

The UN's Response to the Human Rights Crisis after the Coup in Myanmar: Destined to Fail?

DAMIAN LILLY



Cover Photo: People take to the streets in Nyaungshwe, Myanmar, to protest the military coup. March 2, 2021.
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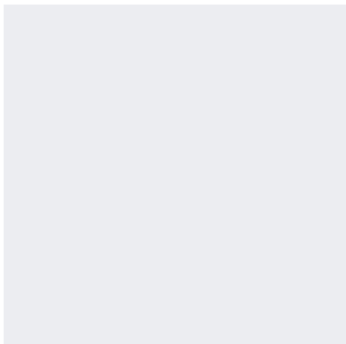
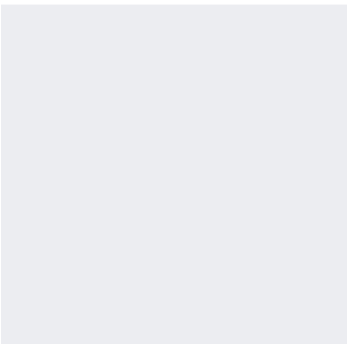
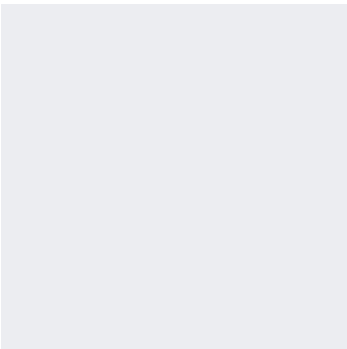
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CONTENTS

Abbreviations	iii
Executive Summary	v
Introduction.....	1
The Military Junta's Terror Campaign against Its Own People.....	2
Excessive and Lethal Use of Force	2
Attacks on Health and Education Facilities and Staff	3
Arbitrary Detention, Enforced Disappearances, and Torture	4
Violations of the Right to Peaceful Assembly and Freedom of Expression	4
Attacks against Civilians during Armed Conflicts.....	4
Forced Displacement	5
Other Humanitarian Consequences	5
The Human Rights Agenda under Threat	5
The Responsibility to Protect: A Withering Doctrine.....	5
From Human Rights Up Front to the Secretary General's Call to Action	7
What Is Left in the Human Rights Toolbox?	8
Political Pressure and Nonrecognition.....	8
Punitive Measures: Sanctions Regimes and Arms Embargos.....	12
Human Rights Monitoring and Advocacy	14
Legal Accountability Mechanisms	16
The Role of the Aid Community	18
Local Human Rights Actors and Civil Resistance.....	20
Conclusion: An Agenda for Protection in Myanmar.....	21

ABBREVIATIONS

AAPP	Assistance Association for Political Prisoners
ASEAN	Association of Southeast Asian Nations
HRuF	Human Rights Up Front
ICC	International Criminal Court
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
IIMM	Independent Investigative Mechanism for Myanmar
NLD	National League for Democracy
NUG	National Unity Government
OHCHR	Office of the UN High Commissioner for Human Rights
RC/HC	Resident coordinator/humanitarian coordinator
R2P	Responsibility to protect
UNHCR	UN Refugee Agency

Executive Summary

Since seizing power in a coup on February 1, 2021, Myanmar's military has launched a violent crack-down against anti-coup protesters—a campaign of terror that may amount to crimes against humanity. With violence spreading, there are fears that the country is slipping toward full-scale civil war and state collapse. The international community has appeared almost powerless to respond to this human rights crisis, reflecting a broader weakening of its resolve to prevent and respond to atrocity crimes over the last decade.

There is a sense of history repeating itself in Myanmar as the military junta acts with impunity while the international community rolls out the familiar playbook, to limited effect. Some states have refused to recognize the military junta and imposed bilateral sanctions, but others have continued engaging with it and failed to take punitive measures. The lack of international unity has prevented robust action by the Security Council, which has not taken even minimal measures like an arms embargo. A five-point consensus plan agreed by the Association of Southeast Asian Nations (ASEAN) has not been implemented but is the only realistic solution to the crisis.

While the UN has publicly condemned the military junta, this has not been accompanied by private diplomacy. The UN's capacity to monitor, document, report, and analyze human rights violations has not matched the scale of the problem. There are few international justice mechanisms for holding members of the military accountable for atrocity crimes, though pursuing these could yield success in the long run. The international development and humanitarian actors present in the country have taken only minimal actions to address the human rights crisis. In view of the inadequate international response, national human rights organizations, protesters, and the civil disobedience movement have been left to fill the gap with little international support.

Compared to the scale and severity of human right violations occurring in Myanmar, the UN's response—both as an intergovernmental body of member states and as a system of operational entities—has been woefully inadequate. While

there is no simple recipe for halting the atrocity crimes, the UN could take a combination of measures at several levels:

- **Ground the response in a political strategy:** The UN urgently needs to develop a political strategy to address the crisis in support of the ASEAN process, including by revamping the office of the special envoy on Myanmar and creating an international support group while ensuring that human rights are at the center of any political process.
- **Increase capacity for human rights monitoring and quiet diplomacy:** An ASEAN-UN civilian protection monitoring mechanism should be explored as an option to help put an end to the violence by all parties, even if political support will be hard to achieve. The UN also urgently needs to increase its capacity to monitor human rights, even if done remotely, including through digital platforms.
- **Provide clear leadership that encourages a less risk-averse approach:** The UN secretary-general should visit the region to meet with all key actors and strengthen the UN's partnership with ASEAN and other concerned states.
- **Devise a whole-of-system approach to the UN's response:** The UN should introduce mandatory procedures for relevant UN entities to mobilize their resources and capabilities in response to human rights crises and deploy a senior planner to coordinate its political, human rights, humanitarian, and development actions.
- **Scale up protection services:** Humanitarian partners should urgently update their humanitarian appeal and activate the protection cluster in urban areas of Myanmar to coordinate the scaling up of protection services such as psychosocial support, legal aid, and case management.
- **Support existing nationally or locally led protection efforts:** The greatest forces for change have come from the protesters, people involved in the civil disobedience movement, and human rights and civil society organizations. The UN should be more forthright in supporting these efforts and the crucial protection role they are playing.

Introduction

On February 1, 2021, Myanmar's military, the Tatmadaw, staged a coup to depose the government of the National League for Democracy (NLD), which had overwhelmingly won national elections in November 2020. The Tatmadaw claimed there had been electoral fraud and declared a year-long state of emergency, placing commander-in-chief Min Aung Hlaing at the head of a newly created State Administrative Council. State Counsellor Aung San Suu Kyi, President Win Myint, and other NLD leaders were arrested and later charged with a series of offenses on dubious grounds. The remaining NLD parliamentarians went into hiding and formally created the Committee Representing Pyidaungsu Hluttaw, which, along with representatives of some of the ethnic groups in Myanmar, established a National Unity Government (NUG) on April 16, 2021, which is now acting as a parallel civilian government. The political crisis has reversed almost a decade of democratic reforms in the country. With both sides unlikely to accept a return to the status quo ante, reaching a negotiated settlement will be difficult.

The coup has led to unprecedented unity in Myanmar among those who oppose military rule, resulting in the largest protest movement since the pro-democracy uprising of 1988. Hundreds of thousands of people have participated in peaceful protests in the country's largest city, Yangon, and many other cities and towns, while a civil disobedience movement has halted the functioning of many parts of the government. While the Tatmadaw tolerated the anti-coup protests for the first few weeks, it subsequently launched a (predictable) violent crackdown and used deadly force against protesters, causing a serious human rights crisis. The violence has spilled over to, and intensified, decades-old conflicts between the Tatmadaw and dozens of ethnic armed groups across the country, some of which are now aligning themselves with

the NUG. There are widespread fears that the country is slipping toward full-scale civil war and state collapse. There are also chilling parallels with what has occurred in other countries, such as Syria and Libya, where what started as peaceful protests transformed into years of armed conflict.

The international community has appeared almost powerless in the face of the events unfolding since the coup in Myanmar. The familiar playbook of measures such as public statements, withdrawal of support, and sanctions has been rolled out, but with limited impact thus far. With the scale of violations reaching the level of crimes against humanity, there have been calls for the invocation of the responsibility to protect (R2P), although the Security Council has not taken any action. The Association of Southeast Asian Nations (ASEAN) has released a five-point consensus plan to seek a resolution to the crisis, but its track record on Myanmar is not

The international community has appeared almost powerless in the face of the events unfolding since the coup in Myanmar.

encouraging. There is a sense of history repeating itself, with the response, or lack thereof, destined to become yet another failure of the international community to prevent mass atrocities. The crisis is occurring only a few years

after the publication of an independent inquiry (the so-called Rosenthal Report) that looked into the UN's failure to protect the Rohingya minority in Rakhine from what a UN fact-finding mission labeled a genocide.¹ It seems clear today that the lessons from that crisis were not acted upon to avert the current one, whose origins are to be found in the impunity with which the Tatmadaw has been able to act.²

This policy paper analyzes the human rights crisis created by the coup in Myanmar and assesses the response of the UN, within the context of broader international efforts, when viewed against the many commitments that have been made to protect people from atrocity crimes. The first section outlines the different elements of the human rights crisis and the violations that have been occurring. The second section places the events in Myanmar

¹ See: Gert Rosenthal, "A Brief and Independent Inquiry into the Involvement of the United Nations in Myanmar from 2010 to 2018," May 2019. For the fact-finding mission, see: UN Human Rights Council, *Report of the Independent International Fact-Finding Mission on Myanmar*, UN Doc. A/HRC/39/64, September 12, 2018.

² Damian Lilly and Richard Bennett, "Myanmar's Military Coup and the 'Age of Impunity,'" *IPI Global Observatory*, February 24, 2021.

in the context of international commitments, including by the UN, to address atrocity crimes. The third section reviews the human rights tools that are at the disposal of the UN to understand what works and what does not and to highlight innovative ways to address such a challenging situation. The paper concludes with proposals for what an agenda for protection in Myanmar might entail, building on the ambitious Call to Action for Human Rights launched by the UN secretary-general in 2020.³ The unfolding tragedy in Myanmar is one of the first major tests of this initiative to strengthen the resolve of the UN to address human rights crises.

The Military Junta's Terror Campaign against Its Own People

Myanmar's military junta seems to have believed that objections to its seizure of power would be short-lived. This has proved to be a serious miscalculation, with few signs of this new generation of protesters accepting a return to military rule. Initially, the protests were generally nonviolent. However, as a growing number of protesters are killed, there are increasing signs of armed resistance, with civilians opposed to the military junta taking up arms and organizing themselves into civil defense forces. The NUG has announced its desire to create a federal army with the ethnic armed groups in Myanmar and has now established a "people's defense force."

The Tatmadaw's brutal crackdown on the anti-coup protest movement has amounted to a terror campaign against its own people with a clear pattern of systematic and widespread attacks against civilians. This crackdown has all the hallmarks of the Tatmadaw's previous responses to similar protests in 1988 and 2007, as well as decades-old repressive security operations against Myanmar's ethnic armed groups. The current

human rights crisis must, therefore, be understood as the latest phase of state repression, with its origins to be found in the Tatmadaw's ability to act with almost complete impunity. The army generals presiding over the crackdown today are the very same who the 2018 UN fact-finding mission on Myanmar concluded should be prosecuted for genocide, crimes against humanity, and war crimes committed in Rakhine, Kachin, and Shan states.⁴

It has been suggested that the pattern and scale of human rights violations since the coup have already reached the threshold of crimes against humanity, including acts of murder, enforced disappearances, persecution, torture, and imprisonment in violation of the fundamental rules of international law.⁵ According to the Rome Statute of the International Criminal Court (ICC), crimes against humanity entail one or more prohibited criminal acts "committed as a part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack."⁶ This section provides a detailed analysis of the human rights concerns associated with the Tatmadaw's terror campaign. It focuses on the violence against the protest movement, as this is the most recent development in Myanmar. However, it also includes a brief summary of human rights violations within the context of the conflicts with the ethnic armed groups, which are closely linked to the violence against protesters and display the same pattern of concerns.

Excessive and Lethal Use of Force

The state security forces, including the national police supported by specific military units, have used excessive and lethal force against peaceful protesters and anyone else objecting to military rule. According to the Assistance Association for Political Prisoners (AAPP), the most widely quoted source for civilian casualties, 860 people had been killed as of June 10, 2021, more than 50 of them

3 United Nations, "The Highest Aspiration: A Call to Action for Human Rights," 2020.

4 See: UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN Doc. A/HRC/39/CRP.2, September 17, 2018.

5 See, for example: Thomas H. Andrews, "Statement on the Situation of Human Rights in Myanmar," UN Human Rights Council, March 11, 2021, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26884&LangID=E>.

6 See: Article 7 of the Rome Statute of the International Criminal Court (ICC).

children.⁷ The state security forces have shown a complete disregard for their obligations under international human rights standards applicable to law-enforcement operations according to which the use of force should be proportionate to the threat posed and only used as a last resort in self-defense or to protect others.⁸ They have even pronounced on state television that the protesters are to blame for the violence and that anyone caught demonstrating “will suffer the loss of life.”⁹ Some of the most notorious Tatmadaw military units, including the 33rd, 77th, and 101st Light Infantry Divisions (LID), that had been implicated in human rights violations during security operations against the ethnic armed groups, have operated alongside police officers, sometimes even lending them their weapons.

Security forces have used violent crowd-dispersal techniques including water cannons, tear gas, rubber bullets, and sound grenades. Most disturbing has been the use of battlefield weapons such as assault rifles, light machine guns, sniper rifles, and live grenades.¹⁰ There have been countless witness accounts and extensive social media coverage of police firing willfully into crowds of protesters and communities. Some of these actions may amount to extrajudicial killings, as they are devoid of any legal authority. Many of the protesters killed have been shot in the head by army marksmen and snipers. The security forces have also undertaken operations in neighborhoods at nighttime, shouting threats, throwing sound

The Tatmadaw’s brutal crackdown on the anti-coup protest movement has amounted to a terror campaign against its own people.

grenades, and indiscriminately firing rubber bullets and live rounds into people’s homes.

Attacks on Health and Education Facilities and Staff

In addition to the protesters, Myanmar’s healthcare workers have been targeted by the security forces when attempting to provide medical assistance to injured civilians and for participating in the civil disobedience movement. Between February 1st and May 31st, there have been 212 reported attacks against medical facilities, vehicles, personnel, or patients, with fourteen deaths. This represents nearly 50 percent of all such incidents reported worldwide in that period.¹¹ There have been documented instances of security forces opening fire on hospital maternity wards, storming hospitals and forcibly evacuating the patients and healthcare workers, and opening fire on protesters at a hospital. More than one hundred medical students and healthcare workers have reportedly been arrested since the start of the coup, and security forces have forcibly occupied at least thirty-six hospitals in an attempt to arrest injured protesters or healthcare workers providing them care.¹² Security forces had also reportedly occupied more than sixty schools and university campuses in thirteen states and regions as of March 19th—a serious violation of children’s rights.¹³ In May alone, 103 schools and other education facilities were attacked and damaged by explosives.¹⁴

⁷ For more details, see the AAPP website, available at <https://aappb.org/>.

⁸ See: “Basic Principle on the Use of Force and Firearms by Law Enforcement Officials,” Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, August 27–September 7, 1990.

⁹ UN Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in Myanmar*, Thomas H. Andrews, UN Doc. A/HRC/46/56, March 4, 2021.

¹⁰ Ibid.

¹¹ For more details, see the website of the World Health Organization’s Surveillance System for Attacks on Health Care at <https://extranet.who.int/ssa/Index.aspx>.

¹² See: Physicians for Human Rights, “Open Letter to Secretary of State Blinken on the Public Health and Human Rights Crisis in Myanmar,” April 7, 2021.

¹³ UN Educational, Scientific and Cultural Organization (UNESCO) and UNICEF, “Occupation of Schools by Security Forces in Myanmar Is a Serious Violation of Children’s Rights,” March 19, 2021.

¹⁴ Save the Children, “Myanmar: More Than 100 Attacks on Schools in May,” June 11, 2021.

Arbitrary Detention, Enforced Disappearances, and Torture

The military junta's strategy to put down any dissent has involved the arbitrary detention of thousands of protesters and anyone else deemed to have opposed its actions. According to the AAPP, nearly 6,000 people had been detained following the coup as of June 10th.¹⁵ Those held in custody include protesters, activists, elected officials, government workers, politicians, and journalists. They have been taken during anti-coup demonstrations or from their homes during night raids. Additional arrest warrants have been publicly issued for hundreds of people linked to the protest movements. In hundreds of cases, the authorities have refused to confirm the whereabouts of those detained or allowed them access to lawyers or family members. These amount to enforced disappearances, which are prohibited under international law.¹⁶ Those detained have reportedly been held in terrible conditions. There have been several reported instances of torture, with two NLD officials having died in custody after being severely beaten and many more likely to have suffered the same fate.¹⁷

Violations of the Right to Peaceful Assembly and Freedom of Expression

As well as the use of force and depriving people of their liberty the military junta has made several changes to the laws to suppress the right to peaceful assembly and freedom of expression. In the days following the coup, it reintroduced legal measures prohibiting public assemblies of more than five people, imposing a curfew from 8:00pm to 4:00am, and criminalizing civil disobedience.¹⁸ A change to the penal code has meant that protesters or those

opposing the military could face twenty years in prison. Laws constraining the security forces from detaining suspects or searching private property without court approval have also been suspended. In mid-March, martial law was declared in several townships in Yangon, Mandalay, and other cities and large towns, purportedly to provide security and rule of law. The move effectively transferred executive and judicial powers to the Tatmadaw's regional commanders and officers.

Given that much of the opposition to military rule has been voiced online and the Internet has been a potent tool for mobilizing those who have rejected the coup, online space has become a parallel battlefield. The military junta has attempted to block the use of the Internet and other modes of communication.¹⁹ A new cybersecurity law was introduced to provide the junta sweeping powers to access user data, block websites, and order Internet shutdowns. Since March, it has shut off the Internet at night and blocked mobile phones' data connections to social media platforms such as Instagram, Facebook, and Twitter. Internet and mobile phone companies have had little option but to comply with the military junta's orders for fear of having their licenses revoked. The Norwegian provider Telenor, which has signed up to business and human rights standards, has objected but had little choice but to implement the demands of the military junta, writing off \$782 million of its investment in the country.²⁰ The junta has also revoked the licenses of five media outlets as it clamps down on independent coverage of anti-coup protests.

Attacks against Civilians during Armed Conflicts

As mentioned earlier, the anti-coup protest movement has spilled over to, and intensified, the armed conflicts between the Tatmadaw and the plethora of ethnic armed groups in Myanmar,

¹⁵ See the AAPP website, available at <https://aappb.org/>.

¹⁶ An enforced disappearance occurs when an individual is detained by or with the acquiescence of state actors and there is no official acknowledgement or information about the individual's well-being and whereabouts. See: OHCHR, "Working Group on Enforced and Involuntary Disappearances," available at <https://www.ohchr.org/en/issues/disappearances/pages/disappearancesindex.aspx>. See also: Human Rights Watch, "Myanmar: Hundreds Forcibly Disappeared," April 2, 2021.

¹⁷ See: "Myanmar: Second NLD Official Dies in Custody as Junta Cracks Down on Media," *The Guardian*, March 9, 2021.

¹⁸ International Center for Not-for-Profit Law, "Civil Disobedience: Implications for Myanmar," March 2021.

¹⁹ For a detailed analysis, see: International Crisis Group, "Myanmar's Military Struggles to Control the Virtual Battlefield," May 18, 2021.

²⁰ For details about the actions taken by the company, see: Telenor Group, "Directives from Authorities in Myanmar—February–June 2021," available at <https://www.telenor.com/sustainability/responsible-business/human-rights/mitigate/human-rights-in-myanmar/directives-from-authorities-in-myanmar-february-2021/>. See also: John Reed and Richard Milne, "Telenor Writes Off \$782m Myanmar Business Following Coup," *Financial Times*, May 4, 2021.

some of which have been ongoing for decades. There has been a resurgence of fighting in Kachin, Chin, northern Shan, Kayah, and Kayin states, in some cases breaking cease-fires that had been in place for several years. There have already been more conflict incidents reported in Myanmar during the first half of 2021 than during the entirety of the previous year.²¹ During its military operations, the Tatmadaw has used airstrikes against civilian populations in outlying provinces, leading to civilian casualties. Protection actors in Myanmar have reported incidents of civilians being used as human shields, gender-based violence, arbitrary arrests and detention, and the theft and destruction of civilian property.²²

Forced Displacement

The violence across Myanmar since the coup has increased forced displacement. As of June 14th, more than 200,000 people had been displaced in areas of armed conflict and humanitarian operations since the coup.²³ However, this figure does not include the internal displacement resulting from the violence against protestors in urban settings that has also led many people to flee their homes. For example, in mid-March, violence in the industrial township of Hlaing Tharyar in Yangon caused hundreds of thousands of people to flee their homes and return to their places of origin.²⁴ Tens of thousands of people have fled the country, including hundreds of people from Chin state who crossed into India. In late March, 3,000 civilians escaped airstrikes in Karen state and sought refuge in neighboring Thailand, with reports that some of them were pushed back by Thai border officials.²⁵ The UN Refugee Agency (UNHCR) has called on neighboring states to protect people fleeing the violence and respect the principle of non-refoulement by not pushing them back to a situation where they may face violence from the junta.²⁶ However, China has closed its border with Myanmar, citing concerns over the

spread of COVID-19. In February, Malaysian authorities deported at least one thousand people to Myanmar despite a court order blocking the move.²⁷

Other Humanitarian Consequences

The violence, displacement, and economic impact of the looming humanitarian crisis in Myanmar have devastated people's livelihoods and well-being. The combined effects of the coup and the COVID-19 pandemic could put over a decade of progress on poverty reduction at risk and result in half the population (22 million people) living in poverty by 2022.²⁸ As a result of rising food prices, up to 3.4 million more people may be hungry by October 2021, particularly in urban centers.²⁹ The healthcare system is also close to collapse, with hardly any COVID-19 testing or treatment, medicines in short supply, and vaccination programs far behind schedule.

The Human Rights Agenda under Threat

The crisis in Myanmar must be seen in the context of the international community's diminishing resolve over the last decade to prevent atrocity crimes. In Syria, Yemen, and elsewhere, states are increasingly unwilling to take action to halt violence against civilians as the human rights agenda has come under threat.

The Responsibility to Protect: A Withering Doctrine

In 2005, world leaders affirmed the responsibility of states to protect (R2P) their own populations from genocide, war crimes, ethnic cleansing, and crimes against humanity and accepted a collective responsibility to encourage and help other states to

21 For more details, see: Armed Conflict Location & Event Data Project, available at <https://acleddata.com/#/dashboard>.

22 See, for example: UN Office for the Coordination of Humanitarian Affairs, "Myanmar Humanitarian Update No. 7," May 27, 2021.

23 See: UN Refugee Agency, "Myanmar UNHCR Displacement Overview," June 14, 2021, available at <https://data2.unhcr.org/en/documents/details/87198>.

24 International Organization for Migration, "Full Support for Democracy, Peace, Rule of Law in Myanmar: IOM Statement," March 17, 2021.

25 Karen Women Organization (@karenwomenorg), Twitter, March 28, 2021, 12:03pm, available at <https://twitter.com/karenwomenorg/status/1376203335464747011>.

26 See: UNHCR, "UNHCR Calls on Myanmar's Neighbours to Protect People Fleeing Violence," March 31, 2021.

27 OHCHR, "Malaysia: UN Experts Appalled by Deportation of Migrants to Myanmar Despite Court Order," February 24, 2021.

28 UN Development Program, "COVID-19, Coup d'État and Poverty: Compounding Negative Shocks and Their Impact on Human Development in Myanmar," April 2021.

29 "WFP to Step Up Operations in Response to Fast Rising Hunger in Myanmar," World Food Programme, Press Release, April 22, 2021.

uphold this commitment.³⁰ The principle of R2P emerged from the failure to prevent the genocides in Rwanda and at Srebrenica during the 1990s and other atrocity crimes. In its fifteen years of existence, R2P has appeared in more than ninety UN Security Council resolutions, including in peacekeeping mandates to protect civilians in places such as the Central African Republic and South Sudan.³¹ The former chief prosecutor of the ICC, Fatou Bensouda, has described the ICC as “the legal arm of R2P.”³²

The doctrine of R2P includes a range of measures to prevent or respond to atrocity crimes including diplomatic engagement and relevant forms of international assistance. However, it has become closely (and wrongly) associated with military intervention and confrontation in the service of the interests of Western states. Whatever form it takes, its implementation has depended on the political will of states, and in particular the willingness of the UN Security Council to act. In March 2011, the Security Council invoked R2P to authorize the UN peacekeeping mission in Côte d’Ivoire (UNOCI) to use force against state security forces to protect civilians during post-election violence.³³ That same month, the Security Council took the unprecedented step of authorizing force against a member state to protect civilians in Libya as the forces of Muammar Gaddafi advanced on the city of Benghazi.³⁴ There was talk at the time of the emergence of a “new politics of protection” based on the increased willingness of the international community to take robust action to protect civilians.³⁵ However, the NATO intervention in Libya proved politically divisive, with many states arguing that its ultimate, undeclared goal was regime change as much as the protection of civilians. It proved to be a pivotal

While political support for the responsibility to protect has waned significantly over the last decade, the concept remains just as relevant today.

point for R2P. The subsequent conflict in Syria led to political paralysis in, and inaction by, the Security Council, which failed to take any decisive action to prevent the horrors of the armed conflict that unfolded.

Due largely to the controversy generated by Libya and the failure to act in Syria, political support for R2P has waned significantly over the last decade. However, the concept remains just as relevant today to those civilians facing the risk of atrocity crimes. Anti-coup protesters on the streets in Myanmar have used it as a powerful slogan, with “We Need R2P” and “R2P—Save Myanmar” written on t-shirts and banners. There have been several calls by global leaders for R2P to be invoked to halt the violence.³⁶ But even proponents of R2P acknowledge that it is particularly

difficult to uphold the principle in cases such as Myanmar where the state is the primary perpetrator of violence and is unwilling to fulfill its responsibility to protect its own population. It is all the more difficult when the Security Council is unable to agree on

the actions needed to prevent or halt atrocity crimes.³⁷ Although R2P unequivocally applies to the present crisis in Myanmar, there is not political support for it among those states that would need to act.

The failure of the international community to live up to its 2005 commitment to R2P is symptomatic of a broader decrease in support for the multilateral system, not least the UN. While the deadlock in the UN Security Council is a major cause of this, human rights norms have been under assault from many populist governments and right-wing politicians that reject the international liberal order and multilateralism. As a result, states have become increasingly unwilling to support—or comfortable

30 See: UN General Assembly, *2005 World Summit Outcome*, UN Doc. A/RES/60/1, October 26, 2005, paras. 138 and 139.

31 Global Centre for the Responsibility to Protect, “UN Security Council Resolutions and Presidential Statements Referencing R2P,” April 8, 2021.

32 Global Centre for the Responsibility to Protect, “Myanmar’s Deadly Coup and the Responsibility to Protect,” March 25, 2021.

33 See: UN Security Council Resolution 1975 (March 30, 2011), UN Doc. S/RES/1975.

34 See: UN Security Council Resolution 1973 (March 17, 2011), UN Doc. S/RES/1973.

35 Alex J. Bellamy and Paul D. Williams, “The New Politics of Protection? Côte d’Ivoire, Libya and the Responsibility to Protect,” *International Affairs* 87, no. 4 (2011).

36 See, for example: Global Leadership Foundation, “GLF Letter to UN Secretary General on Myanmar,” March 29, 2021.

37 Simon Adams, “If Not Now, When?: The Responsibility to Protect, the Fate of the Rohingya and the Future of Human Rights,” Global Centre for the Responsibility to Protect, January 2019.

ignoring—the international institutions responsible for promoting the protection of human rights. Several states have withdrawn from the ICC. The previous US administration placed sanctions on the ICC's chief prosecutor and pulled out of the Human Rights Council. Political and financial pressures are leading to the drawdown of many UN peacekeeping operations, including those mandated to protect civilians.³⁸ This retreat from the human rights agenda is occurring at a time when compliance with international law and efforts to pursue accountability for those responsible for violations are at a low ebb.³⁹ It is culminating in what David Miliband, head of the International Rescue Committee, has called “the age of impunity,” allowing perpetrators such as the military junta in Myanmar to act without any consequences.⁴⁰

From Human Rights Up Front to the Secretary General's Call to Action

The UN system has attempted to adapt and respond to states' decreasing willingness to address atrocity crimes. The diminished support for multilateralism, though, has eroded the authority of the UN and its efforts to seek greater respect for international law.⁴¹ But the UN has also faced internal challenges that have undermined its ability to address human rights crises. In response to the recommendations of a damning review of the UN's “systemic failure” to address war crimes during the last stage of the conflict in Sri Lanka in 2008 and 2009, the former UN secretary-general launched the Human Rights Up Front (HRuF) initiative in 2013. There is no single policy document that outlines HRuF, but it was intended to ensure that UN staff and entities prioritize human rights and overcome a risk-averse organizational culture that

prevented them from speaking out and engaging member states on human rights violations.⁴² It emphasized prevention through early warning, including a regional quarterly review of potential crises, with decisions taken through a new Senior Action Group at the UN Secretariat.

While there have been many trainings, action plans, and guidance documents related to HRuF, there is little evidence of tangible differences it has made to the way the UN addresses human rights, let alone concrete results. As several people have pointed out, the UN's response to the Rohingya crisis in 2017 can only be described as a complete failure of HRuF.⁴³ Despite this crisis being precisely the sort of situation HRuF was designed to address, according to the Rosenthal Report, the UN's actions were again characterized by “systemic and structural failures” and the UN was largely impotent to address the serious human rights violations occurring.⁴⁴ These failures were strikingly similar to those documented in the review of the UN's response in Sri Lanka. In both cases, the UN country team lacked a common approach, prioritized quiet diplomacy over public advocacy—even when it was no longer working—and assumed that development and humanitarian assistance could address the human rights concerns.⁴⁵ In 2020, the UN country team in Myanmar adopted a human rights strategy that makes reference to HRuF. It developed an implementation plan and established a human rights thematic group to implement the strategy, although how it has informed the UN's response to the human rights crisis following the coup is uncertain.

The current status of HRuF within the UN system more generally is unclear, which may be testament to how seriously it is taken. Since taking office in 2016, Secretary-General António Guterres has not

38 Damian Lilly, “Considering the Protection of Civilians during UN Peacekeeping Transitions,” International Peace Institute, January 2021.

39 See, for example, the annual reports of the UN secretary-general on the protection of civilians in armed conflict.

40 David Miliband, “The New Arrogance of Power: Global Politics in the Age of Impunity,” Fulbright Lecture, June 20, 2019, available at <https://www.rescue.org/press-release/new-arrogance-power-global-politics-age-impunity>.

41 Mark Bowden and Victoria Metcalfe-Hough, “Humanitarian Diplomacy and Protection Advocacy in an Age of Caution,” Overseas Development Institute, November 2020.

42 For an overview of HRuF, see: Ekkehard Strauss, “The UN Secretary-General's Human Rights Up Front Initiative and the Prevention of Genocide: Impact, Potential, Limitations,” *Genocide Studies and Prevention* 11, no. 3 (2018).

43 See, for example: Liam Mahony, “Time to Break Old Habits: Shifting from Complicity to Protection of the Rohingya in Myanmar,” Fieldview Solutions, June 2018.

44 Rosenthal, “A Brief and Independent Inquiry into the Involvement of the United Nations in Myanmar from 2010 to 2018.”

45 Mahony, “Time to Break Old Habits.”

made any visible efforts to make HRuF a political priority. Instead, it has been subsumed under his prevention agenda, including reforms to the UN's development system and peace and security architecture.⁴⁶ In 2018, China and Russia blocked funding for the continuation of the human rights focal point in the secretary-general's office who was responsible for HRuF. The secretary-general has been criticized, including by former senior advisers, for bowing to political pressure in the face of human rights concerns.⁴⁷ There is a sense of human rights being subordinated to political concerns, with the UN focusing on climate change and sustainable development, which are less divisive. On announcing that he would not be seeking a second term in office, the former UN high commissioner for human rights, Zeid Ra'ad Al Hussein, commented that "to [run for another term], in the current geopolitical context, might involve bending a knee in supplication... lessening the independence and integrity of my voice."⁴⁸

With dwindling interest in HRuF and its official status within the UN unclear, it has largely been overtaken by the Call to Action for Human Rights launched by the secretary-general in early 2020. The Call to Action focuses on seven thematic areas and provides a vision of human rights as central to addressing the many challenges on which the UN works, including those related to sustainable development, gender equality, public participation, digital technology, and climate change, as well as other emerging human rights issues. One of the thematic areas is "Rights in Times of Crisis," which picks up on many of the challenges that HRuF was meant to address and explicitly mentions the Rosenthal Report.⁴⁹ In particular, it underlines the importance of prevention and reiterates that human rights are a shared responsibility of all UN entities. The Call to Action specifies that an "Agenda for Protection" will be developed to provide a more unified approach to promoting human rights under the UN's different strands of work. This agenda is currently in the early stages of

development within the UN Secretariat.

The Call to Action has been welcomed for setting out an ambitious vision for placing human rights at the center of the work of the UN. However, it has also been criticized for not proposing the kinds of structural reforms needed for the UN to effectively respond to critical human rights challenges.⁵⁰ The structural challenges that the Sri Lanka review and the Rosenthal Report identified have still not been addressed to ensure a prioritized, system-wide approach to human rights. In the current human rights crisis in Myanmar, the Call to Action does not seem to have made a tangible difference in how the UN has responded.

What Is Left in the Human Rights Toolbox?

The UN has appeared incapable of influencing the events unfolding in Myanmar or unwilling to take the actions required to do so. There is a sense of history repeating itself as the military junta acts with impunity while the familiar playbook of measures from the human rights toolbox are rolled out, once again with limited effect. If there is to be change, it is likely to come from pressure within Myanmar, as successful public protests in Sudan, Ukraine, and Tunisia have shown. However, coordinated international action is also required to exert pressure and support legitimate forces for change. Based on the international commitments made under R2P, Human Rights Up Front, and the secretary-general's Call to Action for Human Rights, this section reviews the human rights tools that are available to the UN, assesses their utility, and identifies other measures that could be tried.

Political Pressure and Nonrecognition

Immediately after the Tatmadaw seized power on February 1st, the UN secretary-general pleaded that

46 Jennifer Norris, "Given UN Failings in Myanmar, Where Is Human Rights Up Front?" Universal Rights Group, October 30, 2019.

47 Colum Lynch, "U.N. Chief Faces Internal Criticism Over Human Rights," *Foreign Policy*, February 4, 2020.

48 Zeid Ra'ad Al Hussein was appointed as president of the International Peace Institute in March 2021. Colum Lynch, "U.N. Human Rights Chief to Leave, Citing 'Appalling' Climate for Advocacy," *Foreign Policy*, December 20, 2017.

49 United Nations, "The Highest Aspiration: A Call to Action for Human Rights," 2020.

50 Tess Brennan, "On Its One-Year Anniversary, the Call to Action for Human Rights Remains a Relevant Tool for Tackling Human Rights Challenges," Universal Rights Group, February 25, 2021.

the coup must fail and be reversed to return Myanmar to democratic rule.⁵¹ However, there has been limited collective action to achieve this goal at either the global or regional level.

Nonrecognition

Nonrecognition of the military junta is a potentially potent tool to change the political dynamics in the country. New Zealand has suspended its diplomatic relations with Myanmar, and many states have said they consider the military junta illegitimate and have instead maintained contact with the National Unity Government (NUG). It is still NLD officials who are accredited to represent the country at the UN in New York and in many embassies around the world. Within the country, the UN has been referring to the military junta as the “de facto authorities” and is limiting its engagement with the army generals to avoid being seen as recognizing their legitimacy. This nonrecognition sends an important signal that the international community does not accept the junta’s illegal seizure of power. By isolating the junta, it also adds pressure for it to seek a peaceful resolution to the crisis.

However, there is no consensus about who is the legitimate representative of Myanmar in international affairs. The World Health Organization excluded Myanmar from the World Health Assembly in May 2021 because both the military junta and the NUG submitted requests to represent the country, suggesting that the matter is not settled across the UN system. For its part, ASEAN conferred legitimacy on the military junta leadership by inviting Min Aung Hlaing rather than the NUG to its summit on April 24th. The lack of coordinated and principled approach to this matter undermines the UN system. The General

Assembly’s Credentials Committee will meet later this year to assess the matter in the context of the seventy-sixth annual session of the General Assembly and urgently needs to provide guidance.⁵²

Security Council, General Assembly, and Human Rights Council

The situation in Myanmar has been on the agenda of the Security Council since 2006. However, the council has never passed a resolution on Myanmar, and prior to this year’s coup, it had only adopted three presidential statements on the country, in 2007, 2008, and 2017.⁵³

The Security Council’s failure to act on Myanmar following the coup is consistent with its response to the 2017 Rohingya crisis.

China and Russia have been unwilling to support an active role for the council, arguing that it would be interfering in what they consider to be an internal matter. Immediately after the coup, state media in

China described the detention and replacement of the country’s political leadership as a “major cabinet reshuffle.”⁵⁴ In the ensuing months, the position of China changed in recognition of the deterioration of the situation and the inability of the military junta to maintain security, particularly after violence was directed at Chinese businesses and factories in Yangon on March 14th. As the largest direct investor in Myanmar, with more than \$100 billion invested in infrastructure and industry, China has a strong interest in the country’s stability, but it has been unwilling to play a leadership role and accepted the junta’s narrative of events putting economic interests first.⁵⁵ For its part, Russia is a major arms exporter to Myanmar and sent one of the highest-level international dignitaries to attend the country’s Tatmadaw Day celebrations on March 27th. In comparison, the other permanent members of the Security Council, France, the UK, and the US, have strongly condemned the coup and taken several bilateral

51 António Guterres, interview by *Washington Post*, February 3, 2021, available at https://www.washingtonpost.com/video/washington-post-live/wplive/un-secretary-general-says-un-will-do-everything-it-can-to-make-sure-myanmar-coup-fails/2021/02/03/60195915-9e88-4e5e-996b-c1c0dbadada5_video.html.

52 See: Rebecca Barber, “The General Assembly Should Provide Guidance to the UN System on the Question of Who Gets to Represent Myanmar,” EJIL: Talk, June 7, 2021.

53 For a detailed overview of the deliberations of the Security Council on Myanmar, see: Security Council Report, “Myanmar,” available at <https://www.securitycouncilreport.org/myanmar/>.

54 “Major Cabinet Reshuffle Announced in Myanmar,” Xinhua, February 2, 2020.

55 Jason Tower and Priscilla A Clapp, “Myanmar: China, the Coup and the Future,” United States Institute of Peace, June 8, 2021.

measures, including imposing sanctions and reviewing their economic and aid relations (see below).

The Security Council has met five times on Myanmar since the coup and has been briefed by the UN special envoy on Myanmar. It has adopted two press statements and a presidential statement. In these pronouncements, the Security Council has registered its concern about the situation in the country and called for restraint and dialogue. However, it has failed to explicitly call for a reversal of the coup, preferring instead to push for the release of the previous political leadership. It has also declined to underline the importance of accountability or to countenance the idea of taking additional measures should the military junta not heed its demands. There have been strong calls for more robust action from the Security Council in the form of an arms embargo, targeted sanctions, and a referral to the ICC, but any resolution proposing such actions would likely be vetoed by China and Russia. The Security Council's failure to act on Myanmar following the coup is consistent with its response to the 2017 Rohingya crisis, when it took ten weeks to release even a presidential statement.

It is worth remembering that the Security Council has used robust action in other contexts, such as by mandating UN peacekeeping operations with Chapter VII mandates to protect civilians and even—as mentioned earlier—by authorizing military intervention, as in the case of Libya. Such actions are politically a nonstarter in Myanmar and would likely prove counterproductive, with the possible exception of a no-fly zone, given the military's airstrikes on civilians.

However, there are other kinds of missions without a mandate to use force that might be considered. For example, the Security Council has recently mandated the UN to monitor cease-fires in Libya and Yemen through the UN Support Mission in Libya (UNSMIL) and the UN Mission to Support

the Hudaydah Agreement (UNMHA), respectively. A similar international presence in Myanmar should not be discounted. For example, there have been calls for a joint ASEAN-UN civilian protection monitoring mission for Myanmar with a mandate from the Security Council.⁵⁶ To go forward, this would have to be part of a political settlement between the parties. With the growing humanitarian crisis in the country, humanitarian access is another issue that the Security Council will have to contend with. As a first step, it could conduct an official visit to the region, as it did in April 2018 following the Rohingya crisis, when council members met with political and military leaders, including Aung San Suu Kyi and Min Aung Hlaing.⁵⁷

It has been suggested that the secretary-general should invoke Article 99 of the UN Charter to unilaterally call for a Security Council meeting on Myanmar, which he has the power to do if he believes that there is a threat to international peace and security. This would force the hand of council members that are adamantly against taking action and test support for options such as an arms embargo, targeted sanctions, a referral to the ICC, and a civilian protection monitoring mission. The secretary-general, however, has been reluctant to use Article 99, not only on Myanmar but also for other crises. The Security Council's impasse on Myanmar mirrors the deadlock it has reached in many other crises, most notably Syria. Consensus within the Security Council is probably at its lowest point since the Cold War.

Myanmar has also been on the agenda of the General Assembly since 1993, and the assembly has also met to discuss the situation in the country after the coup. In the absence of concerted Security Council action, there have been calls for the General Assembly to hold an emergency special session on Myanmar to press for the kinds of collective actions that the Security Council has failed to take.⁵⁸ In 1950, the General Assembly

⁵⁶ Ian Martin and Charles Petrie, "For Myanmar, Why Not Send an ASEAN/UN Civilian Monitoring Mission?" *PassBlue*, April 24, 2021.

⁵⁷ Adams, "If Not Now, When?"

⁵⁸ See, for example: Fortify Rights, "U.N. General Assembly: Hold an Emergency Special Session on Myanmar," March 15, 2021. At least nine members of the Security Council must vote to request an emergency special session. Alternatively, any UN member state may send a letter to the secretary-general requesting an emergency special session, and if a majority of member states agree, one must be held. Since 1950, ten emergency special sessions on situations in several countries have been held, in which the General Assembly recommended arms embargos on four occasions, comprehensive sanctions on two occasions, and the deployment of peacekeepers on one occasion.

passed the “Uniting for Peace” resolution to circumvent the Soviet Union’s persistent vetoes in the Security Council, setting the precedent for such an emergency special session. However, there have rarely been such sessions, and calls from the former secretary-general to hold one to address the situation in Syria were unsuccessful. However, on June 18th, in a rare move for the General Assembly, it adopted a resolution on Myanmar condemning the coup and calling for an arms embargo. While politically significant, the nonbinding resolution exposed the lack of consensus among ASEAN countries, which had postponed a vote on the resolution in May because they felt that it undermined regional solutions to the crisis, and some objected to its call for an arms embargo.⁵⁹

The Human Rights Council has also addressed the situation in Myanmar since the coup, both in a special session on February 12th and as part of its regular session in March, adopting two resolutions. The UN special rapporteur on the situation of human rights in Myanmar, Tom Andrews, has been particularly outspoken and has provided detailed analysis of the human rights situation in his reports to the Human Rights Council. Apart from these reports and the council’s other mechanisms such as the human rights treaty bodies, and the Universal Periodic Review, there are few other options at its disposal. It could consider another fact-finding mission, following the mission sent after the Rohingya crisis in 2017, but it is hard to see what information this would bring beyond what has already been revealed in the reports of the special rapporteur and human rights groups.

UN-ASEAN Partnership

With limited prospects for political action by the UN at the global level, a more effective strategy could be to work through, and in support of, ASEAN. Since 2011, there has been a Comprehensive Partnership between ASEAN and the UN, which has included technical cooperation

and capacity building in the areas of mediation, dialogue, and cease-fires.

While many see ASEAN as the obvious political body to lead efforts to find a political solution to the crisis, it has traditionally been unwilling to play an active role. With the prospect of full-scale civil war and state collapse, the political crisis in Myanmar may pose an existential threat to the organization. In response to several comparable crises, the African Union (AU) has suspended the membership of member states. The Constitutive Act of the AU also enshrines that it is “the right of the Union to intervene in a member state pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide, and crimes against humanity.”⁶⁰ In comparison, the charter of ASEAN is based on the principle of “non-interference” in the internal affairs of its member states, and the regional body has no such enforcement powers, preferring dialogue instead.

With limited prospects for political action by the UN at the global level, a more effective strategy could be to work through, and in support of, ASEAN.

On March 2nd, ASEAN adopted a statement that called on “all parties to refrain from violence” following the military crackdown after the coup. Indonesia, Malaysia, and Singapore have pushed for ASEAN’s more direct involvement, while Cambodia and

Laos have signaled a higher level of tolerance for the junta. Unsurprisingly, Thailand has not been vocal given that its current head of government came to power in a military coup in 2014 and has close ties with the Tatmadaw.

A much-awaited ASEAN summit to discuss the regional bloc’s response finally took place almost three months after the coup, on April 24th. The chairman’s statement laid out a five-point consensus plan to address the crisis, including: (1) an immediate cessation of violence; (2) constructive dialogue among all parties to seek a peaceful solution; (3) the appointment of a special envoy to facilitate mediation of the dialogue process; (4) provision of humanitarian assistance through the ASEAN Coordinating Centre for Humanitarian

59 “SE Asia States Want to Drop Proposed U.N. Call for Myanmar Arms Embargo,” Reuters, May 29, 2021.

60 Constitutive Act of the African Union, 2000, Art. 4(h).

Assistance on Disaster Management; and (5) a visit to Myanmar by the special envoy and delegation to meet with all parties concerned. ASEAN failed to reach agreement on the release of political prisoners, and there was no agreed timeframe for implementing the plan. Nonetheless, it was welcomed at the time as a step toward a political solution to the crisis.

However, while the NUG initially welcomed the five-point consensus plan it later said it would only engage in dialogue once political prisoners had been released. The Tatmadaw similarly backtracked days after the summit by saying it would consider the proposals but would only be ready to implement them once stability had been restored. On June 4th the chair and secretary-general of ASEAN visited Myanmar and met Min Aung Hlaing to promote dialogue and discuss the appointment of the special envoy, but they failed to meet with the NUG, which dismissed their efforts.

Apart from public statements, the UN secretary-general has not led the development of a UN political strategy, delegating this to his special envoy on Myanmar. The special envoy met ASEAN foreign ministers and Min Aung Hlaing at the margins of the April 24th ASEAN summit, but apart from her proposal to visit Myanmar, it is unclear what plan her office has to resolve the crisis. In a closed meeting on Myanmar on March 30th, the Security Council was briefed on the outcomes of the ASEAN summit and called for its five-point consensus plan to be enacted, providing an opening for further support by the UN. With the appointment of an ASEAN special envoy, though, the UN risks getting sidelined.

A political process jointly supported by the UN and ASEAN might be more effective by providing a formula to engage other influential regional powers, especially China, India, and Japan. There are precedents for an ASEAN-UN partnership, especially in the areas of emergency preparedness

and response, including after Cyclone Nargis devastated Myanmar in 2008. These could be built upon to develop a joint response to the current crisis.⁶¹ Whatever process emerges, it is vital that human rights be at its center. Halting the violence should be the primary concern, while the release of political prisoners will be high on the NUG's list of demands. As mentioned earlier, a joint ASEAN-UN civilian protection monitoring mechanism could support any agreement to stop the violence and could be the basis for a more expansive political agreement.

Punitive Measures: Sanctions Regimes and Arms Embargos

One practical action the UN could take—and has taken in many similar contexts—is the imposition of a sanctions regime and arms embargo.⁶² There is a long history of sanctions on Myanmar. Sanctions were first introduced by Western governments and the EU after the demonstrations in 1988 and were progressively tightened in response to various

Targeting the economic interests of Myanmar's military generals clearly limits their ability to commit human rights violations.

political and human rights concerns. By the late 2000s, however, many governments recognized that sanctions had not brought about change in Myanmar and had proved counterproductive by causing further suffering for the general population. Following the start of democratic reforms in 2011, the sanctions began to be rolled back, and by 2016, after the NLD won national elections, they were removed completely, apart from arms embargoes by some countries.⁶³ However, after the Tatmadaw's violence against the Rohingya in 2017, several countries (including Australia, Canada, and the US, as well as the EU) targeted senior military officers and other security officials with asset freezes and visa bans. These are the same individuals who were responsible for the most recent coup and the ongoing human rights violations against protesters, prompting these countries to strengthen their sanctions further.

61 Alistair D. B. Cook, "Time for a Coordinated ASEAN-UN Response to Myanmar's Coup," East Asian Forum, April 14, 2021.

62 For a comprehensive overview of the sanctions and other measures imposed by different governments and international institutions, see the website of the Special Advisory Council on Myanmar at <https://specialadvisorycouncil.org/cut-the-cash/>.

63 International Crisis Group, "Responding to the Myanmar Coup," February 16, 2021.

This time, the US has applied sanctions to whole military units and the entire State Administrative Council.⁶⁴ Along with the UK and EU, it has also targeted the Tatmadaw's massive network of companies and businesses, which lack any democratic oversight. In September 2019, the Independent International Fact-Finding Mission on Myanmar presented a detailed report to the UN Human Rights Council outlining these economic interests and identifying businesses with commercial ties to the military-owned Myanmar Economic Holdings Limited and Myanmar Economic Corporation, whose activities include banking, mining, telecommunications, and brewing. The report concluded that these links were inconsistent with the protection or promotion of human rights and helped facilitate human rights violations.⁶⁵ For many years, human rights organizations had campaigned for sanctions against these companies. The US and UK have also imposed sanctions on military-linked companies in the gem and timber sectors.

The US has gone even further by restricting trade and investment more broadly. The day after the coup, the US government blocked the Tatmadaw from withdrawing \$1 billion from a New York bank account. Several multinational corporations, including Kirin, Woodside Energy, Maersk, H&M, and Benetton have suspended their operations or are divesting from Myanmar, and there have been calls for other foreign companies to sever their ties with any businesses linked to the Tatmadaw.⁶⁶ However, some of the largest investors in Myanmar, including oil companies Total and Chevron, have still refused to review their investments in the country apart from holding back some payments. China and Thailand account for more than half of the country's trade volume, while Singapore is the single largest foreign investor, generating \$11 billion over the past five years, according to Myanmar government figures, but none of these countries have imposed sanctions.⁶⁷

There are differing opinions about the impact of sanctions on recalcitrant regimes and human rights violators such as the Tatmadaw. Some argue that Western sanctions alienate Myanmar's neighbors, have limited impact on the military junta's actions, and risk causing more suffering for an already extremely vulnerable civilian population.⁶⁸ There is also the danger that as principled companies pull out, less scrupulous ones will step in. However, many investors are wary of doing business with entities that have been sanctioned by the US, suggesting that sanctions can have a broader impact.⁶⁹ In terms of the harm to the economy, it is the military junta's reckless policies that are causing the greatest economic difficulties, not sanctions. Furthermore, people in Myanmar who reject military rule have already tolerated extreme economic hardship through the civil disobedience movement, calculating that this is necessary to achieve their political goal. It is unclear how much the military generals are clinging to power so as not to lose their extensive business interests, but targeting these interests clearly limits their ability to commit human rights violations.

A key challenge is that it is only a small set of countries that has imposed sanctions. Unless a broader set of countries, including those in Asia, are willing to impose sanctions, the impact on the Tatmadaw will be limited. As noted earlier, the UN Security Council has been unwilling to establish a sanctions regime, or even an arms embargo, as it has done in many other contexts. On May 5th, 200 NGOs published an open letter calling on the Security Council to take the minimum step of imposing an arms embargo on Myanmar to stem the flow of weapons to the state security forces for use against their own people. They noted that any such arms embargo should be comprehensive by including the "direct and indirect supply, sale, or transfer of all weapons, munitions, and other military-related equipment, including dual-use goods such as vehicles and communications and

64 The US has placed sanctions on the thirty-third and seventy-seventh light infantry divisions based on reports confirming their use of lethal force against protesters. The units had already been implicated in violence in Rakhine and elsewhere.

65 UN Human Rights Council, *The Economic Interests of the Myanmar Military—Independent International Fact-Finding Mission on Myanmar*, UN Doc. A/HRC/42/CRP.3, September 12, 2019.

66 Global Centre for the Responsibility to Protect, "Myanmar's Deadly Coup and the Responsibility to Protect," March 25, 2021.

67 "Myanmar Coup: Could Sanctions on the Military Ever Work?" BBC News, April 9, 2021.

68 International Crisis Group, "Responding to the Myanmar Coup."

69 Global Centre for the Responsibility to Protect, "Myanmar's Deadly Coup and the Responsibility to Protect."

surveillance equipment, as well as the provision of training, intelligence, and other military assistance.”⁷⁰ The Security Council has not responded to such demands and—as noted earlier—ASEAN countries attempted to block reference to the need for an arms embargo in a nonbinding resolution on Myanmar in the General Assembly.

Human Rights Monitoring and Advocacy

While a wide range of actors, including the UN, has publicly denounced the military junta for its flagrant disregard for human rights, the Tatmadaw has appeared impervious to criticism. This public advocacy has not been accompanied by private diplomacy, in part because the Tatmadaw has been unwilling to engage in dialogue about its human rights record, but also because there have been few actors pursuing such an approach. The Rosenthal Report explained how quiet diplomacy and public advocacy are not mutually exclusive but complementary. It drew attention to the tension within the UN during the Rohingya crisis between those who favored one tactic over the other. In particular, the UN resident coordinator at the time was criticized for deliberately de-dramatizing events and shutting down advocacy by the more vocal parts of the UN.⁷¹ Others have also drawn attention to this “advocacy gap,” with the UN’s preference for quiet diplomacy contributing to its passive complicity in the tragedy in Rakhine.⁷²

The reverse has now occurred in response to the post-coup human rights crisis. The excessive, lethal use of force and military crackdown against protesters has been widely condemned by concerned governments, the UN (including the secretary-general, the high commissioner for human rights, and most other agencies, funds, and programs), NGOs, and human rights organizations. There have been countless press statements in response to peaks in the violence and specific violations. It is unclear what influence this has had

on the military junta, which appears to have accepted a path toward international isolation. The junta has issued notes verbales rebuking the diplomatic community and the UN for overstepping their role by issuing such statements, suggesting that it is sensitive to such criticism. There is little evidence, however, that the junta has changed its behavior in response to the multitude of public statements, and it has continued propagating a completely separate narrative on the violence.⁷³

While this public advocacy is welcome—especially compared to the more muted response to the 2017 Rohingya crisis—there has been a dearth of private efforts to remind the military junta of its international human rights obligations and underline the consequences of failing to respect them. On the part of the UN, it has only been the special envoy on Myanmar who has had any direct contact with the military junta, but she has only spoken to the deputy commander-in-chief. Furthermore, she is based outside the country, and the Tatmadaw has refused to give permission for her to visit, and by announcing her departure from her post by the end of 2021, she has already entered a “lame duck” phase. Other parts of the UN in Myanmar have justified not directly engaging with the junta by saying that they do not want to be seen as recognizing it. However, the UN has a responsibility to engage with even the worst perpetrators of human rights violations, despite the significant challenges.

Until recently, the only foreigner from outside the country to directly confront the military junta since the coup had been a CNN journalist who visited the country in April at the invitation of the Tatmadaw (seriously compromising the impartiality of her reporting). This is testament to the low level of diplomatic engagement on the crisis. In June, the president of the International Committee of the Red Cross (ICRC) met with Min Aung Hlaing—the first visit of a senior Western official to the country—and pushed for access to those in detention and humanitarian access.⁷⁴

70 “Global Civil Society Statement on Myanmar,” May 5, 2021, available at <https://www.hrw.org/news/2021/05/05/global-civil-society-statement-myanmar>.

71 Rosenthal, “A Brief and Independent Inquiry into the Involvement of the United Nations in Myanmar from 2010 to 2018.”

72 Mahony, “Time to Break Old Habits.”

73 See, for example, the briefing document submitted by the Tatmadaw to the ASEAN summit entitled “The Current Political Situation in Myanmar,” on file with author.

74 ICRC, “ICRC President Visits Myanmar to Discuss Humanitarian Issues,” June 3, 2021.

In an example of what can be achieved through a combination of private and public advocacy, there was a strong response from an alliance of actors on March 8th when the police cornered a group of 200 protesters and barred them from leaving the township of Sanchaung in Yangon, giving rise to serious concerns for their safety. The UN special envoy engaged directly with the deputy commander-in-chief of the Tatmadaw, as did the French, UK, and US ambassadors. There was also a strong statement by the UN secretary-general and other concerned actors.⁷⁵ As a result, the protesters were released. This was a rare instance of strategic advocacy that appears to have influenced the unfolding events.

A key challenge that has undermined the UN's ability to advocate for protection has been its limited capacity to monitor, document, report, and analyze the ongoing

violations. The Office of the UN High Commissioner for Human Rights (OHCHR) has been refused a presence in the country (having last been allowed to visit in 2019) and operates remotely with a small team from Bangkok, Thailand. UNICEF has monitored violations of children's rights in conflict situations in support of the Security Council-mandated Monitoring and Reporting Mechanism on Grave Violations against Children in Situations of Armed Conflict. Otherwise, there are few UN entities undertaking human rights monitoring. Beyond these mechanisms, there has been limited protection monitoring by the UN or other humanitarian partners.

Because it does not have a presence in-country, OHCHR has proposed creating a cell of UN staff in Myanmar that could augment its human rights monitoring capacity, but this idea is still a work-in-progress and has not been implemented. If OHCHR is blocked from entering the country, it is incumbent on other relevant UN entities to augment the human rights monitoring capacity of the UN. OHCHR was the primary public source of

A range of actors has publicly denounced the military junta, but this public advocacy has not been accompanied by private diplomacy.

the casualty figures from the violence referred to in the media at the start of the crackdown, but after the upsurge of violence in Hlaing Thayar on March 15th, it was no longer able to keep pace with the daily deaths.⁷⁶ The AAPP has since become the main source for the number of people killed in the violence despite the constraints on its work that does not allow for a full analysis of the data. Indeed, it has been local human rights organizations, not the UN, that have conducted most of the human rights monitoring since the coup. These organizations are often overlooked in protection advocacy efforts, even when they face the greatest level of risk and have less access to decision makers than international actors.⁷⁷

In addition to these local organizations, the principal source of information on the atrocities being committed by the security forces has been the technologically savvy

protesters. Despite the security risks and Internet blackouts, they have recorded and shared events in real-time through social media and mobile communications. Compared to previous protests in 1988 and 2007—and even the Rohingya crisis of 2017, when the Tatmadaw was more able to hide its atrocities from the outside world—there has been a daily stream of reports coming out of Myanmar. These reports have persisted despite the ban on international journalists from entering the country and the constant risk of detention faced by local journalists. In such a fast-moving crisis where it is difficult to access victims, traditional methods of human rights reporting have been shown to be outdated. Instead of gathering information directly, the main role of the UN is to verify the accounts and channel the advocacy to key audiences. Faced with such challenges, it should channel its resources to local human rights organizations to ensure that they are able to report on human rights concerns in a safe way. To collect information and data more effectively, it should also embrace digital technologies that allow the crowd sourcing of reports of alleged human rights violations.

75 See: "Myanmar: UN Calls for Safe Release of Trapped Protesters in Yangon," UN News, March 8, 2021.

76 Interview with OHCHR staff member, April 2021.

77 See, for example, Victoria Metcalfe-Hough, "Advocating for Humanity? Securing Better Protection of Civilians Affected by Armed Conflict," Overseas Development Institute, November 2020.

Legal Accountability Mechanisms

An important way of preventing and responding to atrocity crimes is to ensure legal accountability for those responsible. Unfortunately, there are few mechanisms available to hold the perpetrators of the violence in the military junta to account, either domestically or internationally. The military junta has failed to acknowledge even the slightest wrongdoing during its crackdown and has instead blamed the violence on the protesters, using fear and intimidation to quell opposition to its actions. Even the most recalcitrant state security forces in other contexts usually launch at least some form of investigation into alleged wrongdoing by their personnel to placate outside critics. Even in Myanmar itself, in July 2018, the government established an Independent Commission of Enquiry to investigate the August 2017 violence against the Rohingya. The commission's report, which was released in January 2020, contained some admissions of military wrongdoing, though it failed to hold the senior military officials who were responsible to account.⁷⁸

This time, the Tatmadaw has refused any culpability. The Myanmar National Human Rights Commission, whose role is to document human rights concerns and bring these to the attention of the government, has been completely compromised. On March 12th, a civil society working group of the Asian Forum for Human Rights and Development issued a statement calling for the suspension of the commission from regional and global platforms of national human rights institutions because it had failed to denounce the coup.⁷⁹ This move underlines the limitations of human rights institutions in the country. Domestic legal mechanisms for victims to seek justice for human rights violations are all but nonexistent. There are many courageous human rights lawyers (often

working pro bono), but they principally provide legal counsel to seek the release of those who have been arbitrarily detained. There is no viable legal avenue for pursuing redress and reparations for illegal actions by the authorities. As noted earlier, the military junta has changed many of the laws in an attempt to legitimize its actions, though many of the changes are themselves breaches of international human rights standards. In May, the military regime made amendments to the 2016 Legal Aid Law to prevent people from certain vulnerable groups from receiving legal aid.⁸⁰

Without any realistic options domestically, international legal accountability mechanisms provide an alternative avenue for justice. Given that crimes against humanity are potentially being committed in Myanmar, there are international legal mechanisms that are relevant. In September

2018, the Human Rights Council established the Independent Investigative Mechanism for Myanmar (IIMM). The IIMM was intended to collect evidence of the most serious interna-

tional crimes and violations of international law and build case files that could facilitate criminal proceedings against individuals in national, regional, or international courts. Since the coup, the IIMM has been collecting evidence to analyze whether crimes against humanity have been committed. While the IIMM has been inundated with submissions of information and has partnerships with several human rights actors, it is unable to access the country to gather primary-source and first-hand evidence. It is unclear to which courts the IIMM would submit its case files for crimes committed in the current crisis.

In November 2019, the Gambia filed an international lawsuit against Myanmar at the International Court of Justice (ICJ) accusing the country of violating the UN Genocide Convention. In January 2020, the ICJ ordered "provisional measures" against Myanmar to prevent the genocide of the

While legal accountability might seem a distant prospect, the pursuit of international justice can yield success in the long run.

78 Independent Commission of Enquiry, "Executive Summary of Independent Commission of Enquiry," January 2020, available at <https://reliefweb.int/report/myanmar/executive-summary-independent-commission-enquiry-icoe>.

79 See: "International Partners Must End All Cooperation with the Myanmar National Human Rights Commission," March 12, 2021, available at <https://www.forum-asia.org/?p=34124>.

80 International Commission of Jurists, "Myanmar: Amendments Restrict Legal Aid for Thousands of Detainees," May 21, 2021.

Rohingya minority.⁸¹ However, the ICJ does not have jurisdiction over events following the coup, as it can only rule on matters between states.

In November 2019, the International Criminal Court (ICC) authorized an investigation in Myanmar on the grounds of enforced deportations, inhumane acts, and the persecution of the Rohingya, which could qualify as crimes against humanity.⁸² Although Myanmar is not a party to the Rome Statute of the ICC, the court ruled that it has jurisdiction over these alleged crimes because some of them occurred in Bangladesh, which is a state party to the ICC. However, the crimes against humanity occurring as part of the post-coup military crackdown have taken place solely within Myanmar, depriving the ICC of jurisdiction without a referral by the Security Council, which is unlikely. The only path to an investigation would be if the coup was reversed and the subsequent civilian government ratified the Rome Statute. As a first step, the NUG might attempt to ratify the Rome Statute and other human rights instruments as part of its campaign for international recognition. This was the approach taken by Palestinian authorities before they received observer status at the UN, which ultimately led the ICC to launch an investigation into events in Gaza. Toward this end, in June 2021, the NUG published a policy outlining its commitment to justice and accountability for atrocity crimes committed against the Rohingya, including by initiating an investigation by the ICC.⁸³

Min Aung Hlaing and many other military leaders are already implicated in the ongoing legal proceedings of the ICJ and ICC, and at least with respect to the ICC, they may eventually be held criminally accountable. For its part, the NUG has engaged an international law firm to advise on and pursue international legal proceedings against the military junta for the violence it has perpetrated against its own people since February 1st.⁸⁴

While such legal accountability might seem a distant prospect, the pursuit of international justice can yield success in the long run. It can be argued that peace is needed before justice and indicting political leaders who have perpetrated atrocity crimes only disincentivizes them to relinquish power for fear of prosecution, but the reverse can also be true: the pursuit of justice can become a mobilizing force for political and social change. For example, the ICC's indictment of President Omar al-Bashir of Sudan in 2009 (after the case had been referred by the Security Council in 2005) initially looked unlikely to succeed, but holding him accountable was a central demand of the protesters who brought down his government in 2019. This could ultimately lead to him being transferred to The Hague to face trial by the ICC. The case of Sudan provides important lessons for Myanmar, showing how patience is required in matters of international justice and how justice is closely entwined with long-term social change.

Another potential path to international justice for the crimes being committed in Myanmar is through national courts with universal jurisdiction, which have been used to bring perpetrators to justice in other contexts. Universal jurisdiction allows states to try people accused of international crimes regardless of where the crime was committed or the nationality of the accused or the victim. In November 2019, the Burmese Rohingya Organisation UK (BROUK) brought a landmark case in Argentina regarding atrocity crimes against the Rohingya, and a federal court is considering whether to prosecute the case.⁸⁵ The Myanmar Accountability Project (MAP) is similarly trying to pursue torture cases in the UK under the Criminal Justice Act of 1988, as well as in other European countries.⁸⁶ As seen in other contexts where atrocity crimes have occurred, pursuing perpetrators through courts with universal jurisdiction can be an effective legal strategy when there are few other legal mechanisms available.

81 ICJ, "Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)," Press Release No. 2020/3, January 23, 2020.

82 ICC, "ICC Judges Authorise Opening of an Investigation into the Situation in Bangladesh/Myanmar," Press Release, November 14, 2019.

83 Fortify Rights, "Myanmar National Unity Government: Appoint an Ethnic-Rohingya Envoy to Implement New Policy," June 3, 2021.

84 See: Volterra Fietta, "Myanmar (Through the Anti-coup Parliamentary Committee) Instructs Volterra Fietta to Advise on and Pursue International Legal Proceedings against the Unconstitutional and Illegitimate Military Regime," March 11, 2021.

85 See: Tun Khin, "Universal Jurisdiction, the International Criminal Court, and the Rohingya Genocide," *Opinio Juris*, October 23, 2020.

86 See the website of the Myanmar Accountability Project at <https://the-world-is-watching.org/>.

The Role of the Aid Community

UN agencies, funds, and programs, international NGOs, and the donor governments that fund them have an important role to play in promoting respect for human rights. As made clear in the secretary-general's Call to Action for Human Rights—and the HRuF before it—the UN response to human rights crises requires a whole-of-system approach that mobilizes the entire capabilities of the UN. In 2013, the Inter-Agency Standing Committee adopted a statement on “the centrality of protection in humanitarian action” that similarly establishes that protection should be central to humanitarian responses.⁸⁷ However, the Rosenthal Report noted that the biggest challenge facing the UN in Myanmar has been to support the government through development and humanitarian assistance while at the same time critically engaging it on its poor human rights record.⁸⁸ Prior to the coup, the instinctive reaction of the UN was to prioritize aid programs over human rights.

The UN could have at least attempted to take measures that would make clear that the world is watching and document concerns.

The coup has changed this equation and led to a reconfiguration of aid to Myanmar. Not wanting to acknowledge the illegal coup and formally recognize the military junta, aid partners have stopped all assistance benefiting the government. Instead, they have redirected their assistance to programs that are directly targeting the civilian population or being implemented by national NGOs and civil society organizations. Some bilateral donors and the World Bank have suspended their aid to the country altogether. Official development assistance to Myanmar increased from \$202 million per year during the period 2000–2009, before the opening up of the country, to \$1,269 million per year over the period 2010–2017, when democratic reforms had started to take place.⁸⁹ However, there is now likely to be a major drop-off in aid flows as donors reassess their engagement with Myanmar.

The World Bank has forecasted a GDP growth rate of negative 10 percent for Myanmar in 2021, a dramatic reduction from its 6.8 percent growth in 2019 and its COVID-impacted 1.7 percent growth in 2020.⁹⁰ The most immediate priority is to boost humanitarian aid, as the crisis has further increased humanitarian needs. In January 2021, humanitarian partners in Myanmar launched an appeal for \$276 million to reach 945,000 people in need of assistance, mainly in the conflict-affected states of Rakhine, Shan, Chin, and Kachin.⁹¹ However, the appeal does not cover the urban areas where the protests have occurred, and humanitarian partners have not provided an updated appeal based on an analysis of additional needs arising from the post-coup violence.

Based on the policy commitments mentioned above, the protection of human rights should be

central to aid efforts during this time of crisis. However, there is little evidence that the UN country team or humanitarian country team—the main development and humanitarian coordination

mechanisms—have undertaken a comprehensive set of activities with this goal in mind beyond the minimal human rights monitoring and public statements mentioned above. These entities have been hesitant to directly engage the military junta on its human rights record. There are legitimate concerns that doing so might create a backlash and diminish humanitarian access to populations urgently in need of assistance. As noted earlier, however, the ICRC has engaged with the military junta at the highest levels to remind it of its responsibility to protect civilians and to seek humanitarian access.

During the 2007 protests in Myanmar, the then-resident coordinator/humanitarian coordinator (RC/HC) took a number of measures through the UN country team to provide protection. For

87 Inter-Agency Standing Committee, “The Centrality of Protection in Humanitarian Action,” December 17, 2013.

88 Rosenthal, “A Brief and Independent Inquiry into the Involvement of the United Nations in Myanmar from 2010 to 2018.”

89 International Crisis Group, “Responding to the Myanmar Coup.”

90 World Bank, “Macro Poverty Outlook: East Asia and the Pacific,” April 21, 2021.

91 See: UN Office for the Coordination of Humanitarian Affairs, “Humanitarian Response Plan: Myanmar,” January 2021, available at <https://reliefweb.int/report/myanmar/myanmar-humanitarian-response-plan-2021-january-2021>.

example, he ensured that UN personnel were present at the protests to monitor them, set up a dedicated hotline for civil society to report concerns, engaged in advocacy with the government, and conducted regular briefings for ambassadors in Yangon.⁹² The current country team has been far more risk-averse. It has not implemented basic protection measures such as legal aid, psychosocial support, and case management for the thousands of civilians who have been impacted by the violence. The UN has been inundated with appeals from injured protesters seeking medical evacuation or treatment but has been unable or unwilling to respond.⁹³ While OHCHR has been hampered by a lack of presence and capacity, the humanitarian cluster system, including the UNHCR-led protection cluster, has not been activated in Yangon and the other large cities and towns where the protests have taken place. Many humanitarian actors do not consider it their responsibility to act given that the protests have not amounted to an armed conflict.

There were discussions among UN agencies about whether to engage in “protection by presence” by ensuring that there was an international presence at the sites of protests to deter violence and monitor concerns.⁹⁴ On March 21st, civil society organizations and protesters wrote an open letter to the RC/HC pleading for the UN to provide such observers. This is an established protection action that has been used in many other contexts by organizations such as Peace Brigades International and Nonviolent Peaceforce.⁹⁵ In recent years, there has been a growing recognition of the role of unarmed civilian protection strategies implemented by the UN.⁹⁶ In Myanmar, however, the UN considered that it did not have the mandate, capacity, or skills to play such a role, with the security of UN personnel also being a major concern. While some of these challenges are valid, the UN could have at least attempted to take measures that would make clear that the world is watching and document concerns. For example, it

could have conducted assessment missions around the sites of protests or established a remote monitoring system to keep in daily contact with the protesters.

In general, the siloed structures of the UN have not lent themselves to dealing with the post-coup crisis, which has simultaneously had political, human rights, humanitarian, and development consequences. There has not been leadership to bring together these different work streams into a coherent strategy. The UN's RC/HC has been based outside the country for more than a year for medical reasons, and it took the Secretariat more than a month after the coup to designate an in-country alternate to lead the UN's response. By that time, the fractured and risk-averse nature of the response had already set in. The humanitarian side of the UN has been reluctant to characterize the consequences of the violence as a humanitarian crisis because the needs have not been driven by armed conflict or a natural disaster. The human rights side of the UN has found it hard to mobilize other parts of the UN to engage in a comprehensive human rights response and, as noted earlier, has mainly been focused on monitoring and advocacy. Development actors have had to contend with losing their principal partner in the form of the national authorities since the UN stopped providing aid directly to government departments.

The crisis has highlighted how the separate planning frameworks, coordination structures, and funding mechanisms for these different forms of UN assistance and support can impede a system-wide approach. Since the World Humanitarian Summit in 2016, the UN has increasingly focused on the so-called “triple nexus” between the humanitarian, development, and peace sectors to provide a more cohesive approach in crisis settings. The protection dimension of the nexus has not been so well articulated and has only latterly received more attend.⁹⁷ The UN's response following the coup in Myanmar shows how the

92 Interview with former RC/HC, April 2021.

93 “Memo from Myanmar,” *Private Eye*, April 2021.

94 Interview with UN official, April 2021.

95 See, for example: Liam Mahony, “Proactive Presence: Field Strategies for Civilian Protection,” Centre for Humanitarian Dialogue, 2006.

96 See, for example: Harley Henigson, “Community Engagement in UN Peacekeeping Operations: A People-Centered Approach to Protecting Civilians,” International Peace Institute, November 2020.

97 Damian Lilly, “Protection and the Nexus: Tensions and Opportunities,” Humanitarian Practice Network, April 2020.

nexus approach is just as applicable to quick-onset crises as it is to protracted ones. For the people of Myanmar, it matters little how the UN labels different forms of assistance. This should be the starting point for devising practical interventions to respond to crises in a coherent way.

Local Human Rights Actors and Civil Resistance

The UN's meagre response to the human rights crisis in Myanmar has put the spotlight on local human rights actors, including the national NGOs and civil society organizations that are arguably playing the biggest role in trying to address the many reported concerns. The brutal crackdown by the military junta has made it hard for such actors to continue their operations, with many staff going into hiding. However, several organizations are still courageously monitoring human rights violations or providing assistance to those directly affected by the violence. There is a broad spectrum of such organizations, ranging from those that are actively supporting the protests and civil disobedience movement to those that have tried to remain more neutral to be able to continue delivering services to beneficiaries and communities in need. Of all the actors on the ground, these organizations have the greatest capacity to provide protection in response to human rights challenges.

While there are political, security, and fiduciary risks involved in providing assistance to such organizations, the UN could be playing a far more active role in supporting them. It could provide not only financial support but also technical support and capacity building. Having a formal link to the UN could provide these organizations some sense of protection in that if anything happened to their staff, the UN would have a responsibility to address this with the authorities.

With the security forces having abrogated their

responsibility to protect their own people and instead constituting the main threat to civilians, the peaceful protesters and those engaged in civil disobedience have had to provide for their own protection. The protesters have used protective equipment and barricades to protect themselves against the excessive and lethal force of the security forces. In response to night raids by security forces to detain protesters, communities throughout Myanmar have devised “neighborhood watch” schemes to warn targeted people, including by banging pots and pans. Faced with such a vicious and brutal crackdown, many have displayed an increasing willingness to resort to more violent forms of resistance. Explosions directed at security forces or those sympathetic to the military junta are now a daily occurrence in Yangon and other cities and towns. Yet despite increased signs of armed resistance, many peaceful demonstrations are still taking place.

As long as it is being provided impartially, support to the legitimate right to peaceful protest should not compromise the UN's neutrality.

The civil disobedience movement is probably having more of an impact on the regime than the protests and demonstrations in the streets.⁹⁸ The movement has involved a general strike by people working in a host of different professions, including medical workers, civil servants, miners, teachers, railway workers, bank staff, and journalists. By mid-March, only a third of the country's hospitals were fully operational, and a majority of the nearly 1.4 million government workers had joined the civil disobedience movement.⁹⁹ The movement has extended to calls for boycotting products and services linked to the military. A boycott of Myanmar Beer is estimated to have wiped \$1 billion off the value of its military-linked parent company, Myanmar Brewery Limited, with sales dropping as much as 90 percent.¹⁰⁰ The civil disobedience movement has been met with a severe backlash from the military junta, which has suspended teachers and attempted to force the banks to reopen. Those engaging in these protests have also suffered from lost liveli-

98 “A Boycott by Bureaucrats Is Undermining the Coup in Myanmar,” *Economist*, February 18, 2021.

99 Zarchi Oo, Billy Ford, and Jonathan Pinckney, “Myanmar in the Streets: A Nonviolent Movement Shows Staying Power,” United States Institute of Peace, March 31, 2021.

100 See: “Coup Hangover: How Myanmar's National Brew Went Stale Overnight,” *Frontier Myanmar*, April 17, 2021.

hoods and income.

Research has shown that campaigns of nonviolent resistance against authoritarian regimes are much more likely to succeed than violent movements, mainly because they mobilize more diverse participants and can impose unsustainable costs on a regime.¹⁰¹ Providing support to those groups opposing the coup, however, poses an ethical dilemma for the UN: how does it maintain political neutrality while providing assistance to those in need? The complexity of the issue has tended to lead to inaction. Some have argued that it is justified for aid actors to leave aside their neutrality to support the resistance to the military dictatorship in Myanmar when this strategy could save lives.¹⁰² As long as it is being provided impartially (i.e., based on need alone), support to the legitimate right to peaceful protest should not compromise the UN's neutrality. Such support should not be viewed as furthering the political ends of the protesters but rather as a way to provide protection. While measures would need to be taken to ensure that the support is not fueling armed resistance, there is an imperative to act to protect populations at risk of atrocity crimes.

Conclusion: An Agenda for Protection in Myanmar

Myanmar is at a critical juncture in its history. There is no turning back to the situation prior to the coup. The opposition to military rule is now so great that the only way to achieve their goals may be through armed conflict unless a political solution is found. At the same time, the military junta is leading the state into collapse. The stakes could not be higher, and the crisis demands a concerted and robust response from the UN.

However, when compared to the scale and severity of human right violations occurring in Myanmar, the UN's response—both as an intergovernmental body of member states and as a system of

operational entities—has been woefully inadequate. The organization has once again been found wanting and appears destined to fail. The inability of the UN to prevent atrocity crimes in Myanmar not only undermines the credibility of the organization but also risks rendering it irrelevant to what is happening in the country.

There is no need for another independent inquiry into what the problems are, as these are well known. The overall conclusion of the Rosenthal Report (and of the Sri Lanka inquiry before that)—that the UN faces systemic, structural, and leadership challenges when responding to atrocity crimes—is just as relevant to the current crisis. The secretary-general accepted the findings of the Rosenthal Report in 2019 and is due to submit a written report on the actions taken to implement its recommendations to the Human Rights Council in 2022, though these have been few.¹⁰³ While the recent initiatives to raise the profile of human rights within the UN, such as the Human Rights Up Front (HRuF) initiative and the Call to Action for Human Rights, are welcome, they tend not to lead to the structural reforms and clear actions required. The difficulty seems to lie in acting on the all-too-familiar lessons to make a difference the next time around. As one person interviewed for this research remarked, “What level of self-criticism does the UN have to reach to do something about its own failings?”¹⁰⁴

The situation in Myanmar is one of the most challenging the UN faces today, putting to the test its ability to fulfill its responsibilities under the UN Charter. Nonetheless, the scale of suffering demands that the UN redouble its efforts rather than dwelling on the difficulties and sliding into despondency. The lack of political will of member states, particularly in the Security Council, to live up to their responsibility to protect should not be understated; it is the key challenge to responding adequately to the crisis. However, the UN system has also been bereft of leadership, direction, and coherence at multiple levels.

101 See: Erica Chenoweth and Maria J. Stephan, “Drop Your Weapons—When and Why Civil Resistance Works,” *Foreign Affairs* 93, no. 4 (2014).

102 See: Hugo Slim, “Humanitarian Resistance and Military Dictatorship,” Humanitarian Practice Network, April 14, 2021.

103 UN General Assembly, *Resolution Adopted by the Human Rights Council on 24 March 2021—Situation of Human Rights in Myanmar*, UN Doc. A/HRC/RES/46/21, March 29, 2021.

104 Interview with Myanmar researcher, April 2021.

While there is no simple recipe for halting the atrocity crimes, there are actions that could be taken. None of the human rights tools reviewed above are likely to prove decisive on their own in getting the military junta to change course or holding it accountable for its blatant disregard for human rights. A combination of measures is required at several different levels, and change may come from the places least expected. The following are key considerations for the UN to develop a plan of action for a better response:

- **Ground the response in a political strategy:** It is extremely hard to respond to human rights concerns in the absence of a formal political process involving the relevant parties. With the Security Council deadlocked, the ASEAN five-point consensus plan—despite all its challenges—represents the only opening for a political process to address the crisis and therefore deserves backing. The UN urgently needs to develop its own political strategy in support of ASEAN, providing technical support on mediation and dialogue and serving as a link with other regional powers and the Security Council. As in other contexts, the UN should try to facilitate an international support or contact group of concerned states to support the potential locally led political process. The departure of the current UN special envoy in a few months presents an opportunity for the UN Secretariat to revamp and significantly strengthen this office. Human rights must be central to the political process and not sidelined in the pursuit of a peaceful settlement. Addressing the most critical issues, such as the violence against civilians and the release of detained protesters, is vital for building a sustainable peace.
- **Increase capacity for human rights monitoring and quiet diplomacy:** Military intervention to stop the violence is not politically feasible and would, in any case, prove counterproductive. An arms embargo and

The inability of the UN to prevent atrocity crimes in Myanmar not only undermines its credibility but also risks rendering it irrelevant to what is happening in the country.

sanctions are needed to debilitate the Tatmadaw but will not be decisive on their own. Preventing attacks on civilians requires the parties to commit to ending the violence and for this commitment to be accompanied by a robust monitoring mechanism that brings reports of violations to the attention of those actors with the responsibility to stop them. An international presence in the form of an ASEAN-UN civilian protection monitoring mechanism would be the preferred option and should be explored. It will be hard to get the Tatmadaw to agree to this, and it would represent a new phase for the UN-ASEAN partnership, but this should not stop them from trying. Failing agreement on a formal mandate from the UN and ASEAN, one alternative could be an ad hoc arrangement acceptable to the parties and supported by a trusted member state, as Norway has done in some contexts. In the immediate term, the priority should be to strengthen OHCHR's capacity to monitor human rights (even if it continues working remotely), drawing on the pooled resources of other members of the UN country team. In ramping up its human right monitoring, the UN should focus on the use of digital platforms to record events rather than traditional fact finding and documentation. The UN should also devise a clear advocacy strategy toward the Tatmadaw that includes both quiet diplomacy and public denunciation.

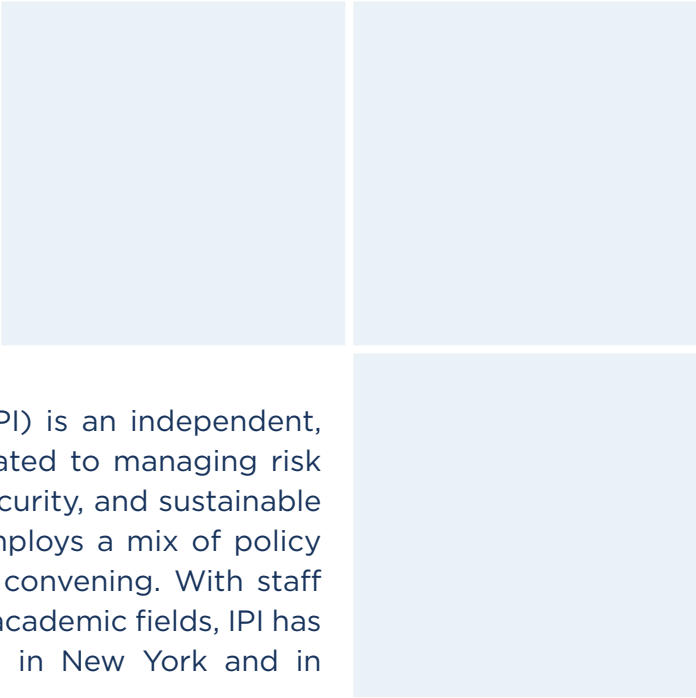
- **Provide clear leadership that encourages a less risk-averse approach:** The UN secretary-general should provide clear leadership for the UN response to the crisis, including by visiting the region to meet with all key actors and strengthening the partnership with ASEAN and other concerned states. Through his leadership, the secretary-general should aim to make the UN less risk-averse and should empower UN officials to act at the field level. As former Deputy Secretary-General Mark Malloch Brown recently noted, the UN has

entered “a new age of caution” in response to the populist antipathy to multilateralism.¹⁰⁵ While the political challenges of operating in Myanmar should not be understated, the UN should be bolder in its response, and this requires strong leadership.

- **Devise a whole-of-system approach to the UN's response to the human rights crisis:** While the UN country team has had a unified approach to the crisis (unlike during the Rohingya crisis) its capabilities have not been commensurate with the scale of the problem. Mobilizing resources across the UN system to address human rights concerns currently relies on the goodwill of different UN entities rather than on agreed procedures. Within the humanitarian community the UN has established a global system that makes it mandatory for all relevant agencies to direct resources toward a crisis once it is designated as the highest level of severity. A similar system should be put in place for the UN's response to human rights crises with ongoing atrocity crimes, as in the case of Myanmar, triggering a prioritized response from all UN entities. In these situations, rapid-response mechanisms and rosters should be used to mobilize staff and resources to support the scaling up of human rights activities. After the Rohingya crisis, a Permanent Monitoring Group on Myanmar (PMGM) was established within the Secretariat for UN principals to coordinate the UN response as part of HRuF. This group should now be working to scale up the response. The Secretariat should bring in a senior-level planner to provide coherence to the political, human rights, development, and humanitarian activities of the UN and determine what more the organization can offer under the current circumstances.

- **Scale up protection services:** While preventing human rights violations in Myanmar must be the priority, providing assistance to people who have been impacted by the violence is also imperative. The UN has been unable to decide whether it is responding to a political, human rights, humanitarian, or development crisis in Myanmar following the coup. The answer is all of the above. These labels mean little to the people facing the brunt of the military crackdown who are in urgent need of assistance. While the UN should scale up its human rights monitoring capacity, humanitarian partners in Myanmar should also urgently update their humanitarian appeal and activate the UNHCR-led protection cluster in urban areas to coordinate the scaling up of protection services such as psychosocial support, legal aid, and case management. Although material assistance will not halt the violence, it is urgently required to respond to the needs of those affected by it.
- **Support existing nationally or locally led protection efforts:** Coordinated action by the UN Security Council, ASEAN, and other regional powers is critical to pressure the military junta to halt the violence and reach a political solution to the crisis. With limited international or regional action, however, the greatest forces for change have come from within Myanmar from the protesters, people involved in the civil disobedience movement, and human rights and civil society organizations. Despite the risks involved, the UN should be more forthright in supporting these efforts and the crucial protection role they are playing. This support could be channeled to accredited organizations through bilateral donor and pooled funding mechanisms that already exist in Myanmar, as well as directly by the UN agencies with their implementing partners.

¹⁰⁵ Mark Malloch Brown, “UN at 75: Slow Death or New Direction?” WIDER Annual Lecture, October 26, 2020, available at <https://www.wider.unu.edu/event/wider-annual-lecture-24-un-75-slow-death-or-new-direction>.



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