

Rohingya and Responsibility to protection

By Aman Ullah

Along the nearly 1,000-kilometer refugee passage from western Burma to southern Thailand lies a string of mass graves occupied by a single ethnic group -- the Rohingya. United to End Genocide

The Burmese successive junta, its armed forces known as the “Tatmadaw,” and other armed groups under government control are committing gross human rights violations against ethnic and religious minorities. Extrajudicial killings, torture, and forced labor are prevalent; rape and sexual abuse by the Tatmadaw are rampant; and shows a complete disregard for the principle of distinction, intentionally targeting civilians with impunity.

All Burmese citizens are subject to government oppression. However, the above crimes appear to be targeted primarily at five ethnic groups: the Karen, Shan and Karenni in eastern Burma, and the Rohingya and Chin in western Burma. While international actors have focused on the repression of the pro-democracy movement by the military government, crimes perpetrated against ethnic minorities for years have received little international attention and show no signs of subsiding.

The Rohingya, an ethnic Muslim minority, are likely the most oppressed minority within Burma with Human Rights Watch recently reporting that, “Even in Burma’s dreadful human rights landscape the ill-treatment of the Rohingya stands out.” Military operations in 1978 and the early 1990s resulted in mass arrests and torture which led hundreds of thousands to flee to Bangladesh.

Since June 2012, Anti-Muslim violence in Burma has been roundly condemned in statements from the UN, international governments, regional bodies, and human rights groups. Undeterred by negative international attention, the Burmese government has not attempted to provide a system of transitional justice for Muslims who have been attacked. On the contrary, government officials have participated in new attacks, tightened restrictions on Muslims, blocked aid from displaced Muslim populations, and segregated the mostly stateless Rohingya and other Muslims from the rest of the population.

Despite the government’s withholding of justice, the international community has failed to take necessary action to protect Muslim victims. Though the United Nations has acknowledged the role of Burmese authorities in “widespread” and “systematic” attacks against Muslims that “*may constitute crimes against humanity.*”

These violations perpetrated primarily by state actors on a widespread and systematic basis, rise to the level of crimes against humanity, ethnic cleansing and war crimes - *three of the four crimes states committed themselves to protect populations from in endorsing the responsibility to protect (R2P) at the 2005 World Summit.*

Humanitarian intervention

The international community in the last decade repeatedly made a mess of handling the many demands that were made for “*humanitarian intervention*”: coercive action against a state to protect people within its borders from suffering grave harm. There were no agreed rules for handling cases such as Somalia, Bosnia, Rwanda, and Kosovo at the start of the 1990s, and there remain none today. Disagreement continues about whether there is a right of intervention, how and when it should be exercised, and under whose authority.

Since September 11, 2001, policy attention has been captured by a different set of problems: the response to global terrorism and the case for "hot preemption" against countries believed to be irresponsibly acquiring weapons of mass destruction. These issues, however, are conceptually and practically distinct. There are indeed common questions, especially concerning the precautionary principles that should apply to any military action anywhere. But what is involved in the debates about intervention in Afghanistan, Iraq, and elsewhere is the scope and limits of countries' rights to act in self-defense -- not their right, or obligation, to intervene elsewhere to protect peoples other than their own.

The Policy Challenge

External military intervention for human protection purposes has been controversial both when it has happened -- as in Somalia, Bosnia and Kosovo-- and when it has failed to happen, as in Rwanda. For some the new activism has been a long overdue internationalization of the human conscience; for others it has been an alarming breach of an international state order dependent on the sovereignty of states and the inviolability of their territory. For some, again, the only real issue is ensuring that coercive interventions are effective; for others, questions about legality, process and the possible misuse of precedent loom much larger.

NATO's intervention in Kosovo in 1999 brought the controversy to its most intense head. Security Council members were divided; the legal justification for military action without new Security Council authority was asserted but largely un-argued; the moral or humanitarian justification for the action, which on the face of it was much stronger, was clouded by allegations that the intervention generated more carnage than it averted; and there were many criticisms of the way in which the NATO allies conducted the operation.

At the United Nations General Assembly in 1999, and again in 2000, Secretary-General Kofi Annan made compelling pleas to the international community to try to find, once and for all, a new consensus on how to approach these issues, to "forge unity" around the basic questions of principle and process involved. He posed the central question starkly and directly:

--If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica

--To gross and systematic violations of human rights that affect every precept of our common humanity? It was in response to this challenge that the Government of Canada, together with a group of major foundations, announced at the General Assembly in September 2000 the establishment of the International Commission on Intervention and State Sovereignty (ICISS). The Commission was asked to wrestle with the whole range of questions -- legal, moral, operational and political-- rolled up in this debate, to consult with the widest possible range of opinion around the world, and to bring back a report that would help the Secretary-General and everyone else find some new common ground.

Why the Responsibility to Protect, R2P?

The political uprisings in Libya and the Libyan government's brutal repression are reminders that the world is far from achieving "*freedom from fear*", one of the grounding purposes for the establishment of the United Nations in 1945. Often in the twentieth century, crimes against humanity provoked condemnation. *The world has said "never again" many times. In reality, however, "again and again" would be a more accurate description.* As each subsequent slaughter has occurred, in places like Rwanda and the Balkans, little has been done to prevent or avert mass atrocities.

However, in the past decade the international community has started to develop new terminology to address such atrocities, in the hope that new tools to prevent and respond to them will follow. Most notably, *the Responsibility to Protect (R2P)* is a new and evolving concept in international relations that addresses the failure of states --

whether unable or unwilling — to protect their populations from mass atrocities. R2P was clarified with the 2001 Report of the International Commission on Intervention and State Sovereignty (ICISS). The ICISS Report made a profound assessment of all previous research and practice of “humanitarian intervention”, a hotly debated topic amongst political scholars and practitioners.

R2P has been put forward as a solution for these disagreements by shifting the focus away from the rights of states to intervene via humanitarian intervention, and towards the rights of victims to survive. Typically, states pursuing their own strategic interests rarely reach consensus on the circumstances in which humanitarian intervention is justified. Historically, humanitarian intervention has been viewed by third parties as a means to pursue non-humanitarian, neo-imperial interests. This cynicism is understandable given that the concept has been abused frequently by aggressors, from Hitler’s invasion of Czechoslovakia in 1938 to George W. Bush’s invasion of Iraq in 2003, to name just two examples.

Core principles

1) Basic Principles

- A. State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself.
- B. Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.

2) Foundations

The foundations of the responsibility to protect, as a guiding principle for the international community of states, lie in:

- A. obligations inherent in the concept of sovereignty;
- B. the responsibility of the Security Council, under Article 24 of the UN Charter, for the maintenance of international peace and security;
- C. Specific legal obligations under human rights and human protection declarations, covenants and treaties, international humanitarian law and national law;
- D. The developing practice of states, regional organizations and the Security Council itself.

3) Elements the responsibility to protect embraces three specific responsibilities:

A. The responsibility to prevent: to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk.

B. The responsibility to react: to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention.

C. The responsibility to rebuild: to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert.

Tenth anniversary of the UN’s adoption of the Responsibility to Protect

This year marks the tenth anniversary of the UN’s adoption of the Responsibility to Protect. Adopted in 2005 as part of the UN Reform Summit, R2P is intended to ensure that civilians will be better protected against mass atrocities such as war crimes, crimes against humanity and genocide.

As outlined in the UN Secretary-General’s 2009 report, Implementing the Responsibility to Protect, R2P obligations include:

- That each individual state has the primary responsibility to protect its populations from genocide, war crimes,

crimes against humanity and ethnic cleansing. States also have responsibility for prevention of these crimes.

- That the international community should encourage or assist states to exercise this responsibility.
- The international community has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means to help protect populations threatened by these crimes. When a state manifestly fails in its protection responsibilities, and peaceful means are inadequate, the international community must take stronger measures, including collective use of force authorized by the Security Council under Chapter VII of the UN Charter.

According to Dr. Simon Adams, Executive Director at the New York-based Global Centre for the Responsibility to Protect, “Ten years since the adoption of R2P . . . We have won the battle of ideas. We now have near universal acceptance of the abstract concept that all states have a responsibility to protect their populations . . . The only real debate at the UN these days is about how individual states and the international community should uphold their responsibility to protect in specific cases. The discussion now is about implementation of the most appropriate measures and means, not whether a responsibility exists. This is an enormous and historic change from just ten years ago. “

“Myanmar won’t succeed if the Muslim population is oppressed.”

President Obama

In March 2015, staff of the Simon-Skjodt center for the prevention of genocide traveled to Burma to investigate the threats facing the Rohingya, who has been subject to dehumanization through rampant hate speech, the denial of citizenship, and restrictions on freedom of movement, in addition to a host of other human rights violations that put this population at grave risk of additional mass atrocities and even genocide.

The United States holocaust memorial museum’s work on genocide and related crimes against humanity is conducted by the Simon-Skjodt Center for the Prevention of Genocide. The Simon-Skjodt Center is dedicated to stimulating timely global action to prevent genocide and to catalyze an international response when it occurs. The staff believes that conditions are ripe for genocide in Myanmar, also known as Burma, and found that many of the preconditions for genocide currently are taking place.

What is Genocide?

After the Holocaust, the United Nations created a new term — genocide — and defined it as any of the following actions committed with intent to destroy a national, ethnic, racial or religious group:

Killing members of the group; Causing serious bodily or mental harm to members of the group; Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; Imposing measures intended to prevent births within the group, or forcibly transferring children of the group to another group.

The term genocide was coined by the Polish jurist Raphael Lemkin, who wrote that “By genocide we mean the destruction of a nation or ethnic group”. Lemkin went on to argue that “Genocide has two phases one, the destruction of the national identity of the oppressed group, the other, the imposition of the national identity of the oppressor.” The distinctive feature of genocide, according to Lemkin, is that it aims to destroy a group rather than the individuals that make up the group. The ultimate purpose of genocide is to destroy the group's identity and impose the identity of the oppressor on the survivors.

In 2008, the U.N. Security Council expanded the definition of genocide with the passage of [Resolution 1820](#) noting that “rape and other forms of sexual violence can constitute war crimes, crimes against humanity or a constitutive act with respect to genocide”

The crime of genocide

On December 9, 1948, in the shadow of the Holocaust and in no small part due to the tireless efforts of Lemkin himself, the United Nations approved the Convention on the Prevention and Punishment of the Crime of Genocide. This convention establishes genocide as an international crime, which signatory nations “*undertake to prevent and punish.*” It defines genocide as:

[A]ny of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

1. Killing members of the group;
2. Causing serious bodily or mental harm to members of the group;
3. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
4. Imposing measures intended to prevent births within the group;
5. Forcibly transferring children of the group to another group.

The specific “*intent to destroy*” particular groups is unique to genocide. A closely related category of international law, crimes against humanity, is defined as widespread or systematic attacks against civilians.

While many cases of group-targeted violence have occurred throughout history and even since the convention came into effect, the legal and international development of the term genocide is concentrated into two distinct historical periods: the time from its coining until its acceptance as international law (1944–48) and the time of its activation with the establishment of international criminal tribunals to prosecute persons responsible for committing it (1991–98). Preventing genocide, the other major obligation of the convention, remains a challenge that nations and individuals continue to face.

The term “genocide” did not exist prior to 1944. It is a very specific term, referring to violent crimes committed against a group with the intent to destroy the existence of the group. Human rights, as laid out in the US Bill of Rights or the 1948 United Nations Universal Declaration of Human Rights, concern the rights of individuals.

Early warning sign

- Physical violence targeted against Rohingya people, homes, and businesses
- Physical segregation of the Rohingya from members of other ethnic groups
- Blockage of humanitarian assistance, including necessary health care
- Deplorable living conditions for those displaced from their homes
- Rampant and unchecked hate speech against Rohingya and other Muslims
- Restrictions on movement
- Stripping of citizenship
- Destruction of mosques, onerous processes for Rohingya to maintain or fix mosques, and other restrictions on freedom of religion
- Extortion and illegal taxation
- Land confiscation
- Two-child policy and restrictions on marriage in some areas of Rakhine State
- “Supply checks” or raids by security forces on Rohingya homes
- Sexual violence and arbitrary arrest and detention
- Abuses in detention
- Revocation of legal or other documents
- Inability to pursue livelihoods and restrictions on business opportunities

- Lack of opportunities to pursue education
- Restrictions on voting
- Government blockage of information flow in and out of Rohingya communities

Target of mass atrocities, including genocide

The United States Holocaust Memorial Museum's Simon-Skjoldt Center for the Prevention of Genocide is mandated to monitor early warning signs of genocide and other atrocities and catalyze international action to prevent those crimes. According to them Burma deeply concerned that so many preconditions for genocide are already in place. With a recent history of mass atrocities and within a pervasive climate of hatred and fear, the Rohingya may once again become the target of mass atrocities, including genocide.

- Rohingya are the targets of state-sponsored discrimination and face severe restrictions on basic freedoms.
- Rohingya face a set of oppressive policies promulgated by the national, state, and local levels of government that are either codified in law or written as policy orders.
- Rohingya suffer from a combination of state sponsored discrimination and popular hatred, which together creates a climate of racism, xenophobia, and hate, which has primed the country for future violence, including potential genocide.
- One Rohingya advocate described the government's strategy as one of "soft elimination" of the Rohingya.
- Rohingya are excluded from citizenship under Burma's 1982 Citizenship Law. The law renders most Rohingya stateless, which fuels extremist rhetoric that the Rohingya are foreigners who should not be in the country. One Rohingya advocate told us, "By denying us citizenship, they are denying our entire existence, our struggle, and our survival."
- Rohingya risk further vulnerability as their identification cards expire

Most Rohingya live in Rakhine State, in western Burma. Local orders, enforced in northern Rakhine State, place onerous restrictions on basic freedoms by requiring official permission for Rohingya to travel, marry, and make repairs to buildings. There is a two-child policy enforced in the northern Rakhine townships of Maungdaw and Buthidaung that only applies to Rohingya. Although the policy is enacted at the local level, politicians at the national and state level support the measure and describe the population control method as necessary and even beneficial for Rohingya. Penalties for disobeying the orders include fines or imprisonment. One Rohingya leader described the government's policy as "an attempt to depopulate the Rohingya people."

Moving beyond Definitions into Action

The passage of the Convention changed the role of the international community in responding to genocide: state's rights no longer superseded rights of individuals. This concept was declared in Article 1 stating that genocide *"is a crime under international law which they undertake to prevent and to punish."*

While individuals and nations may debate whether a particular mass atrocity constitutes a true genocide, we believe the most important thing is that we remember past genocides and mass atrocities, we learn from them, and we strive to make a difference — by being aware and taking action together, we can stop and prevent mass atrocities, we can end genocide.

Every nation is responsible for protecting its own citizens from mass atrocities such as ethnic cleansing. Should a nation fail to protect its citizens from mass killings, either intentionally or through inability to act, it is the internationally community's responsibility to protect the citizens being affected. These principles, which were agreed upon by the United States and other nations and ratified by the United Nations, are known as the Responsibility to Protect (or R2P) Doctrine.

The Responsibility to protect doctrine, is a concept of state and international responsibility to citizens, which was adopted by the 60th Anniversary United Nations Summit. The doctrine states:

The international community, through the United Nations, also has the responsibility to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. **“What is being prosecuted in Rakhine State is an effort to remove the Rohingya from the area.”**

Benjamin Zawacki

In 2005, governments around the world unanimously agreed to the principle of the responsibility to protect (R2P), which holds that all states have a responsibility to protect their populations from genocide and mass atrocities, that the international community should assist them to fulfil this duty, and that the international community should take timely and decisive measures to protect populations from such crimes when their host state fails to do so. R2P is committed to peaceful interventions including assistance, peaceful persuasion, and financial sanctions. The nature of collective action must exhaust the possibilities of *“appropriate diplomatic, humanitarian, and other peaceful means”* before *‘forceful means’* can be considered.

The means of determining whether a state has abdicated its responsibility to protect is an independent investigation that can be commissioned by the UN Security Council, UN Human Rights Council, UN General Assembly, or the UN Secretary General. An investigation can recommend that the UN Security Council refer the situation to the ICC. Under Chapter VII of the UN Charter, the Security Council has the authority to determine measures, peaceful or, if necessary, forceful, *“to maintain or restore international peace and security.”* This *“international”* provision does not imply that conflicts must threaten to spill over borders; certainly, the UN Security Council has acted to address numerous crises without *“spillover power”* on the basis that these crises necessitated UN intervention to reestablish international order. Even so, the threat in Burma has definitively *spilled over* international borders, with thousands of refugees from the anti-Muslim conflict pouring into nations including Thailand, Malaysia, Bangladesh, and Indonesia.

This has caused significant regional conflict and has motivated regional ministers and groups to call for international action. The Organization of Islamic Cooperation (“OIC”) called on the European Union in June 2013 to increase pressure on the Burmese government to allow full humanitarian access to Rohingya in Arakan State. In response to the escalating influx of Rohingya refugees in August 2013, the Association of Southeast Asian Nations (“ASEAN”) Parliamentarians for Human Rights (“APHR”) urged the ASEAN Inter-governmental Commission on Human Rights to develop a regional solution to the Rohingya crisis. Eva Kusuma Sundari, APHR president and Indonesian Member of Parliament, stated: “Our heads of state must recognise the significance of ASEAN’s action or inaction on this major international issue and the serious implications it has, not only for the Rohingya people, but the future stability of the region as a whole.”

At an ASEAN conference in January 2014, Indonesian Foreign Minister Marty Natalegawa said that Burma’s anti-Muslim violence has regional ramifications, even inspiring retaliatory terrorist plots in Jakarta. Neighboring countries Thailand and Malaysia are facing international scrutiny for capacitating human trafficking rings of Rohingya asylees. Religious violence involving Burmese living in Malaysia and Indonesia is growing, likely provoked by Burma’s anti-Muslim violence and refusal to provide accountability. Yet Burma has dodged responsibility. When the Burmese government assumed the chairmanship of ASEAN in 2014, it unabashedly announced it would apply ASEAN’s *“non-interference”* policy to the Rohingya situation. It deemed the violence an *“internal affair”* that would not be discussed at ASEAN meetings, *“even if other countries ask for it.”*

UN officials, Nobel Peace laureates, and human rights organizations have thus recognized the applicability of R2P and the need for an independent investigation. UN High Commissioner for Human Rights Navi Pillay has called for a prompt, independent investigation into crimes in Arakan State since June 2012. Twelve Nobel Peace laureates echoed and expanded Pillay’s call in June 2013, after violence spread beyond Arakan State, calling for an *“independent investigation of the anti-Muslim violence in Burma”* on the grounds that *“some within Burma are propagating a politics of division—and using violence as a tool to manipulate feelings of fear and insecurity.”*

In August 2013, after conducting an investigation inside Burma, Physicians for Human Rights (“PHR”) also called for an independent investigation due to the Burmese government’s failure *“to properly protect its people and address human rights violations.”* PHR argued that anti-Muslim violence, bolstered by hate speech, systems of impunity, and inaction by Burmese leaders, *“could lead to mass atrocities on a scale heretofore unseen in Burma”* unless the international community were to implement an investigation.

In order for an independent investigation to be warranted, two points must be established:

1. It must be likely or evident that minority Muslims are suffering from mass atrocity crimes, defined under the Rome Statute and Geneva Conventions as *genocide, war crimes, crimes against humanity, or ethnic cleansing,*
2. It must be likely or evident that the state has withheld justice and accountability for victims of these mass atrocity crimes.

Atrocity Crimes

Muslims in Burma are suffering from two types of mass atrocity crimes: *crimes against humanity and ethnic cleansing.*

Crimes against humanity

Crimes against humanity, defined in the ICC’s Elements of Crimes, consist of prohibited acts committed as part of a *“widespread or systematic attack against a civilian population.”* The most relevant prohibited acts committed against Muslims include the crimes of murder, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty, torture, rape, sexual slavery, sexual violence, apartheid, and persecution.

An *“attack”*, ‘in Rome Statute, is defined as a *“course of conduct involving the multiple commission”* of prohibited acts’. According to the Harvard Law School International Human Rights Clinic, and scholars, *“Widespread”*, attacks are commonly understood to be *“large-scale”* with many victims. *“Systematic”* refers to well-organized attacks or attacks of a patterned or methodical nature. Attacks against non-Rohingya Muslims in Burma throughout 2013 were coordinated and widespread; indicating that prohibited acts against non-Rohingya Muslims may constitute crimes against humanity.

As for acts against Rohingya Muslims, the verdict is even clearer. UN Special Rapporteur on the human rights situation in Burma, Tomás Ojea Quintana, concluded in 2014 *“that the pattern of widespread and systematic human rights violations in Rakhine State may constitute crimes against humanity as defined under the Rome Statute of the International Criminal Court.”* In April 2014, after the government banned Doctors Without Borders (MSF) from Arakan State and failed to protect UN and NGO aid workers from attacks with the intention of blocking aid to Rohingya, Quintana issued a special statement condemning the *“discrimination and persecution against the Rohingya community which could amount to crimes against humanity.”*

In February 2014, Fortify Rights published official documents that show government policies restricting the rights of Rohingya in Arakan State, including marriage, childbirth, and movement. Evaluated through the Rome Statute, these policies provide a *“prima facie finding that Rohingya in [Arakan] State are victims of the crime against humanity of persecution, perpetrated by Myanmar government officials.”* The report establishes that government officials had knowledge that these policies deprived Rohingya of basic rights, having written, distributed, and enforced them.

Ethnic cleansing

Human rights violations against the Rohingya also amount to ethnic cleansing. Ethnic cleansing is identified as a mass atrocity crime in customary international law, but it has not received an official legal definition. A 1994 UN Commission of Experts defined ethnic cleansing as a *“purposeful policy designed by one ethnic or religious group*

to remove by violent and terror- inspiring means the civilian population of another ethnic or religious group from certain geographic areas.” Using this definition, ethnic cleansing precisely defines the plight of the Rohingya, who have been systematically moved from their neighborhoods and land, even from areas that were not affected by violence, and exiled to makeshift government camps. The local Arakan population, Burmese government officials, and in many cases, the general Burmese public, are remarkably straightforward about their intent to achieve a Rohingya-free Burma.

Human Rights Watch concluded in March 2013, after extensive investigative research into the human rights violations in Arakan State, that the Rohingya were *prima facie* targets of ethnic cleansing. The OIC Secretary General has called the Rohingya situation in Arakan State ethnic cleansing as well. Scholar Benjamin Zawacki of the International Commission of Jurists argued the same, maintaining that *“what is being prosecuted in Rakhine State is an effort to remove the Rohingya from the area.”*

Prohibited acts committed against Muslims in the context of widespread and systematic attacks are ongoing, with flare-ups in August 2013 in Sagaing Division where a 1000-strong Buddhist mob attacked the homes and shops of Burmese Muslims, displacing many, and in October 2013 in Arakan State where Buddhist mobs killed five Kaman Muslims and again displaced hundreds. In January 2014, security forces and Buddhist mobs slaughtered up to seventy Rohingya, including many women and children, in Du Chee Yar Tan, a western Arakan State village. Government participation and complicity in anti-Muslim violence and systematic impunity have created a ripe legal and social context where mass atrocity crimes continue unabated.

Withholding Justice and Accountability

In order to establish an independent investigation into these crimes, it must be demonstrated that the Burmese government has failed to pursue justice for the victims and perpetrators of these crimes. Under the Rome Statute and R2P, the Burmese government shoulders the sovereign responsibility to protect its own people against mass atrocity crimes. The ICC cannot have jurisdiction over the case unless the individual state’s judicial system fails to act.

Burma’s national judicial system has failed to act. No system of legal recourse or redress for Muslim victims of violence has been implemented. Domestic attempts at justice have been discriminatory and violent, resulting in mass arrests of Muslims, convictions under trumped-up charges, and the continuing sexual violence and extrajudicial killings of unarmed Rohingya. Two of the most horrific massacres—the slaughter of twenty-eight Muslim children in Mrauk-U, Arakan State on October 28, 2012 and the executions of at least thirty-two Muslim schoolchildren and four teachers in Meiktila on March 21, 2013, who were forcibly marched to their deaths by soldiers as cheering crowds and officials looked on—have been unaddressed by authorities. Those who assist Muslims, including humanitarian aid workers, Buddhists who sell products to Muslims in defiance of the apartheid-style 969 campaign promoted by outspoken monks, and those who have helped smuggle Muslims to safety, are targets of threats and intimidation.

The Burmese government has not only abdicated its responsibility to protect its people, but also denies that the Rohingya are a legally legitimate people. In July 2012, the Home Affairs Minister announced that the government would actually tighten restrictions on the Rohingya’s rights to travel, marry, bear children, migrate, construct buildings, and own land in the wake of the attacks against them. After government forces shot dead three displaced Rohingya women in June 2013, UN Special Rapporteur Quintana wrote: *“[T]here continues to be absolutely no accountability for what is occurring there. There is no way of glossing over this state of affairs.”*

Investigative reports commissioned by the Burmese government under international pressure have failed to address abuses by government authorities and hold accountable those responsible for the attacks. An official July 2012 report denied all government involvement in the attacks and shamefully declared that there were no

outstanding humanitarian needs in Arakan State. In April 2013, the government released a second report, which discriminatorily refers to the Rohingya as illegal “Bengali,” recommending a higher presence of security forces in Arakan State and genocidal birth control tactics to limit the Rohingya population, and suggesting that the international community update Burma’s weaponry so the army can better control people trying to cross the Bangladesh border. The report’s language is severely incendiary, with the Burmese version more racist than the strategically translated English version. The UN, international agencies, and the human rights community, who have called repeatedly on the Burmese government to pursue justice and accountability, met the report with great skepticism.

After the large-scale killings of Rohingya in Du Chee Yar Tan in January 2014, the government at first refused to commission any investigation whatsoever. It called a UN statement that condemned the attacks unacceptable, barred access to the village, and threatened the Associated Press and other media outlets for investigating the incident. It vehemently refused the U.S. Ambassador unprecedented request that the government establish an independent investigation commission with international officials. The government did eventually commission investigations under the Office of the President and the Myanmar Human Rights Commission, but both investigations preposterously concluded that no killings had taken place.

To compound matters, the government refuses to honor its November 2012 commitment to allow the UN High Commissioner for Human Rights to open an office in Burma to monitor the human rights situation. Moreover, the government has banned Rohingya persons from self-identifying as Rohingya in the national census. It is also pursuing national legislation to criminalize marriage between Buddhist women and non-Buddhists and to ban non-citizens (i.e. Rohingya) from forming political parties.

The government has also constructed or enabled significant obstacles to researchers and aid workers attempting to enter conflict zones. When UN Special Rapporteur Quintana visited Burma in August 2013, around 200 Buddhists, the identity of whom remains unclear, attacked his UN convoy in Meiktila. Quintana stated afterward that government forces failed to protect him from the mob, just as they had failed to protect the victims of March 2013 violence in Meiktila. President Thein Sein’s office subsequently alleged that Quintana had fabricated the attack and that the mob had only meant to give Quintana a letter and a t-shirt.

This government defiance is the status quo. Far from pursuing justice, the government has persistently denied allegations of human rights violations against Muslims, and has “strongly rejected” human rights reports from the United Nations and other organizations. These public refutations of violence demonstrate how the Burmese government has not only intentionally failed to provide justice; it has also become emboldened by the lack of international pressure to stop the violence. Further international calls to stop violence would thus be redundant and ineffectual.

As repression in Burma continues unabated, it is reasonable to expect that calls for intervention will continue to be heard from around the world.

The willingness and ability of the international community to get involved will continue to be crucial elements in resolving Burma's problems. The political will of the UN must be regarded as a particularly important factor in determining how and when Burma will finally shed the burden of repressive rule. The creation of an independent international commission on intervention would be a promising move, and Burma should certainly be one of the first cases to receive careful consideration and study.

In fact, there are already options that could be used to save the lives of people, if the international community - including the Asean leadership - could find the will to use all of the tools at its disposal, from political engagement to radical action. The chains of oppression can be broken, but only if the world recognizes that human security is an issue that transcends national boundaries.

“The Rohingya hold themselves – hold within themselves – the same dignity as you do, and I do.”

President Obama

On November 4, 2014, the Buddhist Teachers in America urged that, *“We as 381 Buddhist Teachers in America represent a large community that is deeply concerned about the growing anti-Muslim violence in Myanmar and across Asia, and the plight of the 1.3 million Rohingyas, many forced to live against their will in inhumane internment camps and permanent ghettoized communities..... We urge you to once again express concern for Burma’s Muslims and Rohingyas in your public speeches and as well as in your diplomatic engagements there. We believe you can do so in a positive way, honoring the Burmese legacy of tolerance and Metta, values shared across all the great spiritual traditions, as nations including our own face challenges of injustice and prejudice....”*

U.S. Secretary of State Hillary Clinton stated on November 14, 2012, that President Barack Obama would discuss the deadly sectarian violence in Myanmar’s Rakhine State between Rohingya Muslims and Buddhists during his historic visit to the country, and Secretary Clinton said this unrest would “of course” feature in Obama’s talks.

In effect, President Obama, in his Yangon University speech, said: *“Today, we look at the recent violence in Rakhine State that has caused so much suffering, and we see the danger of continued tensions there. For too long, the people of this state, including ethnic Rakhines, have faced crushing poverty and persecution. But there is no excuse for violence against innocent people. And the Rohingya hold themselves – hold within themselves – the same dignity as you do, and I do.”*

The Obama administration has expressed “deep concern” for the Muslim crisis. But, overall, the United States has addressed anti-Muslim violence in a distant and even upbeat manner, and has failed to acknowledge the existence of mass atrocity crimes. After the violent events in June 2012 in Arakan State, the U.S. embassy’s charge d’affaires preposterously announced, *“The [Burmese] government is trying to help everybody who needs it, whether that is Rakhine Buddhists or Muslims.”* Fewer than twelve hours after President Thein Sein’s shocking announcement in July 2012 that all Rohingya should be deported, President Obama lifted the investment ban. Obama ended the long-standing U.S. isolation of Myanmar’s generals, which has played a part in coaxing them into political reforms that have unfolded with surprising speed in the past few years. The U.S. has appointed a full ambassador and suspended sanctions to reward Myanmar for political prisoner releases and Suu Kyi’s election to parliament.

1. Then just weeks after the October 2012 renewal of mass atrocities in Arakan State, Obama honored the government’s reform efforts by visiting Burma and giving a speech at the University of Yangon, in which he announced a new U.S.-Burma partnership and extended *“the hand of friendship”* to the government. He only briefly mentioned the Rohingya. In a May 2013 meeting in Washington, DC, Obama praised Thein Sein for *“leading Myanmar in a new direction”* and again glossed over the Muslim crisis. During the meeting, President Obama announced the establishment of a U.S.-Burma Trade and Investment Framework Agreement.

U.S. officials, journalists, and other policymakers have repeatedly characterized the Muslim crisis as a mere *“bump”* along the road to democracy, and when pressured, have made only vaguely illogical arguments defending the administration’s decision to not support an International Investigation.

But anti-Muslim violence is not a natural consequence of democratic transition; the Burmese government has proven itself more than capable of using force to crackdown on disorder and using the legal system to implement its will, and in the case of the Muslim crisis, the government has all the national and international resources to do so. Anti-Muslim violence is a constructed consequence of the government’s *“institutionalized discrimination and deliberate failure to intervene and enact legal*

accountability". It is in fact widely believed internationally and in many parts of Burma that anti-Muslim violence is a state- driven movement *"to generate chaos in an attempt to derail reforms, to maintain . . . political/economic power, and/or to provide an opportunity for the army to maintain its position in society."*

Even so, U.S. calls to address violence have been carefully couched in new investment and trade initiatives, which have handily overshadowed diplomatic admonishments. This praising of powerful Burmese leaders for econo-centric reforms as they simultaneously perpetuate mass atrocity crimes legitimizes the regime's ideology of ethno-religious nationalism. President Thein Sein and other Burmese officials have accordingly responded to U.S. encouragement by denying the severity of anti-Muslim violence, rather than by providing justice.

2. But investigating rights violations in Burma would be advantageous to U.S. interests in the long-term. The United States has politically and financially invested in the Burmese freedom and democracy movement for decades. The State Department reiterated in February 2013 that the United States' *"overarching policy goal"* is *"to support political reform in Burma towards the establishment of a peaceful, prosperous, and democratic state that respects human rights and the rule of law."* In May 2013, President Obama renewed Executive Order 13619, declaring that human rights violations and conflict in Burma still constitute an *"extraordinary threat to the foreign policy and national security of the United States."* The anti-Muslim crisis is precisely that—an extraordinary threat to U.S. policy endeavors and strategic interests to establish a peaceful, prosperous, and democratic Burma.

To date, the U.S. has avoided acknowledging the Burmese government's failure to protect Muslims out of concern that pressuring Burma could threaten the U.S. policy of *"encouraging reformers."* Since April 2012, the United States has worked to rapidly restore ties with the Burmese government by building relationships with its leaders—the same leaders who were at the helm of the former military regime. In order to build mutual trust with these leaders, the United States has simultaneously cut ties with its historic partners—Burma's persecuted ethnic groups and democratic opposition.

The zeal with which the United States has alienated these historic partners, lifted sanctions, and promoted trade and investment without establishing conditions for concessions or the reinstatement of sanctions has ostensibly given the Burmese government such confidence in U.S. support that it has condoned violence with little fear that sanctions will be re-imposed.

Such headlong U.S. engagement is motivated by either one or a combination of five strategic factors: -

1. taking advantage of potential trade and investment opportunities in what has been called the *"last frontier of Asia;"*
2. mitigating Burma's status as a Chinese satellite state;
3. developing an ally on the Andaman Sea, a strategic nexus with international security and trade benefits;
4. establishing an example of positive Western engagement to lure North Korea out of isolation; and
5. providing the Obama administration with a foreign policy success in a difficult international scene.

On the surface, calling for an investigation into anti-Muslim violence may not seemingly bolster any of these policy endeavors for the U.S. government, but ethno-religious violence has and is continuing to promote deep regional insecurity, threatening ASEAN's political and strategic legitimacy and ability to partner with the United States at a higher international level. Properly implementing R2P would ultimately lead to a more stable, democratic Burma; in the long-term, a democratic Burma would prove more profitable to the United States than a Burma systemically undermining national reconciliation. A democratic Burma would not only prove a stronger strategic ally in China's sphere of influence and create fewer refugees, but would also better promote regional and international cooperation and be a more profitable trade and investment partner. A 2013 McKinsey report into Burma's investment landscape warned that due to the persisting systems of inequality and disenfranchisement among

religious and ethnic minorities and the rural public, Burma's consumer market is extremely small, and may not grow quickly enough to justify significant U.S. investment in the consumer sector. But the consumer sector is precisely where most U.S. investors are looking. Forcing Burma to repeal laws centered on ethno-religious nationalism and to end repression of minorities will be foundational to establishing a larger consumer market for U.S. investment.

Holding the Burmese government accountable through an independent investigation is imperative to address the government's culture of impunity and end mass atrocity crimes, which defy national reconciliation. While difficulties will doubtlessly arise in maintaining strong relationships with top government leaders, these relationships have proven inadequate at ending abuses of power and fulfilling the overarching rights-based U.S. policy goal to support a peaceful, stable Burma.

An investigation into violations of international human rights and humanitarian law with respect to Muslims is imperative because Burma routinely and injudiciously uses violence as a mechanism to control, terrorize, and suppress its people. Similar mass atrocity crimes in other nations have prompted the United States to support international, independent investigations, and providing an external forum of accountability for anti-Muslim violence is a natural articulation of U.S. policy. Assuming the legal Responsibility to Protect would help legitimize the work of genuine political and legal reformers inside Burma and establish an international expectation of a Burmese political landscape in line with international human rights standards.

A global commitment to the Responsibility to Protect, born out of the resolve of "never again", means that, atrocities are not internal affairs. Every government, including US, affirmed this in 2005 when they endorsed the Responsibility to Protect at the UN World Summit.

The United States is responsible for protecting victims of anti-Muslim violence in Burma, even more so—not less so—as it builds a policy of pro-active engagement with the Burmese government. The appropriate action is to call on the United Nations to establish an independent investigation into anti-Muslim violence, supporting basic human rights for all Burma's people.

Establishing that the crimes against humanity in Burma are of the same functional severity as those in the former Yugoslavia, Rwanda, and Darfur where the UN Security Council, with U.S. support, implemented international justice mechanisms; that "violations that have been reported in Burma are sufficiently long-lasting and severe to merit similar Security Council action".
