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Justice Without Teeth: The Illusion of International Accountability in the Rohingya Crisis

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Abstract

Violence against the Rohingya community in Myanmar has emerged as one of the most systematic and brutal humanitarian tragedies in contemporary history. Amidst the realities of genocide, crimes against humanity, and forced deportation, international law faces an acute challenge in demonstrating its normative and operational reach. This article aims to provide a philosophical and juridical analysis of the international legal constellation surrounding the crimes committed against the Rohingya ethnic group, the responsibility of the State of Myanmar, and the failure of the international community to uphold the principles of justice. This study employs a normative-juridical method using both conceptual and case-based approaches, and it critically examines international legal norms such as the Rome Statute, the 1948 Genocide Convention, the principle of jus cogens, and the doctrine of erga omnes obligations. The analysis reveals that the crimes committed against the Rohingya community constitute not only grave violations of fundamental norms of international law but also reflect a collective failure of the global community in fulfilling its responsibilities. Moreover, the study identifies a stagnation in the enforcement of legal accountability, rooted in political factors, institutional weaknesses, and the normalization of diplomatic relations. The article recommends strengthening transnational mechanisms and establishing an ad hoc tribunal as necessary measures for the restoration of substantive justice for victims and for reaffirming the supremacy of international law over impunity.

1. Introduction

The Rohingya community in Rakhine State, Myanmar, has endured systemic marginalization for decades, culminating in state-led repressive actions that constitute elements of gross human rights violations. The climax of this repression occurred in 2017, when large-scale military operations conducted by the Tatmadaw (Myanmar's armed forces) triggered the mass exodus of over 700,000 Rohingya civilians to neighboring countries, particularly Bangladesh.[1] Reports by various international bodies, including the United Nations Independent International Fact-Finding Mission on Myanmar, have explicitly stated that the violence exhibited characteristics of genocide, crimes against humanity, and ethnic cleansing—all of which represent serious breaches of international law.[2]

The central issue lies not only in the occurrence of such violations but in the international community's inability to ensure accountability and effectively uphold the principles of international justice. International judicial mechanisms, such as the International Criminal

[1] Eleanor Albert and Lindsay Maizland, "The Rohingya Crisis," *Www.Cfr.Org*, January 23, 2020, https://www.cfr.org/backgrounder/rohingya-crisis.
[2] Burmese Rohingya Organisation, "Ensure Justice for Rohingya, End Military's Impunity for Genocide," *Brouk.Org.Uk*, August 25, 2023, https://brouk.org.uk/ensure-justice-for-rohingya-end-militarys-impunity-for-genocide/.

Court (ICC) and the International Court of Justice (ICJ), have demonstrated a degree of engagement; however, they have yet to produce concrete outcomes that guarantee the fulfillment of victims' rights and the imposition of sanctions on those responsible. This situation reveals a critical gap within the architecture of international law, particularly in the enforcement of state responsibility for international crimes and the protection of *jus cogens* norms and *erga omnes* obligations.

The phenomenon of crimes against the Rohingya community cannot be separated from Myanmar's domestic legal structure, which actively discriminates against this group, including through the revocation of citizenship rights under the 1982 Citizenship Law.[3] These actions reflect an organized state intention to create conditions of oppression and to erase the collective identity of the Rohingya, which, from the perspective of international law, may be classified as a form of genocide.[4] Within the framework of international legal responsibility, a state cannot invoke the doctrine of sovereignty as a shield to evade accountability for grave and systematic human rights violations.

This article aims to provide a comprehensive examination of the issue of justice in the context of crimes committed against the Rohingya community, with particular emphasis on state responsibility, the role of the international community, and the relevance of international legal principles governing the most serious crimes under international humanitarian law and international criminal law. The central focus is on how justice can be pursued—whether through judicial mechanisms such as the ICC and the ICJ, or through transnational approaches that facilitate reparations and the restoration of victims' rights. Accordingly, this study also serves as a critical reflection on the effectiveness of the international legal regime in addressing the challenges of state impunity and the limitations of global enforcement mechanisms.

2. Methods

This study employs normative legal research grounded in a doctrinal approach to analyze legal principles relevant to the issue of justice for victims of gross human rights violations, with a particular focus on the Rohingya community in Myanmar. The normative approach is employed to examine positive legal norms, legal doctrines, general principles of law, and international legal standards governing crimes against humanity, genocide, and state responsibility for violations of jus cogens norms and erga omnes obligations. Legal materials were collected through qualitative library research, with an emphasis on content analysis. Data analysis was conducted deductively by formulating legal arguments based on applicable international legal norms, principles, and doctrines, in order to derive logical, systematic, and valid conclusions in addressing the research problem concerning justice for the Rohingya community.

3. Results and Discussion

3.1. The Legal Constellation of Crimes Against the Rohingya Community

The atrocities committed against the Rohingya community are not merely a social wound within the contemporary humanitarian landscape but rather the clearest manifestation

[3] Ronan Lee, "Myanmar's Citizenship Law as State Crime: A Case for the International Criminal Court," *State Crime Journal* 8, no. 2 (January 1, 2019): 241–69, doi:10.13169/statecrime.8.2.0241.

[4] Musfiroh Musfiroh, Safiulloh Safiulloh, and Bella Shintia Rukmana, "Tindak Kejahatan Genosida Terhadap Etnis Rohingya Di Negara Myanmar Dalam Perspektif Hukum Pidana Internasional," *Jurnal Res Justitia: Jurnal Ilmu Hukum* 4, no. 2 (July 7, 2024): 651–62, doi:10.46306/rj.v4i2.170.

of a systematic intent to eliminate the collective existence of an ethnic group through state machinery and institutionalized impunity. Within the framework of international criminal law, the patterns of conduct carried out by the Tatmadaw (Myanmar's military), including mass killings, forced deportations, systematic rape, village burnings, and arbitrary detention, clearly and unequivocally fulfill both the objective and subjective elements of crimes against humanity as defined under Article 7 of the 1998 Rome Statute. However, the problem extends beyond the realm of criminal culpability. A teleological analysis of Myanmar's national legal structure, particularly the implementation of the 1982 Citizenship Law, which discriminatorily denies recognition of the Rohingya as citizens, reveals a legal construction of apartheid that deliberately produces statelessness based on racial and religious identity. This situation evidences the *presence of dolus specialis*, a concealed yet systematic malicious intent, which constitutes an essential element in the legal qualification of genocide under Article 6 of the Rome Statute.[5] Consequently, the designation of the "Rohingya genocide" cannot be reduced to a merely political or moral declaration; it must instead be understood as a legal consequence arising from the application of peremptory norms (*jus cogens*) under international law. The Rohingya tragedy constitutes both a crime against humanity in the general sense and a collective failure of the international community to uphold substantive justice for those who have been relegated to the status of "the other" by a state and legal system marked by structural corruption.[6]

The forced deportation of over 750,000 Rohingya individuals to Bangladesh does not merely constitute an emergency-driven instance of forced migration, but rather represents a form of structural aggression that clearly violates Article 7(1)(d) of the 1998 Rome Statute, which classifies deportation or forcible transfer of population as a crime against humanity. However, deportation in this context should not be narrowly construed as the mere physical relocation of a population from one territory to another. It constitutes an existential dislocation that severs a community from its historical, cultural, and spiritual roots, a collective amputation of its living space and narrative of identity. When the Rohingya community was coerced into leaving their ancestral homeland under threats of violence and genocide, what was lost extended beyond homes and personal belongings; it encompassed the very right to live with dignity within the framework of their community.[7] Therefore, this act must be understood through the lens of *lex humanitatis*—the spirit of law that places human dignity as the highest value of international legal civilization.[8] Viewed in this light, forced deportation is

[5] Oleh Andrukhiv, "The Principle of 'Dolus Specialis' and the Problem of Proving the Genocidal Actions of the Russian Federation in Ukraine," *Scientific and Informational Bulletin of Ivano-Frankivsk University of Law Named after King Danylo Halytskyi* 18, no. 30 (December 9, 2024): 8–14, doi:10.33098/2078-6670.2024.18.30.8-14.
[6] Simon Adams, "The Responsibility to Protect and the Fate of the Rohingya," *Global Responsibility to Protect* 11, no. 4 (October 4, 2019): 435–50, doi:10.1163/1875984X-01104005; Iqthyer Uddin Md Zahed, "Responsibility to Protect? The International Community's Failure to Protect the Rohingya," *Asian Affairs* 52, no. 4 (August 8, 2021): 934–57, doi:10.1080/03068374.2021.1999689.
[7] Adams, "The Responsibility to Protect and the Fate of the Rohingya."
[8] Adeno Addis, "The Role of Human Dignity in a World of Plural Values and Ethical Commitments," *Netherlands Quarterly of Human Rights* 31, no. 4 (December 20, 2013): 403–44, doi:10.1177/016934411303100403.

not merely a crime against individuals but a fundamental betrayal of the non-negotiable principles of humanity itself.

Myanmar is not a State Party to the Rome Statute and, in conventional terms, this has served as a shield of impunity, preventing any form of accountability before the ICC. However, the jurisprudential breakthrough established by the ICC's Pre-Trial Chamber in its 2018 decision marked a paradigmatic leap, signaling the resurgence of substantive international legal spirit over procedural entrapments of sovereignty.[9] In that ruling, the Court determined that, because the territorial jurisdictional element, specifically, the location where the effects of the crime occurred, involved Bangladesh, a State Party to the Rome Statute, the ICC could exercise jurisdiction over the crime of forced deportation committed by Myanmar. This decision constitutes an interpretative innovation and a concrete articulation of the principle of effectiveness in international law enforcement, rejecting rigid legal formalism. In doing so, the ICC affirmed that international criminal law must be dynamic, responsive, and capable of transcending artificial state boundaries when confronted with atrocities that strike at the core of humanity.[10] The Court's boldness in constructing a progressive jurisdictional argument reflects a transition from a paradigm rooted in state consent to one centered on humanity-based accountability, an important milestone in the evolving history of international legal civilization.

By accepting jurisdiction over the crime of forced deportation of the Rohingya, the ICC is not merely fulfilling its juridical mandate, but also the moral imperative entrusted by the international community.[11] This affirms that justice in international law must not remain confined to textual interpretation, but must evolve and respond dynamically to real human suffering. It represents a concrete embodiment of the maxim *fiat justitia ruat caelum*, let justice be done, though the heavens fall. However, the ICC is limited to prosecuting individual perpetrators. To achieve comprehensive state accountability, more progressive forms of intervention are required, such as a referral by the United Nations Security Council to the ICC or the establishment of an ad hoc tribunal, as was the case with the former Yugoslavia and Rwanda. The international community is thus faced with a critical choice: to remain immobilized by geopolitical calculations or to stand firmly by the universal credo that every human being is entitled to justice.

3.2. State Responsibility of Myanmar: Gross Violations of International Law

The 1982 Myanmar Citizenship Law represents a manifestation of discriminatory legislation that systematically and structurally denies the legal existence of the Rohingya as subjects of law within the framework of the modern nation-state.[12] By excluding the Rohingya

[9] Douglas Guilfoyle, "The ICC Pre-Trial Chamber Decision on Jurisdiction over the Situation in Myanmar," *Australian Journal of International Affairs* 73, no. 1 (January 2, 2019): 2–8, doi:10.1080/10357718.2018.1538316.
[10] Ibid.
[11] Ibid.
[12] Melissa Crouch, "States of Legal Denial: How the State in Myanmar Uses Law to Exclude the Rohingya," *Journal of Contemporary Asia* 51, no. 1 (January 1, 2021): 87–110, doi:10.1080/00472336.2019.1691250; Md. Mahbubul Haque, "Rohingya Ethnic Muslim Minority and the 1982 Citizenship Law in Burma," *Journal of Muslim Minority Affairs* 37, no. 4 (October 2, 2017): 454–69, doi:10.1080/13602004.2017.1399600.

from the list of 135 officially recognized ethnic groups, this law not only strips them of their civil and political rights but also actively constructs a condition of permanent statelessness, a non-status that places them beyond the reach of basic legal protections and fundamental human rights. This statelessness is not a neutral void; rather, it is the result of deliberate state action that contravenes core principles of international law, particularly the principle of non-discrimination as enshrined in Article 26 of the International Covenant on Civil and Political Rights (ICCPR), and the prohibition of apartheid as codified in the International Convention on the Suppression and Punishment of the Crime of Apartheid. The denial of citizenship to a specific ethnic group, especially when accompanied by socio-economic exclusion, restrictions on movement, and collective violence, exceeds the domain of administrative violations and constitutes a grave breach of international law. By deploying national law as an instrument of exclusion rather than inclusion, Myanmar has effectively reduced law to a mechanism of oppression—one that perpetuates marginalization and dehumanization. This reflects an extreme degeneration of the role of law within a *Rechtsstaat*, where the law is intended to serve as a guarantor of justice and protection for all, not as a legitimizing tool for violations of human dignity. Therefore, a critical reading of the 1982 Myanmar Citizenship Law must recognize it as a structural root of the crimes against humanity perpetrated against the Rohingya.[13]

Furthermore, the denial of citizenship status to the Rohingya community cannot be merely interpreted as a passive administrative act. Rather, it constitutes a premeditated legal architecture that serves as the foundation for systematic exclusion and paves the way for far more egregious crimes. The collective, targeted, and ethnically based denationalization of the Rohingya is not only an act of discrimination, but also indicative of the *mens rea* necessary to construct genocidal intent. This has been affirmed in the seminal jurisprudence of Prosecutor v. Jean-Paul Akayesu before the International Criminal Tribunal for Rwanda (ICTR), wherein the collective revocation of citizenship was identified as a structural precondition for genocide.[14] The 1982 Myanmar Citizenship Law thus represents a normatively and substantively defective legal instrument. Although formally valid within the national legal framework of Myanmar, the substance of this law stands in stark contradiction to *jus cogens* norms in international law—particularly the prohibition of racial discrimination and the state's obligation to protect all individuals within its jurisdiction without exception.[15] It is therefore evident that this law is not merely flawed from the perspective of international human rights law, but also exemplifies how domestic legal regimes may function as instruments for

[13] Haque, "Rohingya Ethnic Muslim Minority and the 1982 Citizenship Law in Burma."
[14] Susanne Buckley-zistel, "Dividing and Uniting: The Use of Citizenship Discourses in Conflict and Reconciliation in Rwanda," *Global Society* 20, no. 1 (January 9, 2006): 101–13, doi:10.1080/13600820500405616; Jason Benjamin Fink, "Deontological Retributivism and the Legal Practice of International Jurisprudence: The Case of the International Criminal Tribunal for Rwanda," *Journal of African Law* 49, no. 2 (October 18, 2005): 101–31, doi:10.1017/S0021855305000100.
[15] Elizabeth L. Rhoads, "Citizenship Denied, Deferred and Assumed: A Legal History of Racialized Citizenship in Myanmar," *Citizenship Studies* 27, no. 1 (January 2, 2023): 38–58, doi:10.1080/13621025.2022.2137468; Su Yin Htun, "Legal Aspects of the Right to Nationality Pursuant to Myanmar Citizenship Law," *Journal of Southeast Asian Human Rights* 3, no. 2 (December 22, 2019): 277, doi:10.19184/jseahr.v3i2.13480; Haque, "Rohingya Ethnic Muslim Minority and the 1982 Citizenship Law in Burma."

legitimizing structural violence and orchestrated ethnic repression. In doing so, it undermines universal values of justice and human dignity at their very core.

Myanmar has been a State Party to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) since 14 March 1956. As such, the country is legally bound by peremptory norms (*jus cogens*) governing the prevention and punishment of genocide, recognized as one of the most egregious crimes against humanity.[16] These obligations are of an *erga omnes* nature, meaning that Myanmar bears responsibility not only toward the direct victims but also to the entire international community, which holds a moral and legal stake in upholding the integrity of humanitarian norms. This responsibility encompasses two dimensions: first, a negative obligation to refrain from committing or allowing genocide; and second, a positive obligation to prevent, investigate, and prosecute acts of genocide. In this regard, the State of Myanmar's negligence, compounded by the direct involvement of state actors such as the Tatmadaw (military) and bureaucratic elements in the widespread violations against the Rohingya ethnic group, satisfies the criteria for state responsibility under the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), as formulated by the International Law Commission (ILC).[17] These violations are attributable to the state, as they were perpetrated by organs acting on behalf of, or with the tacit approval of, the government. This international legal responsibility necessitates the provision of full reparation, including restitution, compensation, and satisfaction, as prescribed in Article 34 of ARSIWA. However, reparation in this context must not be merely remedial; it must also be transformative. Myanmar is therefore under an obligation to provide guarantees of non-repetition, entailing a comprehensive reconstruction of its legal, security, and political systems.[18] This implies that Myanmar's responsibility does not end with retrospective acknowledgment of wrongdoing, but also extends to a prospective commitment to ensuring that the law is never again instrumentalized as a tool of oppression.

The Provisional Measures Order issued by the ICJ in the case of The Gambia v. Myanmar in January 2020 conveys two fundamental messages. First, it constitutes a binding interim order aimed at preventing further harm to the Rohingya ethnic group. Second, it serves as an ethical signal that the international community does not tolerate impunity for the crime of genocide. The ICJ explicitly affirmed Myanmar's legal obligation to prevent acts of genocide, preserve evidence of such crimes, and submit periodic reports detailing the measures undertaken to comply with the Court's order.[19] However, following the military coup of 1

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[16] Aulia Rosa Nasution, "The Crime of Genocide on the Rohingya Ethnic in Myanmar from the Perspective of International Law and Human Rights," *PADJADJARAN: Jurnal Ilmu Hukum (Journal of Law)* 5, no. 1 (May 13, 2018): 182–206, doi:10.22304/pjih.v5n1.a10.

[17] Setiyani Setiyani and Joko Setiyono, "Penerapan Prinsip Pertanggungjawaban Negara Terhadap Kasus Pelanggaran HAM Etnis Rohingya Di Myanmar," *Jurnal Pembangunan Hukum Indonesia* 2, no. 2 (May 10, 2020): 261–74, doi:10.14710/jphi.v2i2.261-274; M. Ilham Adepio, "Myanmar Government's International Crimes Against the Rohingya and The Enforcement Under the 1998 Rome Statute," *International Law Discourse in Southeast Asia* 4, no. 1 (July 4, 2025): 40–80, doi:10.15294/ildisea.v4i1.22877.

[18] Roman David and Ian Holliday, "International Sanctions or International Justice? Shaping Political Development in Myanmar," *Australian Journal of International Affairs* 66, no. 2 (April 2012): 121–38, doi:10.1080/10357718.2012.658615.

[19] Alessandra Spadaro, "The Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar Decision to Authorize Investigation (I.C.C.) and the Gambia V. Myanmar Order for

February 2021, the Myanmar junta has continued the systemic pattern of violence against the Rohingya community. This includes arbitrary detention, restrictions on access to humanitarian aid, and the prohibition of mobility within internally displaced persons (IDP) camps that resemble internment zones. These actions not only demonstrate non-compliance with the ICJ's binding order but also constitute a grave breach of the principle of *pacta sunt servanda*—a cornerstone of international law that obligates states to perform their treaty commitments in good faith. According to the doctrine of state responsibility, disregard for provisional measures can be classified as aggravated responsibility, referring to violations committed with full awareness of an existing legal obligation.[20] Consequently, the international community can no longer rely solely on normative procedural approaches. What is required is political courage and collective pressure to enforce the supremacy of international law and to revive the spirit of law as a radical expression of solidarity with human suffering.

3.3. Impunity and the Failure of the International Community to Uphold Justice

Within the framework of international law, the United Nations Security Council (UNSC) holds the primary mandate to maintain global peace and security. However, in the case of the Rohingya tragedy, the Council has exhibited a profoundly passive posture—appearing more as a venue for geopolitical negotiation than as the final bastion of global justice. Despite the overwhelming and well-documented evidence of jus cogens violations such as genocide, ethnic cleansing, and crimes against humanity, the Security Council has failed to take decisive action.[21] Even minimal efforts to refer the situation in Myanmar to the ICC have been obstructed by the veto power exercised by two permanent members—China and Russia.[22] This reflects a central paradox in the architecture of international law: the veto mechanism, originally intended to preserve global stability, has instead been transformed into a shield for impunity. The dominance of real politics has entrenched structural inequities in the international legal system, wherein access to justice is conditioned more by geopolitical preferences than by universal legal principles. This exposes the disconcerting reality that international law, despite its normative aspirations, is not fully governed by the rule of law but remains subject to the rule of power. The Security Council's failure is not merely a procedural flaw; it represents a profound institutional decadence, marked by the erosion of moral compass. When the veto is wielded as a political shield to ignore the suffering of the Rohingya people, the foundational mandate of *salus populi suprema lex esto*, the welfare of the people as the supreme law, becomes an empty slogan devoid of authority. If the international

Provisional Measures (I.C.J.)," *International Legal Materials* 59, no. 4 (August 11, 2020): 616–93, doi:10.1017/ilm.2020.28.

[20] P. Klein, "Responsibility for Serious Breaches of Obligations Deriving from Peremptory Norms of International Law and United Nations Law," *European Journal of International Law* 13, no. 5 (December 1, 2002): 1241–55, doi:10.1093/ejil/13.5.1241; Johar Wajahat, Dr.Mohammad Jan, and Dr.Rafia Naz Ali, "International Law and Sovereignty: Between Legal Obligation and Political Will," *Advance Social Science Archive Journal* 4, no. 1 (July 22, 2025): 1145–56, doi:10.55966/assaj.2025.4.1.071.

[21] Mustamin Mustamin et al., "Penguatan Peran Dewan Keamanan PBB Dan Efektivitas Intervensi Dalam Penegakan Hukum Humaniter," *Jurnal Sosial Dan Sains* 5, no. 7 (July 14, 2025): 2093–98, doi:10.59188/jurnalsosains.v5i7.32388.

[22] Jennifer Trahan, "The Origins and History of the Veto and Its Use," in *Existing Legal Limits to Security Council Veto Power in the Face of Atrocity Crimes* (Cambridge University Press, 2020), 9–52, doi:10.1017/9781108765251.003.

community seeks to preserve the integrity of the global legal order, structural reform of the Security Council's decision-making processes must be seriously considered.[23] Absent such reform, the Rohingya crisis will merely stand as one among many humanitarian catastrophes betrayed in the name of diplomacy.[24]

The Responsibility to Protect (R2P) principle, adopted at the 2005 World Summit, represents a critical milestone in the evolution of international legal norms, particularly in addressing large-scale humanitarian crises.[25] This principle marks a paradigmatic shift in the conception of state sovereignty—from an inviolable, exclusive right toward a framework of responsibility for the protection of human rights. Under R2P, states bear the obligation to prevent, protect against, and respond to the commission of atrocity crimes, including genocide, war crimes, ethnic cleansing, and crimes against humanity. Viewed through the lens of R2P, the Rohingya tragedy constitutes a paradigmatic case in which R2P-based intervention is not only relevant but imperative.[26] First, there is overwhelming evidence of severe threats to the Rohingya civilian population, encompassing mass killings, systematic sexual violence, and the widespread destruction of villages. Second, the perpetrating state—Myanmar—has demonstrated both an unwillingness and inability to protect its population from such crimes. On the contrary, state actors, particularly the military (Tatmadaw), have been directly implicated as principal agents of these violations. Third, the situation demands urgent international intervention to prevent further escalation of suffering and to avert recurrence of similar atrocities. Nonetheless, the practical application of R2P in this context has been starkly inadequate. The principle has been largely reduced to a normative narrative devoid of substantive follow-through. While many states—particularly within the Western bloc—have rhetorically expressed concern over the plight of the Rohingya, concrete actions have been minimal or altogether absent. Expressions of concern and weak diplomatic pressure have failed to alter the violent dynamics on the ground. No effective arms embargo has been enforced, no decisive measures have been taken to curtail Myanmar's military access to strategic resources, and there has been no meaningful initiative to establish safe zones or humanitarian corridors for Rohingya refugees. This disconnect between normative commitment and operational implementation underscores a critical deficiency in the current international system: the gap between the moral imperatives embedded in R2P and the geopolitical will necessary for its enforcement. Unless this gap is addressed through institutional reform and genuine multilateral engagement, the principle of R2P risks becoming a symbolic gesture—well-intentioned but ultimately ineffectual in the face of mass atrocity.

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[23] Hitesh Hitesh, "Ethno-Sovereign Catastrophism: Sovereignty, Statelessness, and the Rohingya Crisis in the Age of Global Humanitarianism," *The Social Science Review A Multidisciplinary Journal* 2, no. 6 (2024), doi:10.70096/tssr.240206021.

[24] Emmanuel K Nartey, "The Rohingya Crisis: A Critical Analysis of the United Nations Security Council and International Human Rights Law," *Athens Journal of Law* 8, no. 4 (September 30, 2022): 449–74, doi:10.30958/ajl.8-4-6.

[25] Jin young Hwang, "Sovereignty and the Responsibility to Protect (R2P): Evolving Norms in International Law," *Open Access Research Journal of Science and Technology* 9, no. 2 (April 30, 2025): 035–045, doi:10.53022/oarjms.2025.9.2.0026.

[26] Lindsey N. Kingston, "Protecting the World's Most Persecuted: The Responsibility to Protect and Burma's Rohingya Minority," *The International Journal of Human Rights* 19, no. 8 (November 17, 2015): 1163–75, doi:10.1080/13642987.2015.1082831.

The failure to operationalize the R2P principle is intrinsically linked to structural deficiencies within its implementation mechanisms.[27] Ultimately, any intervention based on R2P still requires authorization from the United Nations Security Council—a body that has frequently served as a primary obstacle rather than a facilitator. The veto power held by permanent members such as China and Russia—both of which maintain significant political and economic interests in Myanmar—has consistently obstructed collective efforts to respond decisively.[28] Even norms born from the painful lessons of Rwanda and Srebrenica have proven insufficient in breaking through the entrenched barriers of global realpolitik. The Rohingya crisis illustrates that failure has not occurred solely at the level of the perpetrator state, but also at the level of the international community. The absence of a robust response reflects a collective failure to fulfill both the moral and legal obligations to prevent human suffering. In this context, the Responsibility to Protect has devolved into a hollow slogan—a symbolic doctrine stripped of its operational substance. Unless the international community undertakes urgent reforms to the implementation framework of R2P, the principle will remain a form of ethical utopianism, aspirational in nature but unrealized in practice.

As a regional organization that includes Myanmar among its member states, the Association of Southeast Asian Nations (ASEAN) holds a potentially strategic position—both normatively and geopolitically—to play a significant role in responding to the Rohingya crisis. This potential derives from geographic proximity, regional political influence, and ASEAN's status as a multilateral dialogue forum that, in theory, possesses the capacity to promote change through collective mechanisms. However, ASEAN's steadfast adherence to the principle of non-interference in the internal affairs of its member states has significantly undermined the effectiveness of any intervention concerning grave human rights violations. Originally intended to preserve regional harmony and respect state sovereignty, this principle has, in practice, engendered a profound ethical dilemma: should the protection of state sovereignty take precedence over the protection of the right to life and human dignity? In reality, ASEAN has more frequently opted for the path of least resistance through a strategy of constructive engagement—a diplomatic approach aimed at maintaining involvement without open confrontation. This was particularly evident in ASEAN's response following the 2021 military coup in Myanmar, where a gradual normalization of relations with the junta occurred despite the ongoing commission of serious violations against the Rohingya and other minority communities. Rather than catalyzing justice, ASEAN has largely functioned as a vehicle for legitimizing an oppressive status quo. Such passivity on ASEAN's part cannot be interpreted as neutrality; rather, it constitutes an institutionalized form of acquiescence. In the context of genocide, neutrality is not a moral stance—it amounts to silent complicity with atrocity. From the perspective of international law, the failure of a regional organization to act in the face of such egregious crimes may be construed as an omission with legal consequences,

[27] Hwang, "Sovereignty and the Responsibility to Protect (R2P): Evolving Norms in International Law."
[28] Trahan, "The Origins and History of the Veto and Its Use."

especially when its actions (or inactions) effectively facilitate or reinforce the political legitimacy of a violent regime.[29]

Amid the stagnation of international and regional mechanisms in responding to the Rohingya tragedy, alternative initiatives have emerged through legal actions based on the principle of universal jurisdiction, brought forward by countries such as Argentina, Germany, and Turkey. The principle of universal jurisdiction, rooted in *jus cogens* norms, grants states the authority to prosecute perpetrators of the most serious international crimes—such as genocide, crimes against humanity, and war crimes—regardless of the locus delicti (the location of the crime) or the nationality of the perpetrators and victims. The case filed in Argentina on behalf of the Rohingya diaspora marks an important precedent, demonstrating that justice can be pursued even outside the conventional institutional pathways.[30] Although substantial challenges remain—including political obstacles, evidentiary limitations, and diplomatic resistance from the state responsible for the crimes—these initiatives illustrate that international law continues to have vitality. In legal spaces unguarded by formal global institutions, there remain normative openings where justice can breathe. In this context, the principle of *aut dedere aut judicare* (extradite or prosecute) finds its most tangible expression: crimes against humanity transcend jurisdictional boundaries because their perpetrators are *hostis humani generis* (enemies of all humankind). Nevertheless, the effectiveness of this mechanism is not immune to critique. The success of universal jurisdiction depends heavily on the goodwill of the prosecuting state, its legal and institutional capacity, and its commitment to judicial independence. Despite these obstacles, such lawsuits remain vital as manifestations of counter-law—alternative legal action born of victims' courage, transnational solidarity, and a collective resolve to combat impunity.

3.4. The Direction of International Justice Enforcement and Accountability Mechanisms

The ICC is a permanent judicial institution designed to prosecute perpetrators of the most serious international crimes—namely genocide, crimes against humanity, war crimes, and crime of aggression. However, the legal idealism embodied in the ICC is directly confronted by jurisdictional limitations inherent within its institutional framework. Myanmar, the state implicated in the Rohingya tragedy, is not a party to the 1998 Rome Statute—the founding treaty of the ICC. As a consequence, the ICC can only initiate a full investigation if there is a formal referral by the United Nations Security Council under Article 13(b) of the Rome Statute. Herein lies one of the most painful paradoxes of international justice: the pursuit of accountability is constrained by the architecture of global political power. The dominance of the veto power held by the permanent members of the Security Council—particularly China and Russia, both of which maintain close political and economic ties with Myanmar's military junta—renders the possibility of an ICC referral effectively unattainable. The ICC's moral and legal mandate is thus stifled by realpolitik calculations that prioritize geopolitical stability over

[29] Jan Klabbers, "Reflections on Role Responsibility: The Responsibility of International Organizations for Failing to Act," *European Journal of International Law* 28, no. 4 (December 31, 2017): 1133–61, doi:10.1093/ejil/chx068.

[30] B. Lora Christyanti, Diajeng Wulan Christianti, and Chloryne Trie Isana Dewi, "The Reversed Implementation of the ICC's Principle of Complementarity: Case Study of Argentina Investigation for Rohingyas," *Padjadjaran Journal of International Law* 7, no. 1 (March 16, 2023): 44–61, doi:10.23920/pjil.v7i1.965.

human suffering. This condition gives rise to a profound irony: the ICC, as the most progressive instrument of international criminal law enforcement, remains shackled by the very system that created it. Justice does not fail due to the absence of legal norms, but rather because law is subordinated to the veto.[31] Therefore, the critical question is no longer whether the ICC can act, but whether an international legal order that permits a veto over justice remains ethically defensible in a world that claims to uphold human rights.

When the ICC cannot serve as an avenue for accountability due to jurisdictional limitations and political deadlock within the United Nations Security Council, the proposal to establish an international ad hoc tribunal often re-emerges as an alternative. The creation of the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY) serves as a critical precedent, demonstrating that international justice can be pursued outside the ICC framework. However, the establishment of an ad hoc tribunal still requires authorization from the Security Council—once again entrapping the pursuit of justice within the vortex of veto power and the geopolitical dominance of major powers. In response to such deadlock, discourse has also developed around the possibility of creating hybrid tribunals, which combine elements of international law with the domestic legal system of the perpetrator state. Yet, in the post-coup context of Myanmar, this option is highly problematic. Myanmar's national legal system has been systematically compromised, with law enforcement agencies themselves serving as principal actors in the violence against the Rohingya community.[32] A hybrid approach, therefore, runs the serious risk of devolving into a legalistic exercise devoid of moral legitimacy, or worse, becoming an instrument of false reconciliation that ultimately reinforces impunity. Under such conditions, the creation of any form of tribunal must not be reduced to a symbolic performance or a venue for normative celebration. A tribunal must represent a concrete manifestation of the principles of international law (*nulla poena sine iudicio*), no punishment without trial. This means that the primary focus must be directed toward the restoration of victims' rights and the genuine enforcement of justice, rather than the maintenance of diplomatic stability or political convenience. True justice can only emerge when legal structures are disentangled from the co-optation of power and stand firmly on the side of victims, not perpetrator states.

In the pursuit of international justice, the establishment of the United Nations Human Rights Council's Independent International Fact-Finding Mission on Myanmar (FFM) in 2017 and the Independent Investigative Mechanism for Myanmar (IIMM) in 2018 marked critical steps in building the epistemic infrastructure necessary to address the atrocities committed against the Rohingya community. These mechanisms have played a central role in systematically documenting grave violations of international humanitarian law and human rights, including mass killings, systematic rape, and the wholesale destruction of villages. Through evidence-based methodologies, both the FFM and IIMM have produced credible, verified, and legally accountable reports and databases. However, the success of these mechanisms in constructing a factual record of abuses faces a persistent structural dilemma:

[31] Trahan, "The Origins and History of the Veto and Its Use."
[32] Spadaro, "The Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar Decision to Authorize Investigation (I.C.C.) and the Gambia V. Myanmar Order for Provisional Measures (I.C.J.)."

the disjunction between documentation and adjudication. Despite the comprehensive collection of evidence, there exists no judicial forum with effective and legitimate jurisdiction to translate these investigative findings into concrete legal proceedings. As a result, a condition known as epistemic impunity has emerged—wherein truth is known and disseminated, yet never acted upon through prosecution. The truth becomes an impotent archive, while justice remains shrouded by the persistence of impunity. From the standpoint of progressive international law, the connection between truth and justice is essential. While the FFM and IIMM serve as epistemic foundations for the pursuit of substantive justice, their effectiveness is contingent upon the existence of institutional mechanisms capable of transforming documented narratives into judicial rulings and using the collected evidence as a legitimate basis for legal sanction. Without such mechanisms, these efforts risk becoming tragic reminders of delayed justice, symbols of moral clarity unaccompanied by legal consequences.

Justice in the context of international crimes cannot be confined solely to the prosecution and punishment of perpetrators. The Rohingya community—victims of multilayered atrocities including genocide, forced displacement, systematic sexual violence, and identity erasure—requires a more holistic and comprehensive form of justice: one that entails concrete, equitable, and impactful reparations and restitution aimed at restoring their dignity and livelihoods.[33] This approach must transcend the procedural limitations of the often elitist and exclusionary international legal system, and instead be embedded within a multidimensional and long-term transnational strategy. Such a strategy may involve multiple mechanisms. First, the filing of civil litigation in the jurisdictions of third-party states on behalf of victims, seeking both financial accountability and symbolic recognition from individuals or entities complicit in the crimes. Second, the establishment of an international compensation fund, supported by contributions from donor states and mandated by United Nations institutions, to provide structured and direct assistance to survivors. Third, formal recognition of the Rohingya as victims of gross human rights violations by countries hosting the diaspora in exile can facilitate access to legal protection, education, and healthcare services. Moreover, reparations must address dimensions of identity and nationality. The restoration of citizenship, recognition of land and housing rights, and socio-political reconciliation in Rakhine State are integral components of a sustainable justice process. Reparations should not be perceived as acts of state benevolence, but rather as legal obligations grounded in the principle of state responsibility and victim-centered justice. Only through such an approach can justice truly reach the bodies, spirits, and futures of the Rohingya community.

[33] Morten B. Pedersen, "The ICC, the Rohingya and the Limitations of Retributive Justice," *Australian Journal of International Affairs* 73, no. 1 (January 2, 2019): 9–15, doi:10.1080/10357718.2018.1548562; L. Moffett, "Elaborating Justice for Victims at the International Criminal Court: Beyond Rhetoric and The Hague," *Journal of International Criminal Justice* 13, no. 2 (May 1, 2015): 281–311, doi:10.1093/jicj/mqv001; Payam Akhavan, Rebecca J. Hamilton, and Antonia Mulvey, "'What Kind of Court Is This?': Perceptions of International Justice Among Rohingya Refugees," *Human Rights Quarterly* 46, no. 2 (May 2024): 173–206, doi:10.1353/hrq.2024.a926219; Andri Sutrisno et al., "The Approach of Restorative Justice Theory In Resolving The Rohingya Case In Myanmar And The Syrian Conflict," *Jurnal Rechten: Riset Hukum Dan Hak Asasi Manusia* 6, no. 2 (August 29, 2024): 27–39, doi:10.52005/rechten.v6i2.170.

4. Conclusions

The systemic violence inflicted upon the Rohingya community constitutes a stark manifestation of the collapse of fundamental principles of international law, particularly *jus cogens* norms and *erga omnes* obligations, which are non-derogable and not subject to compromise by any political interest. Acts of genocide, crimes against humanity, and forced deportation systematically perpetrated by Myanmar authorities represent not only egregious violations of the Rohingya people's integrity but also a flagrant affront to the international legal order that purports to uphold human dignity as the highest norm (*suprema lex*). Yet, to this day, justice remains confined to the realm of normative rhetoric, obstructed by the veto power of permanent members of the UN Security Council, entrenched impunity, and the prevailing apathy of the international community. When the Security Council fails to fulfill its mandate to protect, and the Responsibility to Protect doctrine remains a hollow slogan, it becomes necessary to acknowledge that the international legal system is undergoing a crisis of legitimacy and moral authority. Accordingly, the pursuit of international justice for the Rohingya demands a radical reorientation, one that places victims at the center of the legal system. Referrals to the ICC, the establishment of ad hoc tribunals, and the empowerment of investigative mechanisms must be designed not solely to prosecute perpetrators, but to restore the rights and dignity of survivors. Simultaneously, transnational strategies grounded in universal jurisdiction and cross-border reparative justice must be implemented without delay. In a world that has long borne silent witness to the suffering of the Rohingya, the time has come for international law to speak with clarity and force—not merely through declarative commitments, but through concrete action that advances substantive justice and the moral reconstruction of human civilization.

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