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The Responsibility to Protect in Rakhine State

(Bachelor's thesis)

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Declaration:

Herewith I declare that I wrote the bachelor's thesis on my own and cited all the sources.

Prague, April 25, 2019

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Signature

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List of abbreviations

ARSA	Arakan Rohingya Salvation Army
ASEAN	Association of Southeast Asian Nations
EU	European Union
GDP	Gross domestic product
ICC	International Criminal Court
ICISS	International Commission on Intervention and State Sovereignty
IDP	Internally displaced person
INGO	International non-governmental organization
NATO	North Atlantic Treaty Organization
NGO	Non-governmental organization
OIC	Organisation of Islamic Cooperation
R2P	Responsibility to Protect
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
US	United States of America
WFP	World Food Programme

Introduction

The Rohingya, who according to the United Nations (UN) are the most persecuted minority in the world, have suffered discrimination and persecution for decades. The Rohingya are a Muslim ethnic group who have lived for more than a century in Rakhine State which is located on the western coast of predominantly Buddhist Myanmar. However, they are not considered one of country's 135 official ethnic groups and have been denied citizenship since 1982. The army crackdown on Rohingya villages following the August 25, 2017 clashes caused approximately 740,000 Rohingya to flee Myanmar and seek refuge in bordering Bangladesh. A total of 354 villages were completely or partially destroyed by the end of the year (Reuters 2018a). In February 2018 at least 55 villages were found bulldozed and cleared away completely, as if the villages had never existed (BBC 2018d).

In 2005, the Responsibility to Protect (R2P) concept was unanimously endorsed by the World Summit. The Summit's Outcome Document was later adopted as a General Assembly resolution. World leaders declared that all states have a responsibility to protect their population from genocide, war crimes, ethnic cleansing and crimes against humanity. Furthermore, they are prepared to take collective action in cases where states manifestly fail to protect their population. Nevertheless, the implementation of the R2P principle remains problematic.

The aim of this thesis is to examine the R2P principle and apply it to the Rohingya crisis. The main focus is put on incidents that took place in August 2017 since they led to an unprecedented exodus. Bearing in mind the principle of R2P, I will explore two hypotheses:

1. Myanmar had failed to protect its population from human rights violations before August 2017, which resulted in the flight of hundreds of thousands of the Rohingya from their homes.
2. There are reasonable grounds to believe that genocide, war crimes and crimes against humanity were committed in Rakhine State and the international community has not fulfilled its commitment to R2P.

The thesis is divided into two chapters – theoretical framework and practical application. The first chapter is dedicated to the theory of R2P. Firstly, this chapter focuses on the complicated historical background of state sovereignty and human rights protection in order to understand what led to the emergence of R2P. The following parts describe various aspects of R2P, most importantly the three pillars that the former Secretary-General Ban Ki-moon defined in his

report Implementing the Responsibility to Protect. Since there is no globally accepted strategy for R2P the author decided to use Secretary-General's reports with his recommendations. Furthermore, the UN Framework of Analysis for Atrocity Crimes is used to find out whether Myanmar met its commitment to prevent such crimes. The final part defines four crimes that are stated in R2P. There have been many papers, articles and books published on R2P examining its historical evolution and content. The thesis uses articles and books written by Alex Bellamy, who is one of the main contributors to the R2P discussion. In addition, the author works with books and papers written by Gareth Evans, Luke Glanville or Peter Hilpold. Undoubtedly, *The Oxford Handbook of the Responsibility to Protect* (2016) that helped her the most to understand the problematics of R2P.

The practical part mainly examines the period after 2011 when the military junta was dissolved, and Myanmar began its transition to democracy. However, this chapter also outlines the conflict started on August 25, 2017 and subsequent actions taken by the international community. The chapter is divided into three parts where pillars of R2P are examined one by one. In the first part, the Framework of Analysis for Atrocity Crimes is used to analyse the situation in Rakhine State and Myanmar between 2011 and August 25, 2017 with the aim to obtain the most relevant information about the Rohingya status. On August 25, 2017 the conflict between the Rohingya and Buddhists started in a greater scale than ever before. Therefore, the author decided to examine the period before this date under pillar one, since the August 25 incidents may have resulted in crimes under R2P. By using the Framework, the work will be able to conclude whether Myanmar fulfilled the commitment entailed by the first pillar. The following part is dedicated to the second pillar to find out whether the international community used any measures to protect the Rohingya during the defined period when tensions within the borders of Rakhine State were growing. Subsequently, the thesis analyses the third pillar that entails the international community to take collective action in decisive and timely manner if the state manifestly fails to protect its population. In this part, the author focuses on actions taken by the international community after August 25, 2017 because of the extent of the crisis and its horrific impacts on the Rohingya community. Due to the fact that the Rohingya crisis is a quite new phenomenon and has not drawn enough attention, there is a very small number of academic articles analysing it. Thus, the case study is based on reports made by humanitarian agencies such as Amnesty International or Fortify Rights. The work also finds helpful the detailed report of the Independent International Fact-Finding Mission on Myanmar. Besides, news posts from the BBC, Reuters or The Guardian are often utilized.

For the purpose of this paper it is necessary to clarify terms that are often used. To minimize the confusion, Myanmar is used as the official country name. However, the author is aware that few countries have not recognized the name change from Burma arguing it was made during an undemocratic military regime. The author refers to Burma only when she speaks about the period before the name change in 1989. Furthermore, the paper refers to the Buddhist population of Rakhine State as Rakhine Buddhists, even though in some literature they are still being called Arakanese Buddhists (Rakhine State is historically known as Arakan). In the theoretical part it is distinguished between R2P as a concept and a principle. A concept is usually understood as an abstract idea. On the other hand, the term principle refers to a fundamental truth or proposition that leads from belief to action. Therefore, the concept refers to the time period between the publication of the first report dedicated to R2P in 2001 and the 2005 World Summit. During the World Summit governments endorsed R2P, which reflects a political will to act in accordance with it, making it an international principle.

As stated above, the Rohingya crisis is a relatively new phenomenon and very few scholars have paid attention to it. Moreover, because of significant geopolitical differences between Myanmar and Czechia this ethnic group has been overlooked by local authors. Therefore, this paper looks at the plight of the Rohingya in the context of R2P with the main goal to provide the analysis that might be used later for further research on R2P.

The main limitation of this thesis is a lacking universal strategy for implementation and evaluation of situations that fall under the R2P principle. Having researched the topic, it is evident that the international community has paid attention mostly to the first pillar and the third pillar. The first pillar, generally accepted by all nations, provoked the Secretary-General and academics to develop a framework to assess the level of prevention undertaken by a state. The third pillar, the most controversial and complicated, generated a debate about the use of coercive measures. But, the second pillar has remained the most under-researched and overlooked pillar. Therefore, the international community is left without any specific agenda on how to encourage states to meet its commitment to the second pillar. Without a clearly defined theory, it is very problematic to examine the Rohingya crisis. It is also hard to obtain any data about international engagement in Rakhine State. Hence, the author had to use various articles from the newspapers: The Guardian and The New York Times and broadcasters: the BBC, CNN, Aljazeera. Additionally, the couple of articles from local Myanmar Times and Frontier Myanmar were used.

1. The Responsibility to Protect in theory

In 1994, more than 800,000 Rwandans were slaughtered by Interahamwe militia in just 100 days (even faster rate of killing than during the Holocaust). Later during 1990s in sub-Saharan region of Africa more than five million people were dispatched because of the state collapse and warlordism. Europe was not spared either. The Yugoslav dissolution caused death to 250,000 people. Furthermore, in 1995, 7500 men and boys were executed by Bosnian Serb forces in the town of Srebrenica, a UN-protected area right in front of their eyes (Bellamy 2010).

The slogan “Never again!” which was proclaimed world widely after Holocaust still has not been fulfilled. In 1947, the newly established United Nations General Assembly issued the Genocide Convention which led to a collective responsibility of states to prevent and punish genocide whenever it occurs. War crimes and crimes against humanity were prohibited decades after through the Geneva conventions (1949) and its subsequent protocols (1977). Later in 1998, the Rome Statute of the International Criminal Court covered and forbid these crimes (Bellamy and Dunne 2016, p. 3). However, the world community still witnesses mass atrocities in 21st century such as the Darfur genocide (Rotberg 2010) and ongoing crisis in Myanmar.

Bellamy (2012) underlines seven important developments which have laid the foundation of a web of rules to prevent massacres, protect civilians and prosecute perpetrators. Firstly, he highlights the fact that humanitarian law has outlawed almost every form of killing. As the second development he perceives the establishment of an International Criminal Court in 2002 which has an international jurisdiction to prosecute individuals. Thirdly, he mentions the extension of global humanitarian action to protect civilians. The fourth development is the adoption of resolutions by the UN Security Council boosting a civilian protection agenda that enhance compliance with the International Humanitarian Law. Fifth, the foundation of global peace operations aimed at safeguarding civilians. Sixth, the expansion of regional initiatives especially in Africa and Latin America. Seventh, the international adoption of the Responsibility to Protect principle in 2005 and its reaffirmation by the UN Security Council in 2006.

In following chapters, we are going to look more closely at the emergence of the Responsibility to Protect, one of the most important steps the world community took to protect civilians against the arbitrary killing.

1.1 From Humanitarian Intervention to the Responsibility to Protect

Whenever questions of prevention, reaction and rebuilding after man-made catastrophes occur, the international community faces an enduring struggle between sovereignty and human rights. For the further understanding of the problems associated with R2P it is important to mention the roots of the centuries long dispute. At the beginning of the twentieth century, Lassa Oppenheim (1905) acknowledged that probably there had not been any more controversial conception as sovereignty which would not have had a universally accepted definition. In its traditional or Westphalian interpretation, sovereignty meant a right to an independent self-government without any foreign interference and intervention. Thus, states were liable for their own internal affairs (Glanville 2014, p. 11). This traditional view on sovereignty which was brought into existence around the seventeenth century lasted a number of centuries (Glanville 2014, p. 3). It is also pointed out that the sovereign states' freedom from external intervention and interference was unequivocally established only for the first time in the twentieth century (Glanville 2016, p. 154). The UN Charter Article 2 (4) established the right of non-intervention with only two exceptions: each state has a right to self-defence (Article 51) and collective measures (Chapter VII) authorised by the UN Security Council (Bellamy 2010, p. 8). Moreover, Article 2 (7) established a general principle of universal domestic jurisdiction, declaring: *"Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII"* (Charter of the United Nations [UN] 1945). It was believed that this sovereign right of non-intervention was essential not only to maintain international peace and security but also to protect less powerful states (Glanville 2016, p. 154).

In the nineteenth century, the notion of humanitarian intervention started to appear in various books dedicated to international law. However, it was heavily focused on positivism unyieldingly defending state sovereignty (Hoffmann a Nollkaemper 2012, p. 51). Martin (2011) highlights the significance of human rights declared in the UN Charter preamble affirming: *"faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women"* (Charter of the UN 1945) and in Article 1 (3) where states make commitment to *"promoting and encouraging respect for human rights and for fundamental*

freedoms for all without distinction as to race, sex, language, or religion” (Charter of the UN 1945). To put it simply, the UN Charter was the first treaty that took into account human rights on a universal scale. Later in 1948, the Universal Declaration of Human Rights emerged representing “*the moral code, political consensus and legal synthesis of human rights*” (International Commission on Intervention and State Sovereignty et al. 2001, p. 14) together with its 1966 conventions on civil, political, economic and culture rights (Evans 2015, p. 313).

Bellamy (2010) views sovereignty as the right that states have in regard to territorial integrity, political independence and non-intervention. While, human rights refer to the fact that an individual should enjoy given freedoms by the nature of humanity. However, he finds the conflict of sovereignty and human rights in the Charter itself as the tension is explained above. Martin (2010) underlines that some scholars argue that the creation of the UN Charter foreshadowed the end of the Westphalian epoch of international law whilst others sees it as the definitive confirmation of non-intervention. As mentioned in the report of the International Commission on Intervention and State Sovereignty (2001) the way how sovereignty is exercised changed radically since 1945.

After 1945, human rights became very soon a matter of the international community as a whole. Bellamy and Dunne (2016) recognize the Cold War as a significant era in the human right evolution mainly because of the wave of decolonization which coupled the right of self-determination with universal human rights. Anne Orford (2011) claims that the UN responsibility to keep order in newly re-established states began to shape with the foundation of the UN Emergency Force to respond to the Suez Crisis of 1956 and provide military assistance in the Republic of the Congo in the 1960s. According to Cohen (2012) during 1950s and 1960s there was no effort at the UN to take action on violation of human rights. Nevertheless, in 1967 the UN Economic and Social Council authorized the Commission on Human Rights and its Sub-Commission to examine situations of gross violations in particular countries. The major development was accomplished in 1975 when the Commission created ad hoc working group focused on human rights in Chile and authorize a rapporteur to probe human right abuses in the country. In their view this marked the beginning of collective measures in 1980s and 1990s (Cohen 2012, p. 9). On the other hand, Evans (2015) underlines that during the Cold War era states in terms of practical implementation of the Universal Declaration of Human Rights and commitment were rather reluctant to take any measures. He also underlines that Genocide Convention of 1948, which should have been the biggest exception from the non-intervention approach did not move any further with its practical implication.

Yet, the incidents such as Vietnam's intervention in Cambodia or Tanzania's in Uganda that took place during the Cold War started to shape the international community. The international response to the Iraqi invasion in Kuwait in 1991 was an example of the international system working the way which it was supposed to. However, the euphoria of emergence of the rule-based system did not last long. The incidents in Yugoslavia and the insufficient response to the Rwanda genocide initiated an intensive debate about what later became called humanitarian intervention (Evans 2015, p. 312). But Weiss (2016) perceives the 1990s as the transition stage towards R2P. Bílková (2010) draws attention to the development in 1990s. First, the shift from the bipolar model of the Cold War to the multilateral model which enabled broadening of the competence of international organizations and growing focus on human right violations. Second, the importance of revising priorities of the international community to protect individual human rights and democracy. Third, the formulation of various concepts that led to the creation of R2P.

One of the most important concepts is Sovereignty as Responsibility developed by the Sudanese diplomat and scholar Francis M. Deng in 1992. He began to formulate a new concept for international protection of internally displaced persons (IDPs). While most people who crossed the border were entitled to claim refugee status, IDPs did not obtain any special protection (Hilpold 2014, p. 55). Deng set primary responsibility for the welfare and security of IDPs to their governments. In cases when governments were unable to meet their responsibilities, they were expected to seek international help (Cohen 2012, p.14). He pointed out that sovereignty entailed responsibility not only to protect state from external interference but also have a positive responsibility for the welfare of its own population (Rotberg 2010, p. 11). In other words, the state is accountable to both its citizens and the international community (Hilpold 2014, p. 57). Furthermore, Deng and Cohen argued that international involvement could help to effectuate the national sovereignty by increasing state's capacity to achieve its sovereign responsibilities. It is important to note that this concept was primarily meant to resolve cases of IDPs and conflicts in Africa (Bilkova 2010, p. 30).

The second concept, the principle of non-difference originally emerged in Africa. Its purpose was to induce states of the African Union to use this principle instead of non-intervention (Bilkova 2010, p. 30). Bilkova (2010) also mentions the concept of human security. This concept was proposed by the United Nations Development Programme (UNDP) in its 1994 report. It presented two ways how the concept of security must be changed. First, from the focus on *"territorial security to a much greater stress on people's security"* (United Nations

Development Programme 1994, p. 24) and “*from security through armaments to security through sustainable human development*” (United Nations Development Programme 1994, p. 24). They considered threats to human security in various areas such as economic security and environmental security. These concepts provided significant foundations along with humanitarian crises in 1990s to the new international concept called R2P.

UN Secretary-General Kofi Annan found himself moved by the crisis in Kosovo in 1998-9 and the North Atlantic Treaty Organization’s (NATO) response to it. Despite having been bound to uphold the UN Charter, he stood in defence of the NATO’s campaign over Kosovo regretting he was not able to secure the Security Council mandate (Bellamy 2015, p. 4). In 2000, Kofi Annan in his Millennium Report to the UN General Assembly asked: “*if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violation of human rights that offend every precept of our common humanity?*” (Annan 2000, str. 48). In early 2000, Canada’s foreign minister Lloyd Axworthy identified the need to create a commission which would focus on reconciling state sovereignty and individual human rights. At Annan’s encouragement, Axworthy created commission sponsored by Canada that became known as the International Commission on Intervention and State Sovereignty (ICISS). Although the initiative was Canadian, the members were from different countries (Bellamy 2010, p. 37). In December 2001, they published the ICISS report, *Responsibility to Protect*. According to Cater and Malone (2016) ICISS covered the gap between the concepts of intervention and sovereignty, but it took few more years to gain endorsement of the UN Member States.

The period before the World Summit in 2005 was focused mainly on negotiations between proponents and opponents of R2P. In order to be accepted by the international community, the R2P concept must have been modulated. First, they must have dropped the prospect of unauthorized interventions by the Security Council. Second the precautionary principles and the just case threshold were seen as limits rather than measures to help the Council. Third, the proposal to limit the use of veto for resolution on civilian protection was dropped after members of permanent five raised their concerns (Cater and Malone 2016, p. 124). In only four years the concept was unanimously endorsed by member states at the 2005 UN World Summit. Paragraphs 138–140 of the World Summit’s Outcome Document were adopted as a General Assembly resolution. Thus, the international community was newly assigned to uphold its commitment to R2P.

The paragraph 138 appoints the primary responsibility to every state to protect its own population from four crimes: genocide, war crimes, ethnic cleansing and crimes against humanity. All states are entailed to the preventions of these crimes, including their incitement. The paragraph calls upon states to exercise this responsibility and encourages them to support the UN in establishing an early warning capacity. The paragraph 139 encourages the international community to use diplomatic, humanitarian and other peaceful means in order to protect population from defined crimes. The international community fulfils this responsibility through the UN in accordance with Chapter VI and VIII of the Charter. In case of the manifest failure of national authorities, the international community is bound to take a timely and decisive collective action through the Security Council in accordance with the Charter on a case-by-case basis. They also commit themselves to helping States in building capacity to protect their population and assisting them whilst under stress before a crisis break out. In paragraph 140 they express their support to the Special Adviser of the Secretary-General on the Prevention of Genocide (General Assembly resolution 60/1 2005, p. 30).

After six months, on April 28, 2006, the UN Security Council unanimously reaffirmed R2P in Resolution 1674 (Bellamy 2015a, p. 7). There are five important key points that we should bear in mind while talking about R2P. First, “*R2P is narrow in scope*” (Bellamy 2015a, p. 15). It means that R2P concerns only four crimes: genocide, war crimes, crimes against humanity, ethnic cleansing and their prevention. Second, states are bound to protect their population, not just citizens with often highlighted example of Myanmar’s Rohingya. Third, the R2P principle applies everywhere anytime. States have a constant responsibility to protect their population. Forth, the R2P principle is rooted in already existing international law. Fifth, the World Summit Outcome document underscores the prevention of those four crimes (Bellamy 2015a, p. 15). Moreover, it is crucial to say that only paragraphs 138 and 139 of the World Summit Outcome Document are binding for the UN member states (Bilkova 2010, p. 67).

1.2 Three pillars of the Responsibility to Protect

The Secretary-General Ban Ki-moon in his report *Implementing the Responsibility to Protect* (UN General Assembly 2009) finds three pillars to R2P in the World Summit Outcome Document. He adopted a “narrow and deep” approach. By narrow it is meant the focus only on the four crimes (genocide, war crimes, crimes against humanity and ethnic cleansing), by deep its ambition is to use all means available. The pillars are equal and non-sequential, which means there is no need to use pillar one and pillar two before applying pillar three (Bellamy 2015b, p. 45). His report was later adopted by the General Assembly resolution 63/308.

1.2.1 Pillar one: The protection responsibility of the State

In paragraph 138 of the Summit Outcome the underlying principle of the first pillar is declaring: *“Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it.”* (General Assembly resolution 60/1 2005, p. 30). Even though the Summit Outcome stresses the importance of prevention, it does not explicitly indicate how preventive measures should be exercised (Bílková 2010, p. 78). Therefore, there is a space for various interpretations. The Secretary-General Ban Ki-moon in 2009 in his report reaffirms that the responsibility to protect is primarily the matter of states themselves and that the prevention begins at home. Moreover, states should consider these core recommendations: to take part in the Human Rights Council’s universal periodic review, to become parties to international instruments on human rights for instance the Rome Statute of ICC, to conduct self-reflection of risk and resilience, to form partnership with other member states, regional and sub-regional arrangements and support them in order to boost the cooperation and to share experiences (UN General Assembly 2009, p. 10–14).

The ICISS report originally equated R2P with conflict prevention, so does Gareth Evans (2009). He suggested twenty-three preventing measures including political and diplomatic, economic and social, constitutional and legal and security measures divided into structural prevention and direct prevention strategies. Bellamy (2011), however, pointed out that from 1945 to 2010, 103 episodes of atrocity crimes were committed. He found out that 69 cases (67 per cent) took place during an armed conflict, while 34 cases (33 per cent) happened outside of context of an armed conflict (Bellamy 2011, p. 3). Thus, he recommended using a specific atrocity prevention lens

within the framework of the prevention of armed conflict, which would challenge the traditional conflict prevention (Bellamy 2011, p. 8).

Table 1 Risk factors and indicators of atrocity crimes

	Common risk factors	Indicators
Risk Factor 1	Situations of armed conflict or other forms of instability	International or non-international armed conflict, political instability (regime change, transfer of power, dispute over power), political tensions, economic instability (lack of resources, crisis of state's economy, poverty, mass unemployment, horizontal inequality), social instability (protests against state authority, exclusion or tensions based on identity issues)
Risk Factor 2	Record of serious violations of international human rights and humanitarian law	Past or present restrictions or violations of international human rights, past acts of genocide, crimes against humanity, war crimes, practice of impunity or tolerance of serious violation of international human rights, continuation of support to groups accused of involvement in serious violations of international human rights, justification or denial of violations of international human rights
Risk Factor 3	Weakness of State structures	National legal framework does not offer ample and effective protection, including ratification and domestication of relevant international human rights and humanitarian law treaties, lack of independent and impartial judiciary, high level of corruption and poor governance
Risk Factor 4	Motives or incentives	Political motives (attainment or consolidation of power), economic interest, strategic or military interest, past grievances, tensions or impunity
Risk Factor 5	Capacity to commit atrocity crimes	Availability of personnel and arms or financial resources for their procurement and capacity to transport them, capacity to encourage and recruit supporters
Risk Factor 6	Absence of mitigating factors	Absence of elements (strong and organized national civil society, independent national media, interest of international society, presence of UN and International non-governmental organization (INGOs)), cooperation with international or regional human right mechanism, reluctance or failure of UN members to support a state to exercise its responsibility to protect that could contribute to preventing or lessening the impact of violence
Risk Factor 7	Enabling circumstances or preparatory action	Strengthening the security apparatus, mobilization; acquisition of large quantities of arms or object that could be used to inflict harm; creation or increased support to militia or paramilitary groups; expulsion or refusal to allow the presence of non-governmental organization (NGOs), international organizations or media, destruction or plundering of essential goods of protected group; increased inflammatory rhetoric, propaganda campaigns
Risk Factor 8	Triggering factors	Events or circumstances that, even if seemingly unrelated to atrocity crimes, may seriously exacerbate existing conditions or may spark their onset

Source: UN, 2014. Framework of Analysis for Atrocity Crimes. Adjusted by the author

The United Nations Office on Genocide Prevention and the Responsibility to Protect (UN 2014) developed a framework which can be used as a guide for assessing the risk of genocide, crimes against humanity and war crimes. The framework contains eight common factors and six specific factors. Common factors (*Table 1*) aim to identify probability of all atrocity crimes, whilst specific factors help us with specific crimes. For the purpose of this thesis we will work solely with common factors since they can be applied to all crimes and can provide us a significant base for examining human right violations.

1.2.2 Pillar two: International assistance and capacity building

Paragraph 139 declared that *“we also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out”* (General Assembly resolution 60/1 2005, p. 30) thus suggested that the responsibility under this pillar could take four forms. He proposed that states (a) states should be encouraged to meet their responsibilities under pillar one; (b) they should be helped to exercise this responsibility; (c) states should be supported to build up the capacity to protect through economic development assistance in order to reduce inequalities, to improve education or increase political participation; (d) states should assist before a crisis or conflict breaks out (UN General Assembly 2009, p. 15) noting that in case of non-state actors perpetrating relevant crimes, international military assistance might be effective (Bellamy 2015b, p. 48) He also recommended several concrete strategies for states, although Bellamy (2015b) underlines that they were not clearly defined for states.

Besides, he also reduced the pressure exerted on the UN which was initially the main body to exercise the second pillar. He highlighted that also regional and sub-regional organizations, non-governmental organization or civil society groups can play a specific role (Gallagher 2015, p. 1262). Later, the Secretary-General Ban Ki-moon outlined three different categories of assistance: (a) encouragement, (b) capacity-building and (c) assisting state to protect their population. He distinguishes between two types of encouragement. The first type of encouragement refers to all kinds of possible measures to remind states that they have a responsibility to protect such as promotion of human rights or education of national authorities and public about atrocity crimes. Additionally, he suggests a peer review or assessment mechanism (UN General Assembly, Security Council 2014, p. 8). The second type seeks to encourage a dialogue and preventive diplomacy to soothe tensions (UN General Assembly,

Security Council 2014, p. 9). Capacity building includes various educational initiatives, training, development cooperation or creation of opportunities for dialog (International Coalition for the Responsibility to Protect 2014, p. 1). The third element of this pillar focuses on assisting states that are “*under stress or facing impeding crisis*” (Gallagher 2015, p. 15). There are five areas of assistance: (a) dispute resolution; (b) human rights monitoring; (c) law enforcement and criminal investigation; (d) protection of refugees and the internally displaced; (e) protection of civilians in humanitarian emergencies (UN General Assembly, Security Council 2014 p. 15-17).

1.2.3 Pillar three: Timely and decisive response

The most controversial pillar that is claimed by the Secretary-General to be unnecessary if pillar one and pillar two are used effectively is pillar three (UN General Assembly, Security Council 2012, p. 5). In paragraph 139 of the Summit Outcome, a preference for addressing situations first with the non-coercive means was expressed. By non-coercive means they refer to an appropriate diplomatic, humanitarian and other peaceful measures that are in accordance with Chapters VI and VIII of the Charter (General Assembly resolution 60/1 2005, p. 30). Chapter VI provides a broad range of non-coercive measure such as “*negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means*” (Charter of the UN 1945). A fact-finding mission or a commission of inquiry are also often used when gross violations of human rights law or international humanitarian law occur to report on situation.

When diplomatic or other peaceful means are found inadequate or a state does not respond to them, paragraph 139 calls for timely and decisive collective action (General Assembly resolution 60/1 2005, p. 30). The action must be taken in accordance with the Charter and may be authorized by the Security Council under Article 41 and 42. The Article 41 includes “*complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations*” (Charter of the UN 1945). In other words, sanctions that comprises of freezing financial assets of the Government and individuals, travel bans, suspension of credits, aid or loans and others.

The use of force can be authorized only by the Security Council, under Article 42 of the Charter. The coercive military measures may be used when measures provided in Article 41 are inadequate or are proven inadequate. In this case: “*Such action may include demonstrations,*

blockade, and other operations by air, sea, or land forces of Members of the United Nations” (Charter of the UN 1945).

Some may argue that prevention and response are the exact opposites of each other. Furthermore, it may seem that the first two pillars address prevention and the third response. But the dividing lines are not so evident in practice. The Secretary-General Ban Ki-moon highlights that the first pillar may require states to respond to various situations. He gives as an example of suppressing inflammatory rhetoric or cutting of the supply of arms that could be used for committing atrocity crimes. The second pillar also compromises prevention and response. Under pillar two the international community may establish a criminal investigation and identify perpetrators. However, this action may be considered as an action under pillar three as it constitutes a timely and decisive response. Therefore, the Secretary-General underscores that in some cases it may be impossible to ascertain whether a measure falls entirely under only one pillar (UN General Assembly, Security Council 2012, p. 4).

1.3 Crimes under the Responsibility to protect

During the 2005 UN World Summit, states and governments accepted the responsibility to protect their own population against these four crimes – genocide, war crimes, crimes against humanity and ethnic cleansings. In case of the state’s failure to protect civilians, paragraph 139 bounds the international community, through the UN, to take a collective action. Except for the moral and ethical responsibility to protect populations from mass atrocities, there are already well-established legal obligations. The first three crimes are already defined in several legal documents. The Convention on the Prevention and Punishment of the Crime of Genocide 1948 has become a norm of customary international law. Likewise, the common Article 1 of the Geneva Conventions is considered to be a norm of customary international law that means it applies to all states. For the purpose of this work the Rome Statute of International Criminal Court (ICC) is used as a legal base unless, as in case of genocide, the legal obligation is already internationally recognized.

Genocide is defined in Convention on the Prevention and Punishment of the Crime of Genocide as *“any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:*

(a) Killing members of the group;

- (b) Causing serious bodily or mental harm to members of the group;*
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*
- (d) Imposing measures intended to prevent births within the group;*
- (e) Forcibly transferring children of the group to another group.” (Convention on the Prevention and Punishment of the Crime of Genocide 1948)*

In other words, concluding that genocide has been committed there must be a proven intent to physically destroy a national, ethnical, racial or religious group in its whole or in part. Perpetrators target victims deliberately (not randomly) because of their real or perceived membership of the protected group (Global Center for the Responsibility to Protect 2018, p. 1). Genocide can take place either during time of peace or during time of war (Convention on the Prevention and Punishment of the Crime of Genocide 1948).

War crimes are not codified in a single document, but the list of crimes can be found in International Humanitarian Law as well as in International Law treaties (Global Center for the Responsibility to Protect 2018, p.1). The Rome Statute of the ICC distinguishes between international armed conflicts and non-international armed conflicts. The aim defined in the introduction part indicates that the focus of this thesis is solely on Rakhine State and for that reason we define at this part only war crimes in non-international armed conflicts. The Rome Statute identifies following crime:

- “(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;*
- (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;*
- (iii) Taking of hostages;*
- (iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.” (Rome Statute of the International Criminal Court 1998)*

Crimes against humanity have not been codified in any separate treaty. However, this crime was defined in the Rome Statute of the ICC *“as any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population”* (Rome Statute of the International Criminal Court, 1998). These acts are:

(a) *Murder;*

(b) *Extermination;*

(c) *Enslavement;*

(d) *Deportation or forcible transfer of population;*

(e) *Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;*

(f) *Torture;*

(g) *Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;*

(h) *Persecution against any identifiable group or collectively on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;*

(i) *Enforced disappearance of persons;*

(j) *The crime of apartheid;*

(k) *Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”* (Rome Statute of the International Criminal Court 1998)

Despite not having been recognized as an independent crime, **ethnic cleansing** is included in the World Summit Outcome Document. Its inclusion to R2P shows that the international community’s disapproval of the incidents that occurred in 90s in former Yugoslavia (Bellamy 2010, p. 195). It is generally agreed that the crime of ethnic cleansing is already found within ICC jurisdiction (Bellamy 2010, p. 196). The definition of a UN commission of Experts can also be relevant for us. They looked into violations of international humanitarian law in the former territory of Yugoslavia and in their interim report defined ethnic cleansing as *“rendering*

an area ethnically homogeneous by using force or intimidation to remove persons of given groups from the area" or "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." (Global Center for the Responsibility to Protect 2018, p. 2).

The ICC is a crucial institution that may hold perpetrators of mass atrocities accountable. It was founded in 1998 with the goal to cover existing gaps in international criminal justice. There are significant similarities between R2P and the ICC. Both R2P and the ICC recognize the same acts (genocide, crimes against humanity and war crimes) as the grievous crimes that can be possibly committed against people (Kersten 2011). The Rome Statute is built on the principle of complementarity. In other words, the Court intervenes only if a state is unwilling or unable to prosecute individual perpetrators (Ralph 2016, p. 648). The Office of the Prosecutor, the main organ of ICC, is charged with investigation of alleged crimes. The investigation can be initiated if one of three conditions are met: (a) a State Party of the Rome Statute refers to the Prosecutor a situation *"in which one or more of such crimes appears to have been committed"* (Rome Statute of the International Criminal Court 1998) on the territory of a State also party to the Statute; (b) the Security Council acting under Chapter VII of the UN Charter refers a situation to the Prosecutor for investigation regardless whether a State is a party to the Statute (International Coalition for the Responsibility to Protect, n.d.); (c) the Prosecutor initiates an investigations if: (1) *"the information available to the Prosecutor provides a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed"*; (2) *"The case is or would be admissible under article 17"* (Rome Statute of the International Criminal Court 1998) regarding whether a state is unwilling or unable to prosecute (Ralph 2016, p. 645); (3) *"Taking into account the gravity of the crime and the interest of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interest of justice"* (Rome Statute of the International Criminal Court 1998).

The Secretary-General Ban Ki-moon highlighted in his 2009 report that the ICC was a vital tool for implementing R2P and important contribution to mass atrocities prevention (Ralph 2016, p. 647). However, the ICC investigation cannot be considered as a substitute for timely and decisive action, but should be seen as an initial step towards it (Ralph 2016, p. 648).

2. The Responsibility to Protect in practice: Rakhine State

Rakhine State situated on the western coast of the Republic of the Union of Myanmar has been inhabited by Muslims for centuries. In 1959, the first President of Burma Sao Shwe Thaik, a Shan, recognized Muslims of Arakan as one of the indigenous races of Burma. The first prime minister U Nu in his speech, five years earlier in 1954, referred to people living in Buthidaung and Maungdaw Township (see Appendix 1) in Rakhine State as Rohingya (Ullah and Chatteraj 2018, p. 544). The Rohingya are an ethnic Muslim group that is distinct ethnically, linguistically and religiously from dominant Buddhist groups of Myanmar (Albert and Chatzky 2018). The government often refers to the Rohingya as “Bengalis” or “illegal immigrants” (UN Human Rights Council 2018, p. 361) which clearly reflects their social status in Myanmar. Before August 2017, approximately one million Rohingya resided in Rakhine State. The accurate number is difficult to obtain since the Rohingya were excluded from the 2014 census (BBC 2018c), unless they registered as “Bengali” (Green et al. 2015, p. 27). The “clearance operations” held by security forces after the clashes on August 25, 2017 led to massive exodus of some 700,000 Rohingya (Ellis-Petersen 2019). Currently, it is estimated that about 100,000–250,000 Rohingya remain in Rakhine State (Fair 2018, p. 65) together with some 2,000,000 Rakhine Buddhists (The Republic of The Union of Myanmar 2015A, p. 11).

In Myanmar, it is generally believed that Rakhine State has been home to an indigenous population of Rakhine Buddhists who have been recently under threat from immigrant Bengalis (the Rohingya). Ultra-nationalist Buddhists claim that the Rohingya illegally migrated from East Bengal (territory of current Bangladesh) during the British rule of Burma (1886–1948) or after Burma gained independence in 1948 (Zarni and Cowley 2014, p. 689). Some Rakhine nationalists even say that the term Rohingya was created in 1950s with aim to promote political rights of Bengalis in Myanmar (Zarni and Cowlye 2014, p. 690). Furthermore, official Myanmar histories confirm this version stating there is no Rohingya group in Myanmar’s history (Zarni and Cowley 2014, p. 689). Therefore, the Rohingya are excluded from the list of 135 official state groups. On the other hand, independent historians document the centuries long settlement of Muslims in Rakhine State. Nevertheless, the origins of “Rohingya” terminology remain unclear (Green et al. 2015, p. 28). Ullah and Chatteraj (2018) argue that the Rohingya were originally known as the Arakan (former name for Rakhine State) people who lived in the region since 3000 B.C. While Arakan was one of the most powerful kingdoms in South East Asia until 1784 (Green et al. 2015, p. 29), its inhabitants adopted both Buddhism and Islam.

Later, Islam became the main religion in Arakan due to increased trade with Muslim Arabs who very often married locals and settled there (Ullah and Chatteraj 2018, p. 551). During that time, borders were often changed depending on rulers. In 1799, Francis Buchanan, a British linguistic, recognized three dialects in Arakan. One of them was spoken by “Mohammedans” who had long lived in Arakan and who called themselves “Rooinga” or natives of Arakan (Zarni and Cowlye 2014, p. 690). From 1784 Arakan was occupied by Burma which was captured by Britain in 1824. Whole Burma became a province of British India (Ullah and Chatteraj 2018, p. 552). It is important to mention that during British colonial rule many people from India’s state of Bengal, which was predominantly Muslim, migrated to Burma’s Arakan state. The main reason was an increased demand for rice. These people usually settled there enlarging the Rohingya population. During World War Two, the Rohingya joined the British army which promised Arakan full autonomy and Rakhine Buddhists fought with the Japanese (Green et al 2015, p. 28). During that time, Rohingya militants were helping the British with various operations but at the same time they were trying to pursue their political goals. Their main goal was to create an independent Islamic state or union with a neighbouring Islamic state (today’s Bangladesh). They committed numbers of massacres and ethnic cleansing with aim to expel non-Muslims from Rakhine (Bellamy 2017, p. 240). In 1942, Burmese nationalists killed 40,000 Muslims since they believed that Muslims benefited from the colonial rule. The tension graduated in 1948 when Burma claimed Arakan to be its own and, albeit the Rohingya wanted Arakan to join Pakistan. The Rohingya were afterwards forbidden to become civil servants and being involved in politics (Ullah and Chatteraj 2018, p. 552). Past conflicts between ethnic groups lead to stereotypes that describe the Rohingya as terrorists and illegal immigrants (Green et al. 2015, p. 28). Moreover, the fact that the Rohingya had intended to separate Rakhine State from Myanmar and to create its own Islamic state by using the war as an opportunity led to escalating tensions between Muslims and Buddhists in Rakhine State (Bellamy 2017, p. 240).

The most significant turning point in Rohingya lives came in 1982 when the Citizen Act entered into force stripping off their citizenship. In 1990s Rakhine Muslims received Temporary Registration Cards (or “white cards”) that did not grant them citizenship and were only used as their identification (Green et al. 2015, p. 57). However, these cards expired in 2015 and a new Identity Card for National Verifications was introduced. Rohingya applicants had to identify themselves as “Bengali” since the government has claimed there is no group called Rohingya in Myanmar. Therefore, very low number of the Rohingya applied and later in 2016 the government restarted the verification process with new National Verification Cards.

Nevertheless, by January 2017 only 6,000 cards were issued comparing to 400,000 white cards returned in 2015 (UN Human Right Council 2018, p. 117). In other words, we can see the foundations of systematic oppression in the lack of legal status of the Rohingya.

During past decades, *de facto* stateless Rohingya people had to face various restrictions including limited freedom of movement, marriage restrictions, two-child policy and enforced birth control (Fortify Rights 2014, p. 24–37). Moreover, movement restrictions did not permit the Rohingya to access health services (UN Human Right Council 2018, p. 130). Even if they managed to reach a state hospital they were subjected to discriminatory practises.

The first major outflow of some 250,000 Rohingya refugees dates back to 1991 and 1992 as a result of forced labour, rape and religious persecution. By the end of 1997, the majority of Rohingya refugees returned to Rakhine State (Human Right Watch n.d.). In 2012, about 100,000 Rohingya were displaced due to clashes between both Rakhine Buddhist and the Rohingya. However, following well-planned attacks against the Rohingya drove additional 100,000 out of their homes in the same year (Fortify Rights 2014, p.17–18). Another military crackdown on the Rohingya took place in 2016 after Harakah al-Yaqin (currently known as the Arakan Rohingya Salvation Army) attacked several police posts in Rakhine State (Holmes 2016).

As stated in the introductory part, this thesis focuses on recent events, mainly on incidents that took place in 2017. Years of oppression and systematic abuses created the Arakan Rohingya Salvation Army (ARSA), that began with its operations in 2016. They claim to fight for rights of the Rohingya. Moreover, they have denied ties to al-Qaeda and the Islamic State of Iraq and the Levant (Edroos 2017). ARSA members regularly reaffirm their intention on what is believed to be their Twitter account. In its latest press statement issued on August 25, 2018 they noted: “*ARSA has come to existence only to defend, salvage and protect Rohingya people in Arakan State against the Burmese Terrorist Government and its Genocidal Military Regime, that has determined to destroy Rohingya people as a whole*” (ARSA, the Army 2018). On the other hand, the Myanmar president office posted photos and information of so called ARSA *terrorists* (The Republic of the Union of Myanmar, President Office 2018). Additionally, Amnesty International (2017) accused them of killing several Rohingya in Rakhine State and in refugee camps in Bangladesh.

The current crisis started in the early hours of August 25, 2017 when ARSA began a coordinated attack on 30 police posts and army bases in Rakhine State. The confrontation ended with death

of 77 ARSA fighters and 12 policemen (Barany 2018, p. 143) This action triggered an army crackdown on the Rohingya causing several villages to be burnt down, dozens of civilians killed, and women and girls raped. Early news informed about approximately 1,000 people murdered (BBC 2017). However, at least 6,700 other people including 730 children below the age of five were slaughtered in the month after the conflict broke out (Medicins Sans Frontieres 2017). Moreover, by the end of the year more than 655,000 Rohingya people fled to Cox's Bazar, Bangladesh (UN Population Fund Bangladesh 2017), where they joined 307,500 Rohingya refugees who had already come there before the August attack (BBC 2018c). As of March 15, 2019, the UN Refugee Agency registered 909,861 refugees in Cox's Bazar (UN High Commissioner for Refugees 2019).

2.1 Pillar one: The protection responsibility of the State

Myanmar as a UN member has a responsibility to protect its own population. The end of military rule in 2011 was internationally rewarded by easing sanctions and enhancing diplomatic initiatives. However, the transition from decades of military rule to democracy has been marked by human rights violations (Abdelkader 2014, p. 512). To examine if there had been any abuses of human rights before the 2017 plight that could, if solved, have prevented massive exodus the thesis uses the Framework of Analysis for Atrocity Crimes.

2.1.1 Factor 1: Situations of armed conflict or other forms of instability

The transition to democracy started in 2008, when the military government proposed a new constitution. The draft suggested allocating 25 percent of seats in the parliament to the military (the Tatmadaw) and banned Aung San Suu Kyi from becoming a president (BBC 2018b). She is an internationally known dissident and Nobel laureate who was kept in home arrest for 15 years in total for her effort to democratise Myanmar (Barany 2018, p. 144). She has been also the leader of the main opposition party National League for Democracy (NLD). Later in 2008, the government announced that the majority voted in favour of the draft. Two years later, the first elections took place. The main military-backed party, the Union Solidarity and Development Party (USDP), claimed victory. However, opposition groups called it a widespread fraud since there was not any declared campaigning period and the elections were based on a nondemocratic constitution (Nakanishi and Osada 2016). The latest parliamentary elections were held in 2015. Aung San Suu Kyi party won and was able to form the Government

(BBC 2018b). Since she cannot become a president, they created a position of State Counsellor for her. Therefore, she acts as the *de facto* head of the state, even though this position is not defined in any existing law. The military still keeps its 25 per cent of parliament seats (Barany 2018, p. 146).

The military is often a questioned element in Myanmar transition. Under the 2008 Constitution, constitutional amendments are possible only with more than 75 per cent of votes in the legislature (Constitution of the Republic of the Union of Myanmar 2008). Keeping a quarter of the seats, the military ensures that no change is made without their support. Additionally, three core ministries are in hands of the military: Defence, Border Affairs and Home Affairs. The military has the right to independently administer all armed forces and set its own budget (Stokke et al. 2018, p. 10). In 2017, the budget reached \$1.71 (World Bank 2019b) billion which represented 12.44 per cent of all government expenditures (World Bank 2019c) and 2.44 per cent of national gross domestic product (GDP) (World Bank 2019d) the amount as high as the combined total allotted to health care and education (Barany 2018, p. 145). The president of Myanmar lacks the power of Commander-in-Chief who has a power over military justice. The Commander is chosen by the National Defence and Security Council which consists of eleven members who are active-duty military or ex-army personnel. In case of emergency, the Commander-in-Chief can take full control over the state and may restrict or suspend fundamental rights (Stokke et al. 2018, p. 10). Currently the Commander-in-Chief is Min Aung Hlaing.

Besides, the Tatmadaw and its associates have been involved in serious violations of international law. They engaged in a non-international armed conflict in Kachin and Shan States which are located on the borders with China. They often attacked civilian population of these states without any justifiable reason (UN Human Right Council 2018, p. 30). The oppression of various minorities resulted in several riots and strikes. A significant example of social instability can be found in 2012 in Rakhine State, where clashes between the Rohingya and Rakhine Buddhist took place only a few days after ten Muslims, who were not the Rohingya, were murdered by Buddhists (Reuters 2012). The armed conflict did not take place in Rakhine State before crisis 2017 (Arashpuor and Roustaei 2016, p. 390). A rape and murder of a Buddhist woman by Muslims preceded the execution of Muslims. Subsequently, the riots intensified on both sides: the Rohingya and Buddhists. The military failed to resolve the clashes and soon joined Rakhine Buddhists. The events led to an extensive humanitarian crisis. While Rakhine Buddhist enjoyed help from Myanmar Buddhist society, the Rohingya were without

sufficient supplies of water, food and sanitation because Rakhine Buddhists protested against international aid and physically disabled aid deliveries to northern parts of Rakhine State where most Rohingya had fled (Human Right Watch, 2013). Additionally, Abdelkader (2014) also pointed out the murder of several Rohingya women who peacefully protested in 2013 against the government's effort to move their families from the current camp where they had found shelter after the 2012 public violence.

Since its transition in 2010, Myanmar has become one of the fast-growing economies in South-east Asia. Sanctions previously imposed on the military junta were first suspended and then lifted by the European Union (EU), closely followed by Canada and Australia and later by the United States (Than 2015, p. 457). The average economic growth during the period 2012-2016 was 7.5 percent (Stokke et al. 2018, p. XIII). Besides, it is estimated that approximately 3.2 billion barrels of oil and 18 trillion cubic feet of natural gas reserves are in Myanmar (UK Trade & Investment 2014, p. 1). However, there are few limiting factors that influence the growth of Myanmar's economy. Generally, limited infrastructure remains the main problem coupled with the fact that only 37 per cent of population has access to electricity. In addition, the military does not only play a significant role in economic governance, senior military officers also own shares in the most profitable businesses (Stokke et al. 2018, p. 37).

On the other hand, Rakhine State remains almost untouched and is marked by under-investment and under-development. Foreign investment is often discouraged due to social unrest and frequent human rights violations. In the 2014 census was found that Rakhine State has the highest unemployment rate with 10.4 per cent¹ (The Republic of the Union of Myanmar 2015a, p. 2) in Myanmar where the national unemployment rate was four per cent (The Republic of the Union of Myanmar 2015b, p. 29). The 2012 clashes significantly soured the relationships between Rakhine communities. This led to disruption of trade and commerce across the state and also with neighbouring Bangladesh. In addition, some Rakhine employers were under pressure from Rakhine nationalists to avoid hiring Muslims. Muslims themselves faced restrictions on freedom of movement, that disabled them to enter Rakhine market. The latest statistics show that the poverty rate in Rakhine State is 43.5 per cent but national poverty rate is only 25.6 per cent (Advisory Commission on Rakhine State 2017, p. 20).

¹ The number does not include the Rohingya, since they were excluded from the census

2.1.2 Factor 2: Record of serious violations of international human rights and humanitarian law

The Myanmar government often calls the Rohingya as “illegal immigrants” or “Bengalis” referring them to laborers and merchants that came from India during the British colonial period (Southwick 2015, p. 139). Myanmar recognizes 135 national races that had settled in the state before 1823 such as Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan (Burma Citizenship Law, 1982). The most prominent of these groups are the Burman (also called Bamar). They constitute approximately two-thirds of Myanmar’s populations and are mainly Buddhists. Besides, they comprise the majority of the military (Global Centre for the Responsibility to Protect 2015, p. 1). The Rohingya are not one of the 135 official races. However, the settlement of the Rohingya, a Muslim minority in Rakhine State, can be traced back at least to the beginning of 19th century (Southwick 2015, p. 139). A possible reason why the Rohingya are not recognized as one of the official groups is rooted in the complicated historical background. As explained above, Myanmar officials perceive the Rohingya as recent immigrants from Bangladesh and the Rohingya cannot prove they are not because the Myanmar’s government took their documents. Additionally, past grievances between Buddhists and Muslims, mainly during the Second World War when they wanted to create its own state, probably led to current oppression.

The 1982 Citizenship Law denied citizenship to the Rohingya leaving about 800,000 Rohingya stateless in northern Rakhine State (Milton et al. 2017, p. 942). In 1989, the government began a citizen verification programme. They issued colour-coded citizenship card that divided people into three groups: full citizens, associate citizens and naturalized citizens (Green et al. 2015, p. 56). However, only some Muslims held at least national registration cards or temporary registration certificates, but many did not have any identification at all. These documents were collected from Muslims in Rakhine State by government officials and were never replaced leaving most Rohingya and other Muslim minorities in Rakhine without any identification. In 1995, the authorities issued white Temporary Registration Cards that did not grant citizenship but entitled the holder to vote in both the 2010 general elections and 2012 by-elections (Green et al. 2015, p. 57). Out of the 850,000 white cards about 750,000 were issued for people in Rakhine State. Card holders were referred as Rohingya or Bengali (Myint 2014). The white cards, however, were revoked in 2015 and made the holders ineligible to vote in the 2015 elections (Advisory Commission on Rakhine State 2017, p. 9). Since then, the government has introduced two new cards, but none of them has been issued in the same amount as white cards.

In general, the persecution of the Rohingya can be very easily proven. International State Crime Initiative (ISCI) found a leaked document that was apparently adopted in 1988 that uncovered the intent to eliminate the Rohingya from Myanmar. The document contained various strategies such as forbidding higher education, ownership of land, shops and buildings with intent to stop all their economic activities; reducing the population growth by imposing restrictions on their marriages; converting Muslims into Buddhist. However, mass killing of the Muslims was restricted in order to avoid the attention of Muslim countries (Green et al. 2015, p. 36).

The government and the Tatmadaw are not the only ones who were involved in the anti-Muslim propaganda. The Myanmar's Buddhist monks (the Sangha) are important figures in Myanmar society. They influence regular people since they hold the position of the highest moral authority. Before the 2015 elections, monks had played a significant role in the anti-Muslim and especially in the anti-Rohingya movement. The most prominent nationalist movements were 969 and Ma Ba Tha (Green et al. 2015, p. 60). The first movement was based on a strong belief in numerology. For instance, Myanmar became independent at exactly 4:20 a.m. on January 4, 1948 because of astrologers' advice. Additionally, the "8888 Uprising" began on August 8, 1988 that was later crushed by Ne Win on a scheduled date of September 18. Ne Win's favourite number was nine. Thus, September was chosen because it is ninth month and 18 because eight plus one equals nine. As we can see, numbers mean a lot in Myanmar. However, two numbers 969 and 786 mean even more nowadays (Coclanis 2013, p. 26). The number 786 is the numerical value of the first opening words in the Quran. In South Asia and Myanmar this number was posted on various buildings signaling that the place was Muslim. According to some Buddhists the sum of 786 equals 21 hence Muslims who publicly show this number aim to dominate the world in the twenty-first century. Buddhists came up with the counter-number 969 that signifies nine special attributes of Lord Buddha, six special attributes to Buddhism teaching and nine special attributes to Buddhist monks. The 969 movement's roots can be traced back to 1990s, however, it gained momentum in early 2000 (Coclanis 2013, p. 27). The principal message of this movement was that Myanmar belongs to Buddhists. Wirathu (calls himself Burmese bin Laden), who was the main person behind 969, was imprisoned by the military regime between 2003 and 2012 for anti-Muslim propaganda and threatening the regime. After he was released, he preached hatred again (Green et al. 2015, p. 61). The movement created the idea that Muslims want to take over Myanmar by marrying and converting Buddhist women to Islam (UN Human Right Council 2018, p. 26). Wirathu also claimed that Muslims were wealthier than Buddhists (Green et al. 2015, p. 61). There are also

links that suggest that 969 was supported by the government (Green et al. 2015, p. 62). The Sangha prohibited the 969 Movement in 2013, however, its ideology was carried forward through Ma Ba Tha. The successor group was well known for its anti-Muslim ideology and activities. In May 2017, the Sangha posted a statement saying that Ma Ba Tha was not created in accordance with the Sangha Organization Law. Therefore, the members of Ma Ba Tha had to stop using the group's name and all posters of the group must have been removed. Even though the Sangha took measures to stop anti-Muslim propaganda, these groups remained accepted in Myanmar's society. Hence, the anti-Muslim hatred has been spreading till present day (UN Human Right Council 2018, p. 27).

Scholars among NGOs that began to focus on violations of human rights in Myanmar in 2012 have repeatedly called for international response. Southwick (2015) observed that crimes against humanity and possible genocide were committed there. Green et al. (2015) found out that the Rohingya had suffered first four stages of genocide out of six, that were outlined by Daniel Feierstein². Additionally, Alizera Arashpuor and Alireza Roustaei (2016) found that three out of four crimes defined in R2P had already taken place in Rakhine State.

The government systematically denied that any human rights abuses took place in Rakhine State that implicitly approved actions of perpetrators (UN Human Right Council 2018, p. 177). Aung San Suu Kyi, in the period between 2012 and August 2017 denied any allegation about the Rohingya oppression or did not comment on it at all. In 2012, when the communal tensions in Rakhine State broke out, her party was in the opposition. Hence, she could say that the government was responsible for maintaining peace. However, when the forced displacement of the Rohingya continued in 2013, she claimed that Muslims had not been experiencing ethnic cleansing. Moreover, she pointed out that also Buddhists had suffered. In 2015, when her party won the elections, she could no longer blame the government for violations (BBC 2018a). Besides, she told the UN special rapporteur that her government would avoid using the controversial term "Rohingya" (Reuters 2016). When another security operation against the Rohingya took place in 2016, Suu Kyi kept avoiding journalists and press conferences. However, when she was forced to talk in public, she claimed that the security forces were

² Daniel Feierstein (2014) in his book *Genocide as social practice* defined six stages of genocide: stigmatisation (and dehumanisation); harassment, violence and terror; isolation and segregation; systematic weakening; mass annihilation; and finally, symbolic enactment involving the removal of the victim group from the collective history

operating according to the rule of law. She also dismissed a detailed report about Rohingya women being raped by the military as fake rape (Barany 2018, p. 144). She kept saying that the situation of the Rohingya had been exaggerated and in May 2017 she rejected the UN decision to investigate alleged crimes against the Rohingya (Agence France-Presse 2017). Nevertheless, at that time there were already evidence that serious human rights violations were committed.

2.1.3 Risk Factor 3: Weakness of State structures

The 2008 Constitution redistributes power between the executive, legislative and judicial branches. Nevertheless, the former military regime and its officials codified immunity for the acts committed in the past and members of the military are provided with exclusive military jurisdiction (International Commission of Jurists 2014, p.3). A Judicial Service Commission or other comparable body is not appointed in Myanmar to promote and discipline judges; and protect and promote judicial independence and the efficiency of justice (International Commission of Jurists 2014, p.8). The President and the Parliament appoint the member of the Constitutional Tribunal. The president nominates the Chief Justice of the High Courts of the Regions and States. It is crucial to point out that the criteria for appointment do not oblige candidates for judicial office to have a law degree or professional experience in the field. Thus, many judges in Myanmar are not qualified enough to conduct free and fair trials. Additionally, political and military influence plays a significant role in legal decision making. The government often interferes in controversial cases that concern its interests (International Commission of Jurists 2014, p.11). Due to limited access to formal judicial mechanism, the majority of internal disputes are solved through a local or informal mechanism. Public trust in the judiciary is very low since it is believed that the system is abused by authorities and uses corrupted practises (Advisory Commission on Rakhine State 2017, p. 56). In 2017, Myanmar was found on 130th place out of 180 countries in Corruption Perception Index made by Transparency International (2018).

Myanmar is a party to the UN Charter, the Genocide Convention, the four Geneva Conventions, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, International Covenant on Economic, Social and Cultural Rights. Yet, they have not signed or ratified other important treaties such as Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or the International Convention on the Elimination of All Forms of Racial Discrimination (International Commission of Jurists 2014, p. 3).

2.1.4 Risk Factor 4: Motives and incentives

As stated above, the Rohingya have faced the persecution for decades. The leaked document clearly showed that there was an intent to exterminate the Rohingya. However, motives why the Rohingya have been attacked for such a long time remain questionable. It is generally agreed that plight of this minority is caused by different religion and ethnicity. The era of colonization when thousands of Muslims came, left a deep religious trauma. Nowadays, many ordinary Buddhists believe they are under threat from Muslim influx as they were during colonization. Moreover, the decades long government propaganda promoted Islamophobia. But in fact, only 3 percent of Myanmar population are Muslims (Shams 2015). On the other hand, there are few academics who argue that the crisis is not caused only by religious reasons. Saskia Sassen, a professor of Sociology at Columbia University, at the beginning of 2017 claimed that the tension was partly generated by military-economic interest in Rakhine State. She found out that the military had grabbed large stretches of land from smallholders both Rakhine Buddhist and the Rohingya since 1990s without any provision. By 2012 it was changed to favour large corporate acquisitions. Since then, the land has been used for mining or water projects. She also underlined that the government had allocated 1,268,077 hectares in the area where the Rohingya live for corporate rural development (Sassen 2017).

2.1.5 Risk Factor 5: Capacity to commit atrocity crime

Examining previous factors, we can now say that the Myanmar's military constitutes one of the main potential perpetrators of atrocity crimes. As stated before, the budget for 2017 was \$1.71 billion (2.48 percent GDP). According to the World Bank the military spending was fluctuating between the amount of \$2.97 billion and \$1.71 billion between 2012 and 2017 (World Bank 2019b). The estimated number of military personnel is 513,250 during the same time period (World Bank 2019a). However, in terms of recruitment the military has struggled. The previous president Thein Sein intended to create a disciplined fighting force and improve combat capabilities. Yet, the military's equipment is outdated, facilities are falling apart, and soldiers are far from well trained (Barany 2016). However, there was an increase in recruitment of local non-Muslim residents in the Boarder Guard Police Force in Rakhine State due to increased xenophobia toward Muslims and the loosen admission criteria. Apart from the military, there are also ethnic armed groups. ARSA operates within the borders of Rakhine State, but the estimated number of them was approximately 600 members (Barany 2018, p. 143). The

recruitment in the villages of northern Rakhine and camps in Bangladesh rose after October 2016, analysts and aid workers said (McPherson 2017b). We also have to take into account the numerous militias that have been operating in Myanmar. They, as the military and army, are allowed by the government to carry arms. It is impossible to track militia but it is known that most of them are allied with the military, some of them cooperate with ethnic armed groups that control a large area (Asia Pacific Centre for the Responsibility to Protect 2017, p. 22).

2.1.6 Risk Factor 6: Absence of mitigating factors

After the 2015 election, it was thought that Aung San Suu Kyi government would enable more freedom to journalists. According to the 2017 Press Freedom Index Myanmar was one of the most-improved countries, rising from 143rd place to 131st place out of 180 countries (Reporters Without Borders 2018). Frontier Myanmar (2017) in response posted an article where they claimed the opposite. They pointed out that journalists are usually not allowed to attend parliament session, are often denied information by government agencies and the military did not show any commitment to media freedom. Moreover, authorities blocked the access to northern Rakhine State for independent journalists. They also underscored the growing application of section 66 (d) of the Telecommunication Law, which criminalize online defamation. Under former government there were seven cases but above 50 (up to May 11, 2017) under incumbent one. They also highlighted that the section 66(d) created “a new culture of self-censorship” that does not only influence journalists but all users of the internet, mainly of social media (Frontier Myanmar 2017). One of the striking examples of limited freedom of speech is a dismissal of a British investigative reporter Fiona McGregor from the Myanmar Times. McGregor wrote an article headlined *Dozens of rapes reported in northern Rakhine State* reporting many allegations of rape of Rohingya women by security forces during military operations in 2016. Possibly, more than three ministries were involved in her dismissal. Furthermore, the Myanmar Times was prohibited to cover the military operation in Rakhine State (Reporters Without Borders 2016). The UN Special Rapporteur in its report repeatedly pointed out that freedom of speech is endangered (UN Human Right Council 2015, p. 4; UN Human Right Council 2016, p. 5). Civil societies also faced harassment or intimidations. However, about forty independent civil societies called at the beginning of 2017 for international investigation in Rakhine State (Fortify Rights 2017).

Various international non-government organization INGOs or the UN have been present in the country since 2012. In addition, Myanmar is a member of the Association of Southeast Asian

Nations (ASEAN) since 1997. Nevertheless, their access to affected regions is limited. The government also disapproved the UN Human Right Council decision to create an independent fact-finding mission (Cumming-Bruce 2017).

2.1.7 Risk Factor 7: Enabling circumstances or preparatory action

According to Fortify Rights (2018) preparation for atrocity crimes that were committed in late August 2017 took place between October 2016 and August 2017. The military and police during the week preceding August 25 visited houses in Rohingya villages in northern Rakhine State with the aim to confiscate sharp and blunt objects, including cooking knives from civilians. They also took away fences from villages or they destroyed essential belongings such as clothing, money or food. It is likely that the confiscation of objects by the Myanmar's army soldiers was done under orders. Security forces also targeted the Rohingya, for instance they engaged in torture, rape, killings or burning of Rohingya villages (Asia Pacific Centre for the Responsibility to Protect 2017, p. 28). After the 2016 ARSA attacks on police, the Myanmar military started to recruit and arm ethnic Rakhine and other non-Rohingya citizens (Fortify Rights 2018, p.43). They provided Rakhine residents with guns, swords and training (Fortify Rights 2018, p. 44). Additionally, the presence of the military significantly increased in weeks prior to August 25 (Fortify Rights 2018, p. 50).

Rakhine State had been restricted for foreigners and only a few humanitarian groups and UN agencies had been allowed in before attacks in 2016. Myanmar authorities further limited access to affected areas and suspended pre-existing humanitarian aid after the 2016 attacks (Fortify Rights 2018, p. 47). As a result, the Rohingya were lacking food, water and healthcare since the main providers of food aid were humanitarian organizations. Only the World Food Programme (WFP) was allowed to resume its activities at the beginning of 2017, however, in mid-July the government banned WFP from accessing northern Rakhine State leaving the Rohingya without necessary help (Fortify Rights 2018, p. 49).

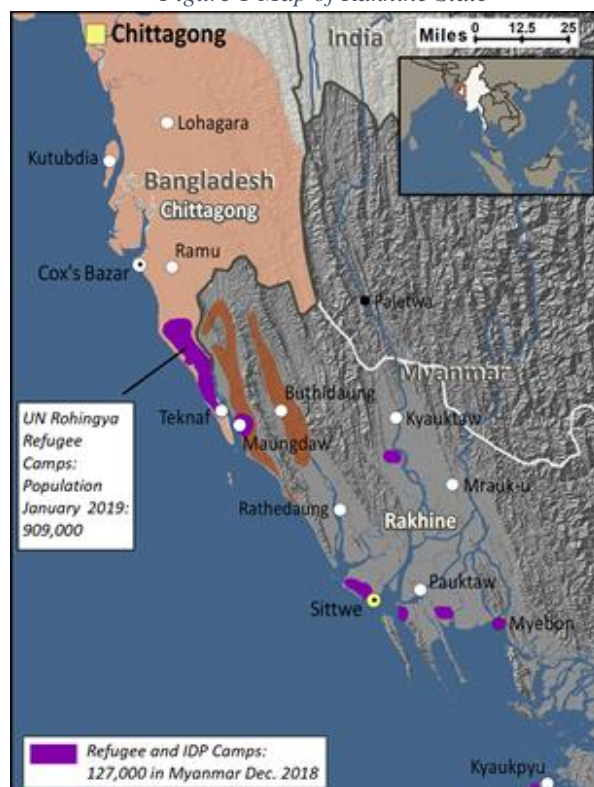
Under the seventh risk factor falls also increased inflammatory rhetoric and propaganda campaigns. The Special Rappourter in 2015, pointed out the video of the Chair of the Peace and Diversity Party, where he called for killing of the Rohingya. She also observed that hate speech, negative stereotyping and discrimination against Muslim minorities, especially the Rohingya took place (UN General Assembly 2015, par. 31). Therefore, in 2016 the government

introduced a task force that would prevent, investigate a charge those who provoke violence (Fortify Rights 2018, p. 29).

2.1.8 Risk factor 8: Triggering factors

The incidents that took place on August 25, 2017 and following days and weeks were the consequences of decades long enmity. The Fact-Finding mission finds it as a result “*from the systemic oppression of the Rohingya, the 2012 violence, and the Government’s subsequent actions and omissions. It caused the disintegration of a community and resulted in a human rights catastrophe, the effects of which will span generations*” (UN Human Right Council 2018, p. 177). The ARSA attack on a military base and up to 30 police posts was probably done with intent to respond to increased pressure on the Rohingya and draw international attention. The response from security forces was instant. They launched so called “clearance operations” with the aim to eliminate a “terrorist threat” that ARSA represented (UN Human Right Council 2018, p. 178). The operations covered hundreds of villages across Maungdaw, Buthidaung and Rathedaung Township (*Figure 1*). The government claimed that the mission was completed on September 5, 2017, although in reality it took more than two months. More than 40 percent of all villages in northern Rakhine were partially or totally destroyed during this period (McPherson 2017a).

Figure 1 Map of Rakhine State



Source: Joshua Project (n.d), https://joshuaproject.net/people_groups/11359/BM.

Using the Framework, the author came to the conclusion that there had been striking indications of human rights violations, discrimination and persecution before August 2017. It was found out that most of the risk factors were present. Taking into account massive violence in Rakhine State in 2017, it is obvious that in the period before August the government of Myanmar should have used all necessary means to protect the Rohingya. However, there is irrefutable evidence that security forces that are managed by state's authorities were involved in the preparation of atrocity crimes. Thus, the author must say that Myanmar failed to fulfil its primary responsibility to protect its population, mainly in term of prevention. The government of Myanmar did not take any measures to improve the conditions of the Rohingya, but deliberately targeted them with various restrictions. Moreover, they intentionally denied access of humanitarian workers to northern Rakhine State, even though the Rohingya were dependent on them and the overall condition of living were inadequate. The unwillingness to protect the Rohingya was proven by president Thein Sein in 2012. He affirmed that Myanmar would take responsibility to protect its own ethnic nationalities, although he underlined that the Rohingya had not been recognized as one of their ethnicities.

2.2 Pillar two: International assistance and capacity building

The transition from military rule after more than fifty years was lauded by the international community for its attempt to stop human rights violations and create a more tolerant society. Sanctions were lifted or suspended by several countries. The Asian Development Bank and the World Bank confirmed the major loans of \$512 and \$440 million for the social and economic development (Global Centre for the Responsibility to Protect 2015, p. 3). Whilst some countries and NGOs expressed serious concern about human rights situation.

2.2.1 Encouragement and Capacity Building

The Universal Periodic Review of Myanmar held on November 6, 2015 brought important insight into Myanmar's approach towards the Rohingya. During the interactive dialog, many delegations were concerned about allegation of human rights violation (Switzerland, Austria, Chile). Furthermore, several countries including Sweden, Turkey, the United Kingdom, the United States, Bahrain, Djibouti, Egypt, Botswana, Chile, Libya, Luxembourg, Oman, Senegal, Sierra Leon and Slovenia raised concerns especially about mistreatment of Rohingya people. In response, Myanmar stated that there had not been any minority under the name of Rohingya.

Adding that peace and stability had been restored after the communal violence in Rakhine State in 2012. Few countries also underscored the necessity to ratify core human rights treaties. Others also encouraged Myanmar to continue with constitutional, legislative, judicial and institutional reforms (Canada), to create a peacebuilding process (Finland) and to ensure registration of all children born without any discrimination (Poland) or to intensify the collaboration with the Human Rights Council (Slovakia). However, the delegation of Myanmar underlined that Myanmar should not have been on the agenda of the Human Rights Council and the Third Committee (UN General Assembly 2015).

On 3 March 1992, resolution 1992/58 entitled “Situation of human rights in Myanmar” was adopted by the Commission on Human Rights. The Commission decided to nominate a special rapporteur in paragraph 3 of resolution (Commission on Human Rights resolution 1992/58). Since then, the special rapporteur has visited Myanmar regularly with the aim to examine the situation of human rights in Myanmar. The rapporteur repeatedly highlighted the situation in Rakhine State. In her first report of 2016, she recognized that national and international attention was turned to Rakhine State, albeit nothing significant had been done. She called upon the newly elected Government to end discriminatory policies against the Rohingya and other Muslim communities in Rakhine (UN Human Right Council 2016). After 2016 attacks, she pointed out various reports regarding gross human rights abuses of the Rohingya.

As proven later, the security forces also watched the Rohingya while talking to the UN officials including the Special Rapporteur. People who were found engaging with the UN or other international actors faced various intimidation and reprisals. When the Rohingya shared information with the UN delegation after the 2016 violations, officials took photos of villagers who interacted with delegation. In following days military came to the village subjecting villagers to ill-treatment (UN Human Right Council 2018, p. 319). She and other UN experts publicly raised concerns about allegations and called for impartial investigation of all cases. Moreover, The UN Special Adviser on the Prevention of Genocide, Adama Dieng, in February 2017 called for an immediate action to halt persecution based on the Rohingya identity (UN News 2017). The Independent International Fact-Finding Mission on Myanmar was established by Human Rights Council resolution 34/22 on March 24, 2017 with the mandate “*to establish the facts and circumstances of the alleged recent human right violations by military and security*

forces, and abuses, in Myanmar, in particular in Rakhine State” (Human Right Council resolution 34/22 2017, p. 3).

The UN Secretary-General also encouraged regional organizations such as Organization of Islamic Cooperation (OIC) and the Association of Southeast Asian Nations (ASEAN) to engage Naypyidaw more in resolution of the communal violence. For the OIC the violation of human rights of the Rohingya had been on the agenda for many years before the 2017 crisis. They frequently called for Rohingya protection (Haacke 2016, p. 812). Additionally, the Secretary General of the OIC appointed his Special Envoy on Myanmar, whose aim has been to boost diplomatic relations with Myanmar in order to restore intercommunal harmony through dialogue since 2014 (Kaladan News 2014). In 2015, a resolution proposed by the OIC was adopted at the UN Human Right Council in Geneva. The resolution urged the Government of Myanmar to ensure protection of Rohingya Muslims and to end impunity for all violations. (Organization of Islamic Cooperation 2015). Besides, they provided humanitarian help to Rohingya refugees and internally displaced persons particularly during Ramadan (Organization of Islamic Cooperation 2016). Early in 2017, the OIC’s special envoy to Myanmar highlighted that the conflict in Rakhine State was no longer an internal issue but concern of the international community. Therefore, they said that the OIC should have sought a UN intervention (Sipalan and Harris 2017). However, the OIC is blamed for its incapacity to create enough pressure on Myanmar, even with help of UN agencies such as the Human Rights Commission. On the other hand, sovereign nations usually ignore international organizations’ recommendations and calls for action if they consider them inappropriate (Al-Ahsan 2017).

ASEAN Secretary-General in August 2012 contacted ASEAN foreign ministers with a goal to organize a special meeting where the Rohingya crisis would be discussed. But Myanmar as a member state of ASEAN objected. Following the second outburst of violence, the ASEAN Secretary-General warned against radicalization of the Rohingya that could possibly undermine stability of the region. Yet, ASEAN was lacking a mutual strategy on how to encourage other members to meet its R2P commitment (Haacke 2016, p. 815). Furthermore, the ASEAN Charter underlines sovereignty, territorial integrity and the principle of non-interference in the internal affairs. Nevertheless, two ASEAN countries – Malaysia and Indonesia started to comment on the Rohingya issue (Subedi 2017). Malaysia recognized the plight of the Rohingya as a regional concern and called for ASEAN to coordinate humanitarian aid and conduct an inquiry of alleged crimes against them (Lewis 2016). Indonesia, on the other hand, offered to be a mediator between Myanmar and ASEAN, since just a few members were willing to support Myanmar.

The efforts were, however, desisted. At the beginning of 2017, when there already were many reports concerning atrocities committed against the Rohingya, it was not on the agenda of the 30th ASEAN Summit (Lego 2017).

Myanmar repeatedly rejected allegation that military was involved in violence against the Rohingya and restricted access to the affected area making it difficult to independently verify them (Agence France-Presse 2016). Furthermore, the Myanmar's government established its own commission. It was concluded that genocide or religious persecution of "the Bengali population" had not taken place in Rakhine State (The Republic of the Union of Myanmar, President Office 2017).

2.2.2 Assisting states to protect their population

The direct consequence of the communal violence in 2012 and 2016 were waves of refugees. However, they are not seen as a traditional security threat in the ASEAN region. Therefore, most countries are short of an effective refugee protection. Except Philippines, Timor Leste and Cambodia, no other member of ASEAN has signed the Geneva Convention of Refugees and its protocols (Subedi 2017). It is estimated that from 2012 to 2016 approximately 168 500 Rohingya refugees crossed borders of Rakhine State (*Figure 2*).

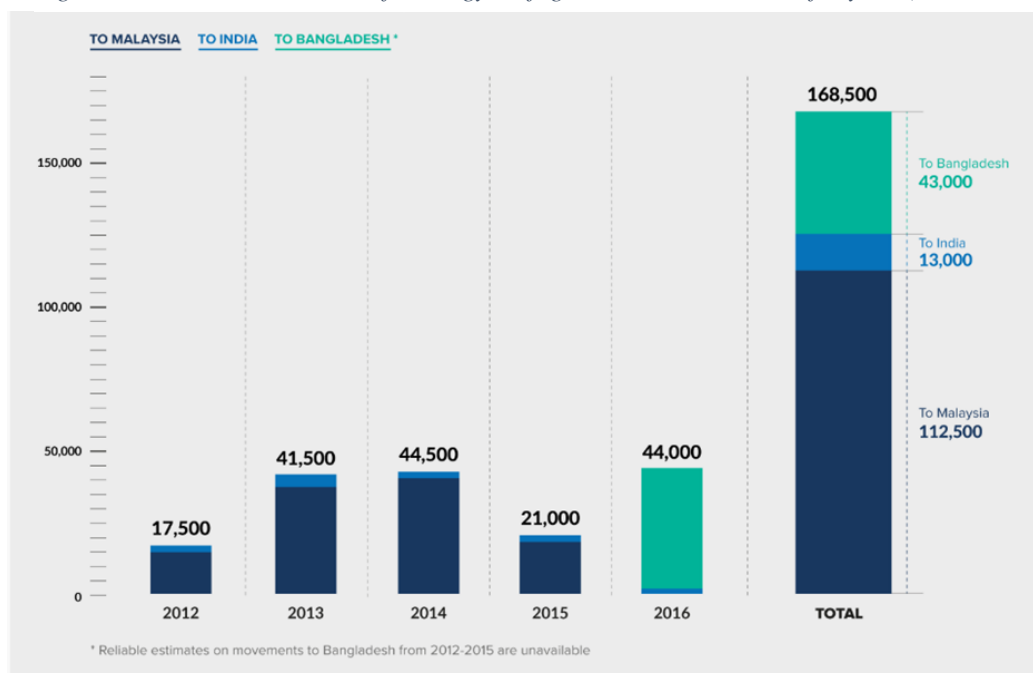
In general, the states such as Indonesia, Malaysia, Thai and Bangladesh during this period of time adopted a policy of pushing boats with refugees away (Lee 2015). However, it is believed that between 2012 and 2015 some 112,500 Rohingya travelled by the sea to Malaysia and at least 13,000 Rohingya entered India from 2012 to 2016. Since 2016, Bangladesh has become the main destination for Rohingya refugees, where the situation in refugee camps significantly improved (Wazed 2018). Approximately 31,000 came during January and February 2017 joining 43,000 refugees who had fled there. It is also important to mention that there had already been approximately 300,000 to 500,000 unregistered Rohingya who had fled during previous decades. They were living elsewhere in the country but were not entitled to humanitarian aid (Subedi 2017).

The most important UN body that provides Rohingya refugees with vital goods is the World Food Programme that has operated in Rakhine State and refugee camps in Cox's Bazar. The programme is sponsored by various countries and organizations. However, it is impossible to find the exact amount of money that was used to help Rohingya population. Generally, one of the most significant donors of humanitarian aid is the EU. From 2007 to 2017, it provided

approximately €87 million in humanitarian aid to vulnerable people in Rakhine State. Besides, during the same period of time the EU provided Rohingya refugees and host communities in Cox's Bazar with funding through NGS's and the UN. They allocated about €50 million for basic goods and health care (European Commission 2018a). The United States contributed \$8.4 million in 2016 and \$13.2 million in 2017 to WFP for Myanmar (USAID 2019).

The systematic discrimination and human rights violation of the Rohingya captured the international community's attention. The Special Rapporteur repeatedly highlighted situation in Rakhine State. The Special Adviser on the Prevention of Genocide called for a collective action. Moreover, various states expressed their concern and encouraged Myanmar to protect its population. Still, the implementation of the second pillar remains highly dependent on a state's will. Discrimination practices and policies were deeply rooted in Myanmar society and for decades Myanmar was unwilling to change it. Undoubtedly, it is evident that security forces acted on orders of Myanmar's authorities. In addition, the government was reluctant to admit that there were human rights abuses and the authorities tried to deny access to Rakhine State.

Figure 2 Estimated movements of Rohingya refugees to main countries of asylum (2012-2016)



Source: United Nations High Commissioner for Refugees, Regional Office for South-East Asia 2016. Available from: <https://unhcr.atavist.com/mm2016>.

The second pillar's guidelines proposed by the Secretary-General are difficult to apply to situations where human rights abuses last for decades and states are loath to cooperate with the international community. Moreover, the suggestions are ambiguous and can be interpreted in many ways. The thesis comes to the conclusion that the international community underscored

the problem of the Rohingya many times, yet the pressure put on the government of Myanmar was not strong enough. The main limitation of the second pillar in this case is Myanmar's unwillingness to put into practise various recommendations made by international actors. The international community did not fail completely in fulfilling pillar two commitment. They provided the Rohingya with humanitarian aid after they were displaced or were forced to cross the border. However, the criminal investigation of allegations that could potentially prosecute the perpetrators and halt further atrocities did not take place.

The situation in Rakhine State before the 2017 crisis had already been grave, but for the purpose of this thesis the author analysed the second pillar measures to fully understand the international response after August 2017.

2.3 Pillar three: Timely and decisive response

The most recent clashes in Rakhine State broke out on August 25, 2017, when the Arakan Rohingya Salvation Army (ARSA) attacked several police and army posts. In response the government declared ARSA a terrorist group and the military launched a brutal campaign (Albert and Chatzky 2018) with the aim to eliminate a "terrorist threat" posed by ARSA (UN Human Right Council 2018, p. 178). But the campaign called by authorities "clearance operations" targeted the entire Rohingya population. Out of 471 villages that were affected by "clearance operations" between late August and September 13, 176 villages became empty and 34 partially abandoned (Holmes, Murphy, Gayle 2017). The estimated number of Rohingya refugees that fled during this period of time is 370,000. By the midst of November, the number was almost twice higher. Moreover, the humanitarian access to norther Rakhine State, where aid was most essential, was suspended by the government (Ware, Bianco, Komesaroff 2017).

As explained above, states agreed at the 2005 World Summit to primarily use non-coercive actions that include various diplomatic, humanitarian or other peaceful means to protect population from atrocity crimes. On September 11, 2017 the UN High Commissioner for Human Rights (UNHCR), Zeid Ra'ad Al Hussein, in his opening comment for the 36th session of the Human Right Council indicated that the Rohingya situations seems to be "a textbook example of ethnic cleansing". Additionally, he called upon the Myanmar government to stop claiming that the Rohingya burn their own houses and put an end to the military operations (UN Office of the High Commissioner 2017). Britain and Sweden requested an urgent meeting of the UN Security Council to discuss the growing humanitarian crisis. However, the first public

meeting on the situation was held on September 28, 2017 after 15 Rohingya including nine children died while trying to escape Rakhine State on a boat across the Bay of Bengal. The meeting did not lead to any formal action and ambassadors said that a strong message was sent to Myanmar. Nevertheless, United States Ambassador to the UN, Nikki Haley recommended other countries to stop delivering arms to Myanmar military (Roth 2017). On November 6, 2017 the Security Council condemned violence and abuses in Rakhine State and urged Myanmar to end the excessive military operations (UN Meetings coverage and press releases 2017). Western nations wanted a stronger resolution but the threat of Russian and Chinese veto power made them agree on a formal statement. Unlike resolutions, statements are not legally binding (DW 2017). In December the UN General Assembly adopted a resolution proposed by OIC, despite an opposition from China, Russia and some other southeast Asian countries such as Cambodia, Laos or Vietnam. The resolution requested the Myanmar government to allow aid workers to Rakhine State and to enable the return of Rohingya refugees. Moreover, a special envoy to Myanmar was appointed (Agence France-Presse at the UN 2017). Myanmar officials had already granted access to the Red Cross Movement in September 2017 and two months later to WFP, however, the majority of humanitarian organizations could not resume their activities in northern Rakhine State (UN Human Right Council 2018, p. 136). Most significantly UNHCR, the UN refugee agency and UNDP were not allowed to access northern Rakhine State for more than one year since the main crisis broke out. In September 2018, they finally got permission to assess 23 individual villages (Watson, Sidhu, McKenzie 2018).

Meanwhile, China, the main opponent to western military interventions in countries it considers to be under its sphere of influence, proposed a three-phase plan. The first is to reach a ceasefire and *“to restore order and stability, so the people can stop running away and live in peace”* (Zhou 2017). The second stage proposed negotiation between Myanmar and Bangladesh in order to solve this issue and finally the third stage called upon international community to re-establish Rakhine State. Both Myanmar and Bangladesh supported this plan (Reuters 2017). Therefore, in late October 2018 Bangladesh and Myanmar agreed to repatriate Rohingya refugees who fled. The UN refugee agency and other aid groups expressed their concern about the safety of the Rohingya. Besides, refugees themselves protested against the repatriation plan (Siddiqui 2018). According to the statement of the chair of the UN Fact-Finding mission in October 2018, approximately 250,000 to 400,000 Rohingya people who remained in Rakhine were still facing severe restrictions and repression. He underscored it was still an ongoing genocide (The Guardian 2018).

In response to increased international pressure, Aung San Suu Kyi claimed that “terrorists” (she probably meant the ARSA or the whole population of the Rohingya) created a “huge iceberg of misinformation” about the Rohingya crisis (Safi 2017). Her office also accused international aid workers of supporting and helping the “terrorists” of Rakhine State (Fortify Rights 2018, p. 32). In her first public speech after the beginning of the current crisis on September 19, 2017 she said Myanmar did not fear international scrutiny. However, the special rapporteur on human rights Yanghee Lee has been denied the access to Myanmar (Depetris 2019). She also underscored that Myanmar “*condemns all human right violations and unlawful violence*” (Al Jazeera English 2017) and that they “*are committed to restoration of peace, stability and rule of law throughout the state*” (Al Jazeera English 2017). She pointed out that security forces had been instructed to act according to code of conduct in order to “*avoid collateral damage and the harming of innocent civilians*” (Al Jazeera English 2017). She also condemned the ARSA attacks on police posts in August and declared them as terrorist attacks. Additionally, she highlighted that “clearance operations” had finished on September 5 and that she did not understand why Muslims kept fleeing. Her controversial speech was criticized by the international community for downplaying the crisis and failing to recognize the Rohingya (Kurlantzick 2017). Paddock and Beech (2017) found her speech similar to the one her prisoners gave while she was home arrested. Myanmar National Security Adviser Thaung Tun said on a press conference that Myanmar was lobbying China and Russia to block any potential resolution relating to the Rohingya crisis in the Security Council (Safi 2017). Additionally, Myanmar’s officials supported Suu Kyi stating that fake news and rumours about the Rohingya were spreading world widely. The Suu Kyi’s reaction to an imprisonment of two Reuters journalist who had investigated the Rohingya crisis in late December 2017 was denounced by the US Ambassador to the UN Nikki Haley as unbelievable. The Myanmar’s *de facto* leader claimed that journalists were not jailed because of their work, but because the court found them guilty of breaching the colonial-era Official Secrets Act (Reuters 2018b). Nowadays, various newspapers say she has fallen from grace in the international community. Besides, during the last two years many bodies withdrew major honours from her. On the other side, in Myanmar Aung San Suu Kyi remains very popular since the vast majority of Buddhists support her decisions over the Rohingya (Ellis-Peterson 2018).

When the state does not respond to a peaceful measure, the international community may use other measures embedded in the Charter. Nevertheless, China and Russia council veto power are likely to protect Myanmar from any kind of actions (Nichols 2018). The reasons behind

China's support to the Myanmar government are mainly economic. Christine Fair (2018) even went a level further and called it an Economic Colonization. Indeed, China has wide interests including security and economic investments in Myanmar that are part of its Belt and Road Initiative (Joy 2018, p. 2). Particularly, in Rakhine State there are two important projects: a special economic zone and a deep-sea port on the island of Kyaukphyu that is located on the coast of Rakhine State. Undoubtedly, both projects clearly show China's aspiration to get access to the Indian Ocean (Fair 2018, p. 72). Similarly, Russia wants to broaden its influence in Southeast Asia. Between 2011–2017 Myanmar imported arms worth of \$2 billion, Russia constituted 33 per cent while China made up about 59 per cent. It is crucial to realise that there are other ethnic groups in Myanmar such Kachin and Kokang people that have fought the Tatmadaw for past few years. These two groups share one advantage – the boarder with China that is willing to intervene when the peace on its borders is endangered (Bi 2018, p. 15). Furthermore, China has provided weapons to several militias. Significantly, they supported United Wa State Army, that operates in the northeast of the country. They received towed artillery, anti-tank guided missiles and also missile-equipped combat helicopters with obvious aim to combat the Tatmadaw. Therefore, Russia balances the long-lasting Myanmar's dependence on Chinese arms import. In addition to the economic interest, both Russia and China have to deal with their own Muslim minorities that are often subjected to similar oppression as the Rohingya (Fair 2018, p. 73).

Hence, there is a slight chance that the UN Security Council imposes collective arms embargo, subjects its officials to targeted sanctions or sets up an ad hoc tribunal when Russia and China back up Myanmar. However, several states and the EU imposed their own sanctions on Myanmar officials. The United States of America (US) imposed economic sanctions on four Myanmar's military and board guard commanders and two military units in August 2018 (Wong 2018). Canada in June 2018 added to its sanction list seven senior officials of Myanmar's military who were in charge during the military operations in Rakhine State (Government of Canada 2019). Similarly, the EU imposed sanction – travel bans and asset freezes on seven military and police officials. Nevertheless, the EU was largely criticized for not targeting more national commanders. The director of Burma Campaign UK, Mark Farmaner pointed out that the measure is only good to stop seven soldiers and police officers from shopping in the EU and this response to a possible genocide is not adequate (Peel, Reed 2018). In November 2018, the EU threatened to add trade sanctions on Myanmar (Heijmans 2018). The EU is ranked as the 6th biggest trade partner to Myanmar with total trade worth €2.09

billion. In 2017, the EU imported goods mainly garment that accounts for almost three quarters of exports and agricultural products up to a total value of €1,549 million (European Commission 2018b). Therefore, disruption of trade would put thousands of jobs in Myanmar's clothing industry at risk. Recently, the EU added seven more people to its Myanmar sanction list and announced that following countries: Turkey, Macedonia, Montenegro, Albania, Bosnia and Herzegovina, Iceland, Liechtenstein, Norway, Moldova, and Armenia joined the EU in its sanctions against Myanmar (O'Kane 2019).

Despite the UN Security Council inaction, other international actors have begun being involved in the Rohingya crisis. As mentioned in the chapter 2.2 the UN Human Rights Council established the Independent International Fact-Finding Mission. The Mission in August 2018 issued a damning report that proved a consistent pattern of human rights violations and serious violations of international humanitarian law. The Mission concluded that *"the factors allowing the inference of genocidal intent are present"* (UN Human Right Council 2018, p. 364). In case of crimes against humanity, the Mission believes that *"murder; imprisonment; enforced disappearance; torture; rape, sexual slavery and other forms of sexual violence; persecution; and enslavement"* (UN Human Right Council 2018, p. 380) were committed in Rakhine State. Even though the crime of ethnic cleansing is not a legal term, it is generally agreed that it is already covered by existing international law. It is also often described as using force or intimidation to remove persons of given groups from the area. Myanmar's security forces used various methods of terrorising the Rohingya out of their homes by shooting, killing, threatening, raping or burning their homes and villages (Amnesty International 2018, p. 137). Thus, the Mission concluded that extermination and deportation factors were present. Additionally, they pointed out that systematic oppression and discrimination might have amounted to the crime of apartheid (UN Human Right Council 2018, p. 380). The Mission considered that non-international armed conflict existed in Rakhine State since August 2017. They concluded that there were reasonable grounds to believe that the Tatmadaw had committed war crimes by *"the attacks on protected people and property, destruction of villages, pillaging of objects, and the widespread use of rape and sexual violence"* (UN Human Right Council 2018, p. 382).

Following the report, the UNHCR mandated an agency to collect and preserve evidence of alleged crimes for potential future prosecution. Moreover, the ICC announced that Myanmar leaders could be prosecuted even though Myanmar is not a signatory to the Rome Statute (Mascarenhas, Jacobi, O'Connell, San Martin 2019). They highlighted that although alleged atrocity crimes that forced the Rohingya to cross the border took place in Myanmar, the crimes

would not have been completed until refugees came to Bangladesh, which is a signatory to the Rome Statute (Safi 2018). The ICC Pre-Trial Chamber noted that inclusion of the transboundary crime of deportation that was committed on the territory of a state party allows the Court to exercise its jurisdiction. However, the question remains whether the ICC will investigate the crime of genocide. Myanmar is a party to the Genocide Convention, hence any state that accepted the International Court of Justice's (ICJ) jurisdiction could bring a genocide claim against Myanmar. The legal case before the ICJ and the ICC could possibly seek accountability on both individual and state level (Mascarenhas, Jacobi, O'Connell, San Martin 2019).

Conclusion

Oppression and persecution of Rohingya people are deeply rooted in Myanmar's society. The current crisis is the consequence of years of discriminatory practises that were upheld by both Rakhine Buddhists and Burmans. The story of the Rohingya is very long and complicated therefore we have to look at it complexly. The first hypothesis was set with the aim to prove whether Myanmar fulfilled its primary responsibility to protect before August 2017. The thesis concludes that the government of Myanmar did not meet its commitment to R2P. Moreover, the authorities themselves were involved in systematic human rights violations. Having used the UN Framework of Analysis for Atrocity Crimes I was able to analyse various risk factors that often indicate whether a population of a state is vulnerable to atrocity crimes. I found out that serious human rights abuses took place in Rakhine State during the examined period. Furthermore, in the months preceding the August crisis the army was confiscating sharp objects, replacing fences and destroying goods owned by the Rohingya out of fear of a possible attack.

Although many INGOs, the OIC and various UN bodies pointed out human rights abuses and called upon the Myanmar government to protect the Rohingya, no significant progress was made. Here I see the biggest limitation of pillar two and three of R2P. How can non-state actors persuade states' authorities to act according to their commitment to R2P when that is not what they desire? The answer lies in the complicated historical background of sovereignty and human rights protection. Even though the Westphalian notion of sovereignty began slowly disappearing after the Second World War, still most states uphold its non-intervention principle. The UN Security Council may use means founded in the Charter when international peace and security are put in danger, however, any attempt of a member can be blocked by the permanent five's veto power. Thus, the decision whether a population will be protected by the international community lies in hands of the world's leading powers: the US, the United Kingdom, France, China and Russia. When these five countries fail to cooperate, the phenomenon such as the Rohingya crisis occurs.

The goal of the second hypothesis was to examine whether there are reasonable grounds to believe that genocide, war crimes and crimes against humanity were committed. Many authors found proof that gross human rights abuses had taken place even before 2017. The "clearance operation" in August and September 2017 drove about 700,000 Rohingya out of their homes. Security forces attacked unarmed Rohingya people causing hundreds of deaths. Women and girls were brutally raped. The security forces burned their houses down and later bulldozed

them. The Fact-Finding mission found the possible genocidal intent and evidence that crimes against humanity and war crimes might have been committed. However, the international community did not take any collective action due to different opinions in the Security Council. Hope remains that the ICC will hold the main perpetrators accountable for their actions. Nevertheless, the solution for Rohingya refugees has not been found. In the long term, Bangladesh cannot provide aid to the Rohingya since it is one of the poorest countries in the region. The repatriation of refugees is also very risky. Hence, Bangladesh authorities and the international community must insist that Myanmar first guarantees safety to the Rohingya and then repatriates them.

The idea of the Responsibility to Protect emerged after two horrific situations took place in the 1990s: Rwanda genocide and Srebrenica. R2P is a very new phenomenon that cannot face centuries-long principle of non-intervention and hence the approach to human rights needs to be changed. Both the Holocaust and Rwandan genocide took the international community by surprise but changed perception of human rights protection. The international community accepted without objections pillar one commitment of R2P. However, I believe that pillar two is even more important to uphold. The international community should regularly examine the situation of human rights in countries which tend to overlook them. The UN has many bodies focused on human rights, but none of them has a power even distantly similar to the Security Council. Even though R2P was unanimously endorsed, there is no international body that could hold the states and the UN accountable if they fail to protect. Therefore, I remain sceptical whether R2P is a definite solution but I believe it is a step towards a better protection of human rights.

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Appendix 1 District Map – Rakhine State



Source: ReliefWeb, 2017. Available from: <https://reliefweb.int/map/myanmar/myanmar-district-map-rakhine-state-23-oct-2017-enmy>