<sup>29</sup> Indeed, medical literature has suggested that such conceptions of truth can improve therapy efforts because there is a re-evaluation of social narratives and beliefs within the oppressor community even where they do not admit liability; see Lawrence E. Lifson & Robert I. Simon (eds), *The Mental Health Practitioner and the Law: A Comprehensive Handbook* (Harvard University Press, 1998), pp. 302–304.

<sup>30</sup> Shiri Krebs, “The Legalization of Truth in International Fact-Finding” (2017) 18(1) *Chicago Journal of International Law* 83 at 135.

<sup>31</sup> *Ibid.*

<sup>32</sup> The experience of the South African Truth and Reconciliation Model shows that a common identity can be forged so long as people are no longer dogmatically attached to a “good versus evil” paradigm of their conflict; James L. Gibson, “The Contributions of Truth Reconciliation Lessons from South Africa” (2006) 50 *J. Conflict Resol.* 409 at 417. Despite not winning over Government-loyalists to endorse the plight of the Rohingya directly, such an approach to truth is more effective than a sole focus on empirical truth, which often fails *on its own* to command agreement and heal social divisions; see Patrick Ball & Audrey Chapman, *supra* n 25.

#### **IV. From Theory to Reality – How a Fact-Finding Commission could actually be created**

18. Admittedly, the establishment of a fact-finding commission would face resistance by Aung and the Government. Through Aung's recent speech on the Rohingya Crisis,<sup>33</sup> it is observable that she is now favouring her Buddhist constituency over the abused Rohingya minority.<sup>34</sup> Aung's true motivations are unclear, but what is obvious is that it is difficult to rely on having initiatives arise from Myanmar. However, UN Intervention and sustained pressure from human rights organisations can bring about such an institution.

##### **A. Formal UN Intervention**

19. The United Nations Security Council ("UNSC") has the authority to use military intervention to end atrocities where there are severe human rights transgressions coupled with state inaction.<sup>35</sup> Not only is the Government likely complicit in the brutality against the Rohingya,<sup>36</sup> but the crisis could arguably qualify as a "genocide".<sup>37</sup> Hence, on a doctrinal level, the UNSC *can* intervene, but *will it do so?*

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<sup>33</sup> "Rohingya Crisis: Suu Kyi Does Not Fear Global 'Scrutiny'", *BBC* (19 September 2017) <<http://www.bbc.com/news/world-asia-41315924>> (accessed 25 October 2017).

<sup>34</sup> Poppy McPherson, "Rohingya Crisis may be Driving Aung San Suu Kyi Closer to Generals", *The Guardian* (29 October 2017) <<https://www.theguardian.com/world/2017/oct/28/myanmar-fears-junta-return-rohingya-suu-kyi>> (accessed 2 November 2017).

<sup>35</sup> This international law stance was presented in the UN's Report on International Collective Responsibility that was tabled before the General Assembly. The report received the UN Secretary-General's approval and was subsequently confirmed before the 191 nations in the General Assembly; see Alireza Arashpour & Alireza Roustaei, *supra* n 15, at 388.

<sup>36</sup> At the very least a stance of unwillingness can be inferred from the lack of protection accorded to the Rohingya; Arya Pradhana Anggakara, "Legal Protection Aspect of Refugees in Indonesia (Case of Rohingya's Refugees)" (2017) 64 *Journal of Law, Policy & Globalization* 24.

<sup>37</sup> The Government is focusing entirely on the Rohingya ethnic group; Maung Zarni & Alice Cowley, "The Slow-Burning Genocide of Myanmar's Rohingya" (2014) 23(3) *Pacific Rim Law & Policy Journal* 683 at 686. Their desire to destroy the group in its entirety can be inferred from their systematic rape, murder, and denial of the Rohingya's right to live in Rakhine, and their history; Benjamin Zawacki, "Defining Myanmar's Rohingya Problem" (2012) *Human Rights Brief* 18 at 21. The Rakhine State Government's position is that the attacks against

20. China historically maintained a non-interventionist stance towards the Rohingya Crisis.<sup>38</sup> Thus, despite calls to action made by other UNSC members, the UNSC faced difficulties making progress on the situation.<sup>39</sup> However, unlike the past years, the 2017 attacks against the Rohingya have moved the UNSC to meet and discuss draft resolutions against Myanmar.<sup>40</sup> Accordingly, the 2017 attacks are perceived to be of greater severity to the international community and may galvanise the establishment of a fact-finding commission.<sup>41</sup> A fact-finding commission comprising of both Burmese and international experts to only uncover facts is arguably less interventionist than a formal Commission of Inquiry.<sup>42</sup> Additionally, the commission's ultimate task would be to pave a pathway of reconciliation through dialogue and consultation, rather than imposing criminal liabilities.<sup>43</sup> Therefore, a fact-finding commission can be viewed as middle-ground that is palatable to the UNSC.
21. Cooperation from the Government is also required but this is arguably likelier than before, given how global scrutiny has taken a toll on Aung's international image as a human rights icon.<sup>44</sup> Myanmar had previously responded to international criticism of the Rohingya situation by unilaterally creating a Rakhine Investigation Commission to

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the Rohingya cannot be ethnic cleansing because the Rohingya is not an ethnic group to the Government. This position is telling, for it reveals the State Government's hostile inclinations towards the Rohingya ethnicity.

<sup>38</sup> Audrey Tan, *supra* n 11, at 1672.

<sup>39</sup> *Ibid.*

<sup>40</sup> "UN Security Council Moves to Confront Myanmar Crisis", *CNA* (27 September 2017) <<http://www.channelnewsasia.com/news/asiapacific/un-security-council-moves-to-confront-myanmar-crisis-9253344>> (accessed 9 November 2017).

<sup>41</sup> Further, during the Darfur conflict, China maintained its position of non-intervention, but it was prepared to push for a dialogue and consultation to resolve the issues in Sudan ; see comments made by the Embassy of the People's Republic of China in the Republic of Kenya Darfur: <<http://ke.china-embassy.org/eng/zt/MediaComment/t425636.htm>>.

<sup>42</sup> See Audrey Tan's classification of "horizontal" means of human rights processes (including formal trials and investigations) versus "vertical" means of human rights processes (including fact-finding commissions); Audrey Tan, *supra* n 11, at 1672.

<sup>43</sup> This is in line with China's position as was advanced during the Darfur conflict.

<sup>44</sup> The President has shifted from stating she is not afraid of international scrutiny, to delivering a "local" speech in English, which addressed international allegations rather than domestic consensus.

“discover the root causes of communal violence and provide recommendations for the prevention of recurrence of violence”.<sup>45</sup> Thus, the state is clearly reactive to such international pressure. Additionally, while Aung decries existing reportage as “fake news”, she would likely prefer a mixed panel of experts to assess the authenticity of news published on the Rohingya Crisis.

**B. Continued Pressure from Human Rights Organisations**

22. It must be recognised that Aung’s local legitimacy arose from her decades of political struggle against the junta.<sup>46</sup> Viewed as the embodiment of human rights, Aung’s predicament influenced the citizens of Myanmar to support her, allowing Aung to obtain a landslide victory and assume the role of the State Counsellor.<sup>47</sup> Aung’s human rights endeavours were widely reported by foreign human rights organisations which published extensively on her struggles.<sup>48</sup> Accordingly, Aung’s ability to remain in control of Myanmar and retain the citizen of Myanmar’s faith in her can be attributable to the help of foreign human rights associations.

23. However, Aung’s inaction against the military’s continued abuse of the Rohingya has resulted in a shift of international perception against her previously stellar human rights record. Human rights organisations and news agencies have increasingly adopted a

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<sup>45</sup> Katherine G. Southwick, “Myanmar’s Democratic Transition: Peril or Promise for the Stateless Rohingya” (2014) 19 *Tilberg Law Review* 261 at 266. Although the Rakhine Investigation Commission’s report was skewed and it did not have a single Rohingya representative on board, it demonstrated that the Government was reactive towards the threat of foreign intervention. to delivering a “local” speech in English, which addressed international allegations rather than domestic consensus.

<sup>46</sup> Hannah Beech, “What Happened to Myanmar’s Human Rights Icon?”, *The New Yorker* (2 October 2017) <<https://www.newyorker.com/magazine/2017/10/02/what-happened-to-myanmars-human-rights-icon>> (accessed 9 November 2017).

<sup>47</sup> *Ibid.*

<sup>48</sup> Audrey Tan, *supra* n 11, at 1668; Harrison Akins, “The Rohingya Are Suu Kyi’s Litmus Test for a Legitimate Democracy”, *Huffington Post* (2 October 2017) <[https://www.huffingtonpost.com/harrison-akins/rohingya-suu-kyi-test\\_b\\_8515810.html](https://www.huffingtonpost.com/harrison-akins/rohingya-suu-kyi-test_b_8515810.html)> (accessed 9 November 2017).

disapproving stance towards Aung's policies for the Rohingya Crisis.<sup>49</sup> Before the international community, Aung has started to fall into disrepute.<sup>50</sup> Therefore, it is possible for the pressure from international associations to influence Aung to make positive changes to the situation in cooperating with the fact-finding commission.

## **V. Conclusion**

24. Ensuring the Rohingya and the Rakhine Buddhists coexist with dignity – if not reconciliation – requires the acceptance of conflicting narratives. A fact-finding commission of the modern age should not only isolate the forensic truth behind the recent atrocities but also accommodate the experiences of individuals on the ground. If that can be assured, these authors contend that the establishment of this commission would be highly recommended and would pave the way for tolerance.

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<sup>49</sup> Hannah Beech, *supra* n 45.

<sup>50</sup> Richard Adams, "Oxford College Removes Painting of Aung San Suu Kyi from Display", *The Guardian* (29 September 2017) <<https://www.theguardian.com/world/2017/sep/29/oxford-college-removes-painting-of-aung-san-suu-kyi-from-display>> (accessed 9 November 2017). With continued and sustained pressure from human rights organisations in the form of adverse reports of the Rohingya situation, the world may no longer perceive Aung as a human rights icon; Harrison Akins, *supra* n 47.