



# MYANMAR'S ARMED FORCES AND THE ROHINGYA CRISIS

Andrew Selth



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## ABOUT THE REPORT

In the wake of the 2016 and 2017 “area clearance operations” against the Rohingya minority in Myanmar’s Rakhine State, this report explores the structure, training, and ethos of the Myanmar armed forces to clarify the implications and challenges of, as well as the prospects for, a solution and an accounting for past events. Drawing on an in-depth review of the literature, extensive field experience, and interviews, the report is produced by the Asia Center at the United States Institute of Peace (USIP) as part of its effort to inform policy and strategies on managing violent conflict.

## ABOUT THE AUTHOR

An adjunct associate professor at the Griffith Asia Institute, Griffith University, in Brisbane, Australia, Andrew Selth has studied international security issues and Asian affairs for forty-five years as a diplomat, strategic intelligence analyst, and research scholar. He has published seven books and more than fifty peer-reviewed works, most of them about Myanmar and related subjects. He has also contributed to the public debate with numerous articles and reports and in online forums.

Cover photo: A Myanmar soldier stands near Maungdaw, in the north of Rakhine State. (Soe Zeya Tun / Reuters Pictures)

The views expressed in this report are those of the author alone. They do not necessarily reflect the views of the United States Institute of Peace.

### **United States Institute of Peace**

2301 Constitution Ave., NW  
Washington, DC 20037

Phone: 202.457.1700

Fax: 202.429.6063

E-mail: [usip\\_requests@usip.org](mailto:usip_requests@usip.org)

Web: [www.usip.org](http://www.usip.org)

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[Myanmar's military leaders have long been haunted by the prospect that one day they may lose the power to control events and be brought before a court to account for their actions, and those of their subordinates. They have had good reason to be concerned.]



## Summary

- It has long been argued that Myanmar's armed forces, or Tatmadaw, should be held legally accountable for a wide range of offenses against the Myanmar population.
- These concerns were highlighted in 2016 and 2017, after the armed forces and national police launched "area clearance operations" against the Muslim Rohingya minority in Rakhine State. More than seven hundred thousand refugees were driven into Bangladesh, prompting renewed calls for Myanmar to be brought before an international court, charged with crimes against humanity, including ethnic cleansing and genocide.
- The security forces claim that they were responding to threats to Myanmar's unity, stability, and sovereignty from Islamist terrorists. Accordingly, they implemented a comprehensive strategy to deprive the militants of food, funds, intelligence, and recruits. Many observers, however, believe the Tatmadaw's long-term aim is to expel all Rohingyas from Rakhine State.
- Should this matter ever come before an international court, many issues would need to be considered. Most relate directly to the atrocities perpetrated against the Rohingyas. However, the tribunal would also need to consider the Tatmadaw's organization and structure, its training and ethos, and—most important—command and control issues.
- The Tatmadaw is an effective military organization with a hierarchical structure. In asking the question of who is responsible for the behavior of troops in the field, the easy answer is the commander-in-chief of defense services. In practice, however, the exercise of military power in Myanmar is more complicated.
- There are in effect two Tatmadaws. One operates according to formal structures and regulations, and emphasizes patriotism, professionalism, and personal integrity. The other operates from day to day according to a more informal set of rules that allows for considerable flexibility, including in the observance of humanitarian law.
- Many observers believe that human rights abuses in Myanmar are official policy. They argue that troops are ordered to commit them as deliberate acts of psychological warfare, to undermine the morale of opposing forces, intimidate noncombatants, or force them to leave contested areas. They claim that atrocities like rape are used as weapons of war.
- Uncovering abuses in Myanmar is not difficult, but obtaining hard evidence of troops being ordered to commit them is. This is not surprising, but it argues for caution in claiming that state terror is routinely used to achieve strategic goals. Even if specific orders are not given, however, the Tatmadaw's failure to punish those guilty of such crimes must encourage them.
- The latest campaign against the Rohingyas has been a disaster for everyone. The Rohingyas have suffered most, but Aung San Suu Kyi, her government, the security forces, and the people of Myanmar have all lost, in different ways. Despite the high hopes that followed the 2015 elections, the country has stepped back into its dark past. This poses real challenges for the international community.
- All Myanmar governments have resisted external pressures to adopt or adapt particular policies. This is unlikely to change. Indeed, with regard to the Rohingyas, a rare consensus between the government, armed forces, and civil population can only strengthen Naypyidaw's determination to decide its own agenda and timetable for any changes.
- Unless attitudes in Myanmar shift significantly, a fair and durable solution to the Rohingya crisis, let alone a full legal accounting for past events, will remain a distant prospect.



## A Note on Terminology

After the Myanmar armed forces crushed a nationwide pro-democracy uprising in September 1988, the country's official name (in English) was changed from its post-1974 form, the Socialist Republic of the Union of Burma, back to the Union of Burma, which had been adopted when Myanmar regained its independence from the United Kingdom in January 1948. In July 1989, the new military government changed the country's name once again, this time to the Union of Myanmar, long the country's vernacular name. At the same time, a number of other place names were changed to conform more closely to their original pronunciation in the Burmese language. In 2008, after promulgation of a new national constitution, the country's official name was changed yet again, this time to the Republic of the Union of Myanmar.<sup>1</sup>

The new names have been accepted by most countries, the United Nations, and other major international organizations. A few governments, activist groups, and news media outlets, however, still cling to the old forms, apparently as a protest against the former military regime's refusal to put the question of a name change to the people of Myanmar. The old names were also believed to be the preference of then opposition leader Aung San Suu Kyi, who was held under house arrest by the military regime for almost fifteen years. Questioned about the official name of the country soon after her party took office in 2016, Aung San Suu Kyi stated her continuing preference for the colonial-era term Burma, but said that both names were acceptable.<sup>2</sup> In this report, the official names have been used, although Burmese has been retained to describe the dominant language of the country. Such usage does not carry any political connotations.

The armed forces have effectively ruled Myanmar since the 1962 coup, but from 1974 to 1988 they exercised power through an ostensibly elected civilian parliament. On taking back direct control of the country in September 1988, the armed forces abolished the old socialist government structure and created the State Law and Order Restoration Council, which ruled by decree. In November 1997, apparently on the advice of a US-based public relations firm, the regime changed its name to the State Peace and Development Council (SPDC), but continued to rule through executive fiat. In 2008, it held a constitutional referendum, which was followed by carefully managed elections on November 7, 2010. The resulting national parliament, consisting of both elected officials and nonelected military officers, met in January 2011. A new government was installed under President Thein Sein in March that year.

Continuing this process, by-elections were staged on April 1, 2012, to fill forty-eight seats left vacant after recently elected MPs had resigned to take up ministerial appointments, or had died. The opposition National League for Democracy (NLD), which was re-registered for the elections in December 2011, claimed that fraud and rules violations were widespread, but the party still won forty-three of the forty-five seats available on the day. One successful candidate was the party's leader, Aung San Suu Kyi.

On November 8, 2015, a new general election was held that, by most accounts, was reasonably free and fair.<sup>3</sup> The result was a landslide for the NLD, which secured 390 of the 491 seats (or 79.4 percent) contested at the Union level. It secured 255 seats in the 440-seat Lower House (Pyitthu Hluttaw) and 135 seats in the 224-seat Upper House (Amyotha Hluttaw). The armed forces are allocated 25 percent of the seats in both houses, but this gave the NLD a majority in the combined Union Assembly (Pyidaungsu Hluttaw). As a result, it was able to elect a new president in 2016 and pass a law creating the position of state counselor for Aung San Suu Kyi, who under the 2008 constitution is unable to become president.<sup>4</sup> The national charter states that the president "takes precedence over all other persons" in Myanmar, but even



before the elections, Aung San Suu Kyi had made it clear that she was going to be “above the president” and act as the country’s de facto leader.<sup>5</sup>

After the UK dispatched troops to the royal capital of Mandalay and completed its three-stage conquest of Burma (as it was then called) in December 1885, Yangon (formerly Rangoon) was confirmed as the administrative capital of the country. It remains the commercial capital, but in November 2005 the SPDC formally designated the newly built city of Naypyidaw (or Nay Pyi Taw), 327 kilometers (203 miles) north of Yangon, as the seat of Myanmar’s government. Where they appear in this report, the terms *Yangon regime*, or in some cases simply *Yangon*, are used as shorthand for the central government, including the military government that was created in 1962 and reinvented in 1974, 1988, and 1997. The government after 2005 is referred to as the *Naypyidaw regime*, or *Naypyidaw*, to reflect the administrative change that took place that year.

Another term used in this report is Tatmadaw (literally royal force), the vernacular name for Myanmar’s tri-service (army, navy, and air force) armed forces. In recent years, this term has gained wide currency in English-language publications on Myanmar. Sometimes, the Tatmadaw is referred to simply as the army, reflecting that service’s overwhelming size and influence, compared with the other two. Although the term *defense services* usually refers only to the armed forces, it is sometimes used in a wider context to refer to the armed forces, the Myanmar Police Force, the People’s Militia Forces, and sundry other paramilitary forces. On occasion, the Myanmar Fire Services Department and Myanmar Red Cross have also been included in this category.

## Introduction

What the Myanmar government claims to be the conduct of military or security operations is actually an established pattern of domination, aggression and violations against ethnic groups. Recent reports of attacks against civilians; against homes and places of worship; forcible displacement and relocation; the burning of villages; land grabbing; sexual violence; arbitrary arrests and detention; torture and enforced disappearances; are acts that have been alleged against the military and security forces for generations. While reports from Rakhine State have rightly provoked international outrage; for many in Myanmar, they have elicited a tragic feeling of *déjà vu*.<sup>6</sup>

Yanghee Lee, UN Special Rapporteur on the situation of human rights in Myanmar, February 1, 2018

Ever since the 1988 pro-democracy uprising, which thrust Myanmar into the world’s headlines and spawned a global activist movement, ethnic minority groups, human rights advocates, and others have argued that Myanmar’s armed forces, or Tatmadaw, should be held accountable for a wide range of crimes against the Myanmar people. These calls have been loudest after major outbreaks of civil unrest in the cities, such as the Saffron Revolution in 2007, but there have long been concerns over the conduct of the security forces engaged in counterinsurgency operations in rural districts. These concerns were dramatically highlighted in 2016 and 2017, after the armed forces and police launched so-called area clearance operations against the Muslim Rohingya minority in Rakhine State (see map).<sup>7</sup> Once again, their actions prompted calls for the Myanmar government and security forces to be brought before an international court to face charges of crimes against humanity, including ethnic cleansing and genocide.<sup>8</sup>

With a few minor exceptions, reports of human rights violations against ethnic minorities and pro-democracy groups have been consistently denied by successive Myanmar governments. For example, despite overwhelming evidence of atrocities perpetrated against the Rohingyas since 2016, both the National League for Democracy administration, under State Counselor Aung San Suu Kyi, and the armed forces, under Commander-in-Chief Senior General Min



Map 1.



Aung Hlaing, have rejected almost all accusations of abuses. A number of internal investigations have found no significant evidence of unlawful conduct.<sup>9</sup> As long as the government and the Tatmadaw maintain this position, there is little chance that an international tribunal looking into events in Rakhine State over the past few years would have the access or information required to conduct a thorough investigation. Nor is there any likelihood that Naypyidaw or the security forces would endorse, let alone support, the work of an external inquiry.

That said, it may be helpful to look at some of the ancillary factors that would be relevant to a formal inquiry and that may affect its possible outcomes. Such factors include not only Myanmar's human rights record and past attitudes toward external scrutiny, but also the structure and organization of Myanmar's armed forces, their training and ethos, and, as far as possible, the way in which they approach operations in the field.

### The Tatmadaw and International Tribunals

Myanmar's military leaders have long been haunted by the prospect that one day they may lose the power to control events and be brought before a court to account for their actions, and those of their subordinates. They have had good reason to be concerned. After the 1962 coup, the military government periodically genuflected before the altar of high principle and ratified several international legal instruments, which, theoretically at least, demanded the observation of certain codes of conduct. However, as the Australian National University's Des Ball once trenchantly observed, the Myanmar armed forces have consistently shown "a total disregard for international law."<sup>10</sup> Particularly since the 1988 uprising, there have been repeated calls for the Tatmadaw to be put on trial for a wide range of offenses against the Myanmar people.

In July 1990, for example, after the NLD won a landslide election victory and seemed poised to take over Myanmar's government, acting party leader Kyi Maung told foreign journalists that popular resentment against the military regime was "pretty strong."<sup>11</sup> He said that revenge was "not high on the NLD's agenda," but hinted strongly at Nuremberg-style trials that would examine the records of senior figures like the chief of military intelligence, then Colonel Khin Nyunt.<sup>12</sup> Whether he intended to give this impression or not, the clear implication of Kyi Maung's remarks was that, once in office, the NLD would look into the conduct of the armed forces during the 1988 uprising, in which more than three thousand people were believed killed.<sup>13</sup> According to several commentators, including a former head of Myanmar's Union Election Commission, this veiled threat was the main reason why the ruling State Law and Order Restoration Council refused to hand over power to the new government.<sup>14</sup>

Over the following two decades, there were frequent calls for international bodies of various kinds to investigate what were described as "widespread, egregious and systematic abuses" by the security forces in Myanmar.<sup>15</sup> Singled out for attention were actions taken against pro-democracy activists (notably NLD leader and Nobel Peace laureate Aung San Suu Kyi) and counterinsurgency operations conducted against armed ethnic groups, mainly around the country's periphery.<sup>16</sup> These calls seemed to fall on deaf ears, although each year from 1991 to 2015 the United Nations General Assembly passed a resolution expressing the international community's concern over the human rights situation in Myanmar.<sup>17</sup> Another important step was taken in 1992 when the UN Commission on Human Rights, after 2006, the Human Rights Council (UNHRC), established the position of special rapporteur on the situation of human rights in Myanmar.<sup>18</sup>

The Office of the United Nations High Commissioner for Human Rights (OHCHR) and UNHRC have been at the forefront of efforts to throw light on human rights issues in

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***The Myanmar armed forces have consistently shown "a total disregard for international law."***

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Myanmar and to identify those responsible for abuses. In January 1995, for example, the first special rapporteur, Professor Yozo Yokota (1992–96), summed up the situation as follows:

The Special Rapporteur is aware that sometimes reports of arbitrary killings tend to be exaggerated or distorted, that there are cases of good treatment of villagers and captured insurgents by the *Tatmadaw* soldiers, that there is evidence that the Government is trying to discipline those soldiers who have committed serious human rights violations, that instances of such violations appear to be decreasing and that the insurgents also commit serious violations of human rights from time to time. However, the Special Rapporteur cannot deny, in view of so many detailed and seemingly reliable reports, that violations appear to be committed consistently and on a wide scale by the soldiers of the Myanmar Army against innocent villagers (particularly those belonging to ethnic minorities) in the form of summary or extrajudicial executions and arbitrary killings which occur in the contexts of forced labour, rape, forced relocation and confiscation of property.<sup>19</sup>

Few objective observers could deny that this was an admirably comprehensive and balanced report. Despite its damning conclusion, however, the special rapporteur stopped short of recommending a formal inquiry into abuses and possible legal action. Instead, the Myanmar government was called upon to take several steps to remedy the situation and lift its performance.

A similar approach was taken by the next two special rapporteurs appointed, Judge Rajsoomer Lallah (1996–2000) and Professor Paulo Sergio Pinheiro (2000–2008). Both emphasized the Myanmar government's responsibility to take certain steps and improve its human rights record. By March 2010, however, the mood had changed. The then special rapporteur, Tomas Ojea Quintana (2008–2014), stated

Given the gross and systematic nature of human rights violations in Myanmar over a period of many years, and the lack of accountability, there is an indication that those human rights violations are the result of a State policy that involves authorities in the executive, military and judiciary at all levels. According to consistent reports, the possibility exists that some of these human rights violations may entail categories of crimes against humanity or war crimes under the terms of the Rome Statute of the International Criminal Court.<sup>20</sup>

The same conclusions were drawn by respected international organizations that followed Myanmar closely, such as Amnesty International and Human Rights Watch.<sup>21</sup> All demanded a thorough investigation of abuses. A number called for those responsible to be brought before an international tribunal.

Other investigators reached similar conclusions. For example, over the years, groups of Myanmar exiles and foreign activists “studiously chronicled the military regime's abuses,” and documented numerous cases of murder, rape, forced labor, and the torture of political prisoners.<sup>22</sup> For many abuses, these groups contended, State Peace and Development Council Chairman Senior General Than Shwe “could be held directly responsible in an eventual international tribunal.”<sup>23</sup> In 2005, a report commissioned by Czech statesman Vaclav Havel and Nobel Peace laureate Desmond Tutu called on the UN Security Council to use its powers to intervene in Myanmar.<sup>24</sup> In 2009, an exile group called the Burma Lawyers Council held a seminar in Bangkok titled “Advancing human rights and ending impunity in Burma.” Among the subjects discussed were the criminal accountability of individual members of the military regime and how the UN Security Council might be persuaded to investigate war crimes in Myanmar. The SPDC's concern over these charges can be measured by the fact that, just days before the seminar began, it outlawed the Burma Lawyers Council and tried to stop the meeting from being held.<sup>25</sup>

Also in 2009, the International Human Rights Clinic at the Harvard Law School published a comprehensive report titled *Crimes in Burma*, which argued that

In light of the repeated and consistent reports of widespread human rights violations in Burma outlined in UN documents, there is a *prima facie* case of international criminal law violations occurring that demands UN Security Council action to establish a Commission of Enquiry to investigate these grave breaches further.<sup>26</sup>

The report stated that the human rights abuses perpetrated in Myanmar required “concerted efforts to achieve some semblance of accountability and justice.”<sup>27</sup> These and other calls for action finally seemed to fall on fertile ground. In March 2010, Tomas Ojea Quintana asked the UNHRC and General Assembly to consider the possibility of convening a commission of inquiry into crimes in violation of international law committed in Myanmar, citing a “pattern of gross and systematic violation of human rights which has been in place for many years.”<sup>28</sup> His request was endorsed by more than a dozen governments, a wide range of international organizations, and activist groups.<sup>29</sup>

Significantly, Quintana’s request was also supported by then opposition leader Aung San Suu Kyi and the NLD. However, they were at pains to emphasize the investigative aspects of such an inquiry rather than its possible implications for future legal action against the military government and security forces. They pointed out that, in addition to “truth-seeking” and ensuring the rights of victims to protection and justice, a commission of inquiry had preventive value. It would send a strong message to everyone, including members of Myanmar’s security forces, that human rights abuses were unacceptable and should be stopped.<sup>30</sup> The NLD also hoped that an inquiry would lead to legislative and institutional reforms. The retributive and punitive implications of such an inquiry were not addressed, at least not in public. Questioned about the party’s attitude, a spokesman denied that Kyi Maung had threatened a Nuremberg-style war tribunal in 1990.<sup>31</sup>

Despite these reassurances, the NLD’s support for a formal investigation into systematic human rights abuses by the Tatmadaw appeared to strengthen fears among Myanmar’s past and then current military leadership that they might one day be held to account for their actions.<sup>32</sup> These concerns surfaced again as Myanmar approached the transfer of formal power from the SPDC to a quasi-democratic government under former General Thein Sein.<sup>33</sup> In the event, Quintana’s proposal for an inquiry was rejected by a number of states in the UN’s Third Committee, notably China and Russia. Quintana himself was criticized by the Myanmar government for relying on questionable evidence from “remnant insurgents and expatriate groups.”<sup>34</sup> Naypyidaw also pointed to its own Human Rights Commission, established under the Paris Principles in September 2011, which it claimed obviated the need for any external inquiry.<sup>35</sup>

Throughout this period, UN representatives, governments, and human rights advocates were conscious of the enormous obstacles that would have to be overcome before the Tatmadaw’s conduct in the field could be properly investigated by an external body, let alone considered by an institution such as the International Criminal Court (ICC). The ICC has recently begun a preliminary examination of evidence relating to the war on drugs in the Philippines, its first foray into such issues in the region, but this has highlighted the constraints it faces in tackling human rights problems in some Asian countries.<sup>36</sup> In Myanmar’s case, it is unlikely that representatives of the ICC would even be allowed entry to the country, let alone be permitted to conduct a thorough investigation of abuses in Rakhine State or anywhere else in the country.

Testimony can be taken from abuse victims found outside Myanmar, and this has been happening for many years. Since 2011, interviews inside Myanmar have been easier to conduct, but, as seen in Rakhine State and elsewhere, access to conflict zones can still be problematic. Legal and other constraints can make people in Myanmar reluctant to speak frankly, a problem highlighted by the arrest of two Reuters journalists in December 2017.<sup>37</sup> Also, any

country or non-state armed group can be charged with violations of humanitarian law, but Myanmar is not a party to the Rome Statute of the ICC, which was adopted in 1998 and went into effect in 2002. That means the ICC can only look at crimes perpetrated after 2002. Even then, it cannot become directly involved unless the Myanmar government requests such action or the Security Council formally refers the matter to the court.<sup>38</sup> Given the political power still wielded by the Tatmadaw in Naypyidaw, the first is extremely unlikely. As long as Myanmar continues to enjoy the support of countries such as China and Russia, the second option is an equally remote prospect.

From time to time, sanctions have been imposed by individual countries and international organizations, including against senior members of the Tatmadaw, where they could be clearly identified.<sup>39</sup> However, as long as they stay inside Myanmar, the country's military leaders are virtually untouchable. Under Article 445 of the 2008 constitution, former members of the military government are protected against any attempts to hold them accountable for their past actions.<sup>40</sup> Also, as the International Center for Transitional Justice has observed,

An analysis of the constitution's provisions suggests that instead of being a true catalyst for lasting change, it further entrenches the military within the government and the associated culture of impunity. In addition to providing amnesty to the ruling regime for any crimes committed, the constitution creates a governing structure that gives the military the ability to dominate the government and protect its interests in perpetuity.<sup>41</sup>

Constitutional amendments have been made very difficult and laws with retrospective effect are prohibited. A new law passed shortly before President Thein Sein left office in 2016 provided additional protection to Myanmar's past leaders.<sup>42</sup>

Despite all the problems encountered in monitoring the human rights situation in Myanmar, determining who has been responsible for specific abuses, and deciding what could be done about them, the Tatmadaw's accountability for its actions remained a live issue. For example, in 2015 the International State Crime Initiative at Queen Mary University of London measured the Myanmar government's actions against widely recognized criteria and accused it of pursuing a policy of genocide against the Rohingyas.<sup>43</sup> A similar conclusion was drawn by the Yale Law School.<sup>44</sup> The issue of abuses was also raised in the period leading up to the handover of power from Thein Sein to Aung San Suu Kyi, after the NLD won the 2015 elections. The Carter Center, which acted as an official observer, noted a fear of retribution after the election. In its final report, it urged all parties to "engage in a dialogue and consensus-seeking process to identify constructive steps toward lasting peace and national reconciliation."<sup>45</sup>

Aung San Suu Kyi had already made it plain, however, that this was her intention. Citing her hero Mahatma Gandhi, and echoing comments made by NLD founding father U Tin Oo, she rejected any suggestion of revenge.<sup>46</sup> Speaking in San Francisco in 2012, for example, she told her audience, "If we march the long road to freedom in hatred, what we find at the end is not freedom but another prison."<sup>47</sup> After her landslide election victory in November 2015, she stated that there would be no investigations into the past actions of the outgoing military regime or the armed forces.<sup>48</sup> She urged elected NLD candidates to "forgive those who wronged us... Whatever mistake they have made in the past, we need to give them the chance to change, instead of seeking revenge."<sup>49</sup> After meeting with the retired Senior General Than Shwe, she was reported to have said that she harbored no feelings of animosity toward the former dictator or his government.<sup>50</sup> Conscious of the need for the country to move forward in a spirit of unity and shared purpose, and doubtless aware of the vulnerability of her own position, she has held this stance ever since.<sup>51</sup>

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***As long as they stay inside Myanmar, the country's military leaders are virtually untouchable.***

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Aung San Suu Kyi's resolve has been sorely tested, however, by the events of the past eighteen months, as she has faced increasingly strident calls by the international community for the armed forces, and indeed her own government, to be held to account for the atrocities perpetrated against the Rohingyas in northern Rakhine State. Accusations of ethnic cleansing and genocide are becoming harder to avoid. Former envoy and US Congressman Bill Richardson spoke for many in January 2018 when he expressed his frustration over Aung San Suu Kyi's refusal to act or accept criticism. He went on to say,

The international community should nonetheless continue to push for efforts to establish accountability mechanisms, such as a joint Myanmar-international investigation into human rights abuses and the mass graves discovered in Rakhine thus far...efforts to meticulously document what has occurred may provide opportunities to hold perpetrators accountable in the future or to help facilitate eventual efforts to establish the truth and promote reconciliation.<sup>52</sup>

As long as the three-quarters of a million or so Rohingya refugees remain in Bangladesh as a stark reminder of the events of the past eighteen months, the calls for international scrutiny and action are not going to go away.

## The Tatmadaw and the Rohingyas

It was estimated in 2003 that, since Myanmar regained its independence from the UK in 1948, successive governments had carried out at least thirteen major armed operations targeting the ethnolinguistic group now widely known as the Rohingyas.<sup>53</sup> Each had its own dynamics and was conducted in different circumstances, but they all had several elements in common. In 1975, for example, about fifteen thousand Rohingyas fled into neighboring Bangladesh to escape persecution. In 1978, a massive two-stage military operation code-named Naga Min (Dragon King), conducted around Sittwe, Buthidaung, and Maungdaw, forced another two hundred thousand Rohingyas to follow them. Bowing to international pressure, mainly from the UN High Commissioner for Refugees, the Rangoon government reluctantly accepted the repatriation of most of those who had fled. However, security operations against the Rohingyas were also staged in 1989, 1991–92, and again in 2002.<sup>54</sup> After the 1991–92 campaign, nearly a quarter million Rohingyas sought refuge across the border.<sup>55</sup> Many later returned, but in 2015 there were still about thirty-two thousand registered and two hundred thousand unregistered Rohingya refugees from Myanmar living in Bangladesh.<sup>56</sup>

Serious concerns over these matters had periodically been expressed by Myanmar watchers and some members of the international community but, in the words of Jacques Leider, the Rohingyas only “entered the awareness of a global audience in 2012 when communal violence led to the internal displacement of tens of thousands of Muslims and the death of several hundred” in Rakhine State.<sup>57</sup> The 2012 civil unrest was followed by a number of attacks against other Muslim communities elsewhere in Myanmar, encouraged by extremist Buddhist groups determined to see all Muslims expelled from the country.<sup>58</sup> The unprecedented global attention given to these events was due in part to increased popular interest in Myanmar, brought about by the well-publicized political reforms taking place under President Thein Sein and the related resurgence of the domestic news media. Also, by then Myanmar was better integrated into global telecommunications systems, a factor shrewdly exploited by exiled Rohingyas and pro-Rohingya activists.

Systematic human rights violations and the lack of opportunities for Rohingyas in Myanmar also triggered flows of refugees and migrants to Thailand and Malaysia, often facilitated by people-trafficking networks. Between 2014 and 2015, for example, some ninety-four thousand Rohingyas and Bangladeshis departed along such routes.<sup>59</sup> In May 2015, Thailand and

Malaysia cracked down on the people smugglers, leading to the abandonment of five thousand irregular migrants at sea. Malaysia and Indonesia eventually offered them temporary shelter, but the crisis underlined the precarious position of the Rohingyas, both inside and outside Myanmar.<sup>60</sup> In 2016, the OHCHR reported that “patterns of human rights violations against the Rohingya have been documented by successive special rapporteurs since 1992. Many result from national, State or local laws, policies and practices targeting the Rohingya owing to their ethnicity, race or religion, either directly or through selective, discriminatory implementation.”<sup>61</sup>

In 2016, Aung San Suu Kyi established a commission, chaired by former UN Secretary-General Kofi Annan, to study the situation in Rakhine State and make recommendations for a long-term solution to the communal tensions there. However, despite this initiative, the UN's repeated warnings, the “Andaman Sea crisis” in 2015, and the worldwide publicity given to the anti-Muslim unrest in Myanmar in 2012–13, very little changed.

All these developments were overshadowed by events in October 2016 when militants from the Arakan Rohingya Salvation Army (ARSA) attacked three border police posts in northern Rakhine State.<sup>62</sup> In some places, civilians were also targeted.<sup>63</sup> Naypyidaw's immediate and harsh reaction sparked an exodus of about sixty-five thousand Rohingyas across the Bangladesh border. After a further round of ARSA attacks in August 2017, a massive military crackdown led to an accelerated flow of refugees. As is always the case when examining events in Myanmar, reliable statistics are difficult to obtain. Numbers vary widely between sources. The usually reliable International Crisis Group (ICG) estimated that after the August 2017 attacks more than 650,000 Rohingya refugees fled to Bangladesh. The International Organization for Migration believes the figure is closer to seven hundred thousand.<sup>64</sup> Some estimates are as high as eight hundred thousand and a few exceed one million.<sup>65</sup> The basis for such claims are not clear, but the higher figures can be justified by adding the 232,000 Rohingya refugees already in Bangladesh before the crisis, the 65,000 who fled after October 2016, and the 650,000 or more who followed them in 2017.<sup>66</sup>

Because they were not included in the 2014 census, the total Rohingya population in Myanmar is unknown, but, based on a rough figure of 1.2 million, more than half are now in refugee camps in Bangladesh.<sup>67</sup>

Estimates of the number of Rohingyas killed over the past eighteen months also fluctuate wildly. The international aid agency Medecins Sans Frontieres (Doctors Without Borders) has estimated that at least 6,700 Rohingyas have been killed since the August 2017 crackdown, including some 730 children under the age of five.<sup>68</sup> More than 70 percent of these deaths were reportedly from gunfire or from being burned to death. This figure does not count an estimated 2,300 Rohingyas who died from other causes, such as starvation and drowning, while fleeing to Bangladesh. These figures are much higher than other estimates. Many news reports cite around ten thousand deaths, but, once again, it is not clear how such figures have been calculated.<sup>69</sup> The UN's estimate of Rohingya deaths for the period since August 2017 is one thousand. Bangladesh's foreign minister has put the number at three thousand.<sup>70</sup> The Myanmar government's estimate is four hundred, and of those casualties 376 were described as ARSA terrorists legitimately targeted as part of its security operations.<sup>71</sup>

Denied access to northern Rakhine State by the Naypyidaw government, most journalists, aid workers, and officials following these developments since October 2016 have focused on the plight of the Rohingyas in Bangladesh, and how they came to be there. Given the nature of the crisis, described by the UN as “a humanitarian and human rights nightmare” and “the largest mass refugee movement in the region for decades,” the flood of reports about the

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Rohingyas in the news media and online is understandable.<sup>72</sup> They have helped international audiences to appreciate the appalling circumstances in which the Rohingyas now find themselves and the enormous scale of the tragedy. It has been compared with the 1993–94 Rwanda crisis, which prompted UN intervention.<sup>73</sup> However, despite all this scrutiny, a few important issues have slipped through the cracks and demand closer attention. They include the role and aims of the security forces.

Over the past eighteen months, there have been countless reports of specific incidents in which the Rohingyas were subjected to terrible abuses by the Myanmar armed forces and police force, assisted by local Rakhine Buddhist militias and vigilantes.<sup>74</sup> There have also been passing references in the news media to so-called area clearance operations in northern Rakhine State. Few observers have stepped back and tried to examine the overarching strategy being pursued by the security forces. Yet, without an understanding of their long-term military and political goals, it is difficult to look beyond past and current problems and anticipate future challenges. It is widely acknowledged that Aung San Suu Kyi's government, though hardly blameless, has little control over the security forces, which seem to be pursuing an agenda of their own. However, what that agenda might be, and the thinking behind it, are difficult to determine.

Broadly speaking, four schools of thought have emerged to explain military operations in Rakhine State since October 2016. They range from the plausible to the improbable.

First, the official line is that the security forces are responding to a serious threat to Myanmar's unity, stability, and sovereignty from Rohingya terrorists, who are supported by international Islamist groups. Naypyidaw has offered few details to back up claims to this effect, preferring to emphasize the attacks against thirty-four police and army posts over the past eighteen months or so, the twenty-one soldiers, policemen, and civil servants killed in the line of duty, and the need to recover arms captured by ARSA.<sup>75</sup> As always in Myanmar, reliable data is scarce, but the ICG is probably right in stating that ARSA does not have a transnational Islamist or jihadist agenda.<sup>76</sup> That said, questions remain over its possible connections with other extremist groups, a number of which may have provided some kind of support for the militants.<sup>77</sup> Also, as the ICG has warned, the potential exists for the Rohingya crisis to be exploited by foreign terrorists, and for them to launch attacks against the Myanmar government, both in the country and abroad.<sup>78</sup>

Naypyidaw is not alone in taking such threats seriously. Even before ARSA's appearance, a number of Southeast Asian governments had expressed concern over the possible emergence of new militant groups and the spread of religious tensions.<sup>79</sup> The persecution of the Rohingyas, it was feared, was radicalizing young Muslims in Myanmar and encouraging them to take up arms.<sup>80</sup> There was already a history of small groups of Rohingyas using violent tactics in efforts to win citizenship and other basic rights from the central government.<sup>81</sup> From time to time, prominent foreign Islamists (including Osama bin Laden) and international terrorist groups (such as Jemaah Islamiyah) appeared to support their agendas.<sup>82</sup> Quite apart from the presence in Thailand, Malaysia, India, and Pakistan of thousands of exiled Rohingyas, Southeast and South Asia's Muslim communities have reacted strongly to the harsh treatment accorded to their co-religionists in Myanmar.<sup>83</sup> The events of 2016 and 2017 reawakened fears that Muslims outside Myanmar would use violence to draw attention to the Rohingya cause.

Second, after what seems to have been a rather confused response to the initial ARSA attacks, Myanmar's security forces implemented a comprehensive "four cuts" counterinsurgency strategy (or a modern variant thereof) designed to deprive the militants of food, funds, intelligence, and recruits.<sup>84</sup> As seen elsewhere in Myanmar, this is essentially a scorched earth

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policy that has its doctrinal origins in practices by the United States and its allies in Vietnam during the 1960s.<sup>85</sup> Some observers have even traced it back to the Japanese “three-all” (*sanko seisaku*) counterinsurgency strategy of “burn all, kill all, destroy all,” which was used in China and taught to Myanmar soldiers by the Japanese during the Second World War.<sup>86</sup> Under the four cuts strategy, villages have been burned, crops destroyed, minefields laid, and populations displaced. Often, search-and-destroy missions have been launched and free-fire zones declared to “sanitize” designated areas. In Myanmar, however, the related hearts-and-minds campaigns designed to win local support have never received more than lip service.

Given its severity, most foreign observers have seen the Tatmadaw’s response to the 2016 and 2017 ARSA attacks as a massive overreaction to a minor threat from a small band of poorly armed and ill-trained exiles and their local supporters, driven to act by decades of institutionalized persecution. It is likely that many of the Rohingyas who participated in the ARSA attacks were coerced into doing so.

Indeed, an ARSA military victory has never been a realistic proposition, suggesting that the militants deliberately provoked an excessive response by the security forces in order to attract international attention and raise support for the Rohingya cause. This is a tried and tested strategy, adopted by guerrillas and terrorists the world over. Also, ARSA’s leadership would have known that anti-Muslim feelings were rife in Myanmar and that the Rohingyas were reviled as illegal Bengali immigrants. Whether Naypyidaw issued specific orders to terrorize Rohingya communities (on which more shortly), ARSA would have known from past experience in Rakhine State and other conflicts in Myanmar that racial and religious prejudices, combined with poor leadership and other factors, would inevitably lead to widespread human rights abuses.<sup>87</sup> ARSA probably anticipated that this too would generate international sympathy for the Rohingyas. If so, it was a breathtakingly cynical use of the local Muslim population to achieve vague political ends.

A third school of analysts is convinced that the Tatmadaw high command seized on the initial ARSA attacks in 2016 to launch a concerted plan to expel all Rohingyas from northern Rakhine State.<sup>88</sup> After a lull in both militant and Tatmadaw activity, the second round of ARSA attacks in August 2017 seemed to give this strategy of ethnic cleansing added impetus.<sup>89</sup> The UN Human Rights Commission, for example, has pointed to “a cynical ploy to forcibly transfer large numbers of people without possibility of return.”<sup>90</sup> It has been suggested that, under this plan, current and potential Rohingya community leaders were to be killed and the rest of the population driven into Bangladesh. Their villages were to be destroyed. Obstacles such as barbed wire fences and landmines were to be put in place to prevent their return.<sup>91</sup> According to this interpretation of events, those Rohingyas able to survive the stringent citizenship verification process and eventually cleared to return to Myanmar would be resettled further south, in large model villages or special camps where they would be less susceptible to manipulation by Bangladesh-based extremists.<sup>92</sup>

There have been few reliable reports regarding the fate of the lands formerly occupied by the Rohingyas in northern Rakhine State.<sup>93</sup> Drawing on satellite imagery, Amnesty International has reported that in some areas new military bases have been built on the ruins of destroyed Rohingya villages.<sup>94</sup> Other commentators have suggested that the land left vacant will be allocated to economic development projects. A few pundits have linked such moves to Chinese commercial interests, albeit without giving any evidence.<sup>95</sup> Others have suggested that, in what seems to be the revival of a 1990s program, vacant Rohingya lands will be allocated to Rakhine Buddhists.<sup>96</sup> In those cases, grants are likely to reflect an intention to create an effective cordon

sanitaire between Myanmar and Bangladesh. Populated by Naypyidaw loyalists, and patrolled by local military and police units, it would act as a buffer against future insurgent incursions and the unauthorized return of Rohingya families. In other parts of Myanmar, villagers used in this way have been organized into local militias to provide additional security.<sup>97</sup> Some have been lightly armed, under Tatmadaw and police supervision.

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***A small number of commentators...insist on seeing the Rohingya crisis in terms of a global conspiracy.***

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The fourth school consists of a small number of commentators who insist on seeing the Rohingya crisis in terms of a global conspiracy. A few have even described it as a proxy war between the great powers, the United States (helped by its ally Saudi Arabia, which is reputed to be supporting ARSA) somehow using the Rohingyas to undermine China's growing influence in Myanmar.<sup>98</sup> Another popular pundit has suggested that the United States and European Union precipitated the Rohingya crisis to interfere in the internal affairs of Myanmar, which he described as a US client state.<sup>99</sup> The atrocities perpetrated against the Rohingyas took place, according to this scenario, "apparently with the support and blessing of the West." No serious observers entertain such far-fetched notions, which seem designed to promote wider anti-Western agendas. However, the other explanations put forward to account for the behavior of the security forces deserve consideration.

It would be surprising if the Tatmadaw were not exploiting the Rohingya crisis for its own purposes. The generals are already flexing their muscles in Naypyidaw, reminding Aung San Suu Kyi's government of the armed forces' key role in national affairs.<sup>100</sup> They are also capitalizing on anti-Muslim sentiments in Myanmar to reinforce their claim to be the defenders of the country's majority Buddhist culture. In any case, a long-term solution to address the Rohingya situation has always been a high priority for the Tatmadaw high command. After the sectarian strife in 2012, President Thein Sein said that Rohingyas without a legitimate claim to residency were not welcome in Myanmar. He reportedly declared that the "only solution" was to expel them to "a third country" or to camps overseen by the UN.<sup>101</sup> Senior General Min Aung Hlaing has been quoted as saying that there are no Rohingyas, only "Bengalis," and those calling themselves Rohingyas are "not native" to Myanmar.<sup>102</sup> He has blamed the current crisis on the need to complete "unfinished business" left over from World War II, an apparent reference to the exodus of Indians from Myanmar in 1942.<sup>103</sup>

Regardless of whether the Tatmadaw's broad strategy in 2016 and 2017 has been dictated by genuine security concerns, crude nativism, political opportunism, or a secret plan permanently to change the ethnic balance of northern Rakhine State, one thing is clear. Myanmar's security forces are determined to pursue their own agenda. Aung San Suu Kyi may eventually become responsive to foreign demands for more humane policies, and some among the security forces may even support such an approach.<sup>104</sup> However, as seen in the past, the generals are unlikely to be persuaded to change their fundamental attitudes or core policies by anything the international community might say or do. Indeed, there is a risk that such pressures will only encourage nationalist feelings and harden their resolve to maintain the current approach.

## **The International Reaction**

Over the past several years, numerous self-serving and factually inaccurate books and reports have been published about the Rohingyas, and some incredible conspiracy theories have been aired.<sup>105</sup> Some have simply reflected inadequate research and others may have been the result of poor analytical skills, but more than a few appear to have been designed largely to promote a partisan point of view.<sup>106</sup> Despite repeated claims in countless news outlets, for example, the UN has never called the Rohingyas "the world's most persecuted minority group," or anything

like it.<sup>107</sup> Even before the current crisis, expatriate Rohingyas and their supporters were adept at using the internet and mass media to mobilize international support for their cause. As Jacques Leider in particular has argued, too little attention has been paid to the long history and complex nature of the political, economic, and social problems found in Rakhine State, which lend themselves to much more complicated explanations of developments than are usually offered online or in much of the pro-Rohingya literature.<sup>108</sup>

That said, the evidence of discrimination, persecution, and other abuses perpetrated against the Rohingyas by Myanmar's government and security forces for decades is incontestable.<sup>109</sup>

As noted, up to a million Rohingya refugees are now in Bangladesh in what the ICG has described as the "largest refugee camp in the world."<sup>110</sup> Many of these victims have been interviewed by journalists, aid workers, and officials. Most have given detailed and harrowing accounts of attacks against their villages by members of the Myanmar Army, Myanmar Air Force, and Myanmar Police Force (MPF), including police security battalions and the Border Guard Police. They have also suffered at the hands of local Rakhine Buddhist groups, some acting in concert with the security forces.<sup>111</sup> The refugees interviewed have reported mass murders, sexual assaults, torture, the destruction of property, forced displacement, and other crimes. Notably, the actions of the security forces did not appear to be random or the acts of maverick individuals, but instead to be directed by officers and noncommissioned officers as part of a concerted plan.<sup>112</sup> Such has been the consistency and credibility of these refugee accounts that, from an early date, voices around the world were raised against the Myanmar authorities.<sup>113</sup>

In February 2017, the UN high commissioner for human rights, Zeid Ra'ad al-Hussein, published a report citing evidence of widespread abuses in Rakhine State.<sup>114</sup> He accused the Myanmar government of "devastating cruelty" against the Rohingyas.<sup>115</sup> In March, the UNHRC decided to send an "independent international fact-finding mission" to Myanmar to "establish the facts and circumstances of the alleged recent human rights violations by military and security forces" in Rakhine State "with a view to ensuring full accountability for perpetrators and justice for victims."<sup>116</sup> This proposal was rejected by Aung San Suu Kyi, who felt that it was not "in keeping with what is actually happening on the ground."<sup>117</sup> Ignoring her own repeated calls for international intervention in Myanmar's internal affairs over the past thirty years, she said, "We must work ourselves for our country's responsibilities, because we are the ones who best understand what our country needs...We don't accept [the UN's] decision as it is not suitable for the situation of our country."<sup>118</sup> She added that Myanmar would rely on its own resources to investigate any accusations of abuses.<sup>119</sup> A UN fact-finding mission was still appointed, and went to Bangladesh, but it was refused entry to Myanmar.

In September 2017, the OHCHR stated that, as far as could be judged without access to the conflict zone, the treatment of the Rohingyas seemed to be "a textbook example of ethnic cleansing."<sup>120</sup> The high commissioner told the Human Rights Council that security operations being conducted in Myanmar were "clearly disproportionate and without regard for the basic principles of international law."<sup>121</sup> Three months later, the OHCHR's position had further hardened. The high commissioner said that he "would not be surprised if a future court found the military campaign against the Rohingya people amounted to genocide."<sup>122</sup> This view has since been echoed by the UN's special rapporteur on the situation for human rights in Myanmar, Yanghee Lee, who in late 2017 was told that she was not welcome in the country for the rest of her term of office.<sup>123</sup> She stated in February 2018 that the military operations conducted against the Rohingya in Rakhine State "bear the hallmarks of genocide."<sup>124</sup> In March 2018,

the OHCHR called for the UN General Assembly to refer alleged atrocities committed in Myanmar to the International Criminal Court for prosecution.<sup>125</sup>

These and similar reports have prompted other UN actions. Between August and October 2017, for example, the Security Council met five times in response to a letter from the secretary-general asking it to consider the Rohingya crisis. Due to the opposition of China and Russia, no formal resolution was passed, but the Security Council strongly condemned the violence that had occurred in Rakhine State, expressed alarm at the deteriorating humanitarian situation and called on the government of Myanmar to “grant immediate, safe and unhindered access to United Nations agencies and their partners.”<sup>126</sup> On November 16, the General Assembly approved a human rights resolution on Myanmar, reviving annual resolutions that had been dropped in 2016 in recognition of the election of Aung San Suu Kyi’s party and the gradual democratization process taking place in the country. In February 2018, the Security Council met again to discuss Myanmar and declared that it would keep the Rohingya crisis “high on its agenda.”<sup>127</sup>

Following a visit to Bangladesh in March 2018, the UN assistant secretary-general for human rights, Andrew Gilmour, urged that, in addition to the UN’s fact-finding mission, which was due to provide an update on its investigation later that month, an independent international investigative mechanism should be established to look into individual accountability for the atrocities perpetrated in Myanmar.<sup>128</sup> It was envisaged that this would be similar to the commission of inquiry set up by the UNHRC on August 22, 2011, to investigate human rights violations, including war crimes, in Syria. The same month, Special Rapporteur Yanghee Lee echoed this call, asking for a structure to be established in Bangladesh that could gather evidence on human right abuses, with a view to presentation at a future criminal trial. It was clear who was in her sights: “This must be aimed at the individuals who gave the orders and carried out violations against individuals and entire ethnic and religious groups.... The Government leadership who did nothing to intervene, stop, or condemn these acts must also be held accountable.”<sup>129</sup>

The UN’s concerns have been echoed by individual countries, albeit at different levels. Numerous governments have made representations about the Rohingya issue directly to Aung San Suu Kyi, without any apparent effect. In November 2017, the EU commissioner for humanitarian aid said that he agreed with the UN secretary-general that “the only description for this situation is ethnic cleansing.”<sup>130</sup> In April 2018, the EU reinforced defense sanctions against Myanmar and in June imposed measures against seven Tatmadaw and police officers because of their involvement in or association with human rights violations committed against Rohingyas.<sup>131</sup> In November 2017, the US government publicly called Myanmar’s security operations against the Rohingya ethnic cleansing. Secretary of State Rex Tillerson said that “no provocation can justify the horrendous atrocities that have ensued.”<sup>132</sup> In December 2017, the United States imposed sanctions against Major General Maung Maung Soe, head of Western Command and the senior officer who oversaw most military operations against the Rohingyas.<sup>133</sup> The US Congress is currently considering legislation to impose sanctions against selected Myanmar military and police personnel. It may also reinstate some sanctions lifted by President Barack Obama in 2016.<sup>134</sup>

Independent bodies such as the Organisation of Islamic Cooperation, which represents fifty-seven predominantly Muslim states, have also called on the Myanmar government to protect the rights of the Rohingyas.<sup>135</sup> Amnesty International and Human Rights Watch have accused Myanmar of crimes against humanity, including acts committed as part of “a widespread or systematic attack directed against a civilian population.”<sup>136</sup> Among the specific crimes listed have been mass murder, sexual assault, torture, arson, and forced deportation.<sup>137</sup> As these



organizations have noted, most fall within the jurisdiction of the International Criminal Court. Other bodies, such as the Permanent People's Tribunal, an international network of scholars and legal experts, have reached similar conclusions.<sup>138</sup> The chorus of condemnation of Myanmar's government and security forces has not been universal, but it has been loud and consistent.

Aung San Suu Kyi appears caught between insistent demands for justice from the international community and strong domestic resistance (including from the Tatmadaw) to any outside "interference" in the Rohingya issue. In October 2017, she formed the Union Enterprise for Humanitarian Assistance, Resettlement, and Development of Rakhine State to help implement the Annan Commission's recommendations.<sup>139</sup> One element of the program allows for international participation. Following the visit to Bangladesh and Myanmar of a delegation from the UN Security Council in May 2018, the president's office announced the formation of an independent commission of inquiry.<sup>140</sup> However, the proposed inclusion of a foreigner in the commission has aroused strong opposition from several quarters, including the armed forces.<sup>141</sup> In June 2018, Naypyidaw negotiated a Memorandum of Understanding with the UN High Commissioner for Refugees and the United Nations Development Program to govern their participation in the planned repatriation of Rohingya refugees from Bangladesh.<sup>142</sup>

None of these measures, however, challenged the discriminatory laws, policies, and practices in northern Rakhine State, nor reduced the international pressure for a full, legal, and public accounting for past human rights abuses.

In April 2018, the prosecutor of the International Criminal Court, Fatou Bensouda, asked it to rule on whether the ICC had jurisdiction over the forced "deportation" of Rohingyas from Myanmar to Bangladesh, which was described as a possible crime against humanity. She argued that, although Myanmar was not a member of the ICC, the fact that part of the alleged crime took place in the territory of Bangladesh, which was a member, meant that the court could seek powers of jurisdiction.<sup>143</sup> Myanmar's government expressed its "serious concern" at this move, and pointed out that, under the 1969 Vienna Convention on International Treaties, no treaty can be imposed on a country that has not ratified it.<sup>144</sup> Naypyidaw saw the prosecutor's initiative as a direct challenge to Myanmar's independence and sovereignty. Once again, it rejected the notion that Myanmar had any case to answer before an international court.

Accusations of abuses have consistently been rejected by the Myanmar government, although it has allowed for the possibility of "unauthorized actions" on at least one occasion by soldiers and local Rakhine villagers.<sup>145</sup> Official spokesmen have even objected to the name *Rohingya* being used in statements on the issue. As the ICG has stated,

Myanmar set its political direction early in the crisis, and, so far, international scrutiny, pressure and diplomatic engagement has brought about no meaningful change—not even seemingly minor concessions such as allowing UN humanitarian access to the area or signalling openness to international support or advice. Extremely strong political consensus on this issue has united the government, the military and vast majority of the population as never before in Myanmar's modern history.<sup>146</sup>

The international community still appears reluctant to take any measures that might undermine Aung San Suu Kyi's fledgling government or slow down the controlled democratization process set in train in 2011. However, in the face of increasingly detailed revelations of human rights abuses against the Rohingyas, including the discovery of mass graves, the pressure for more decisive action is increasing. To quote the ICG once again, "Over time, the drumbeat for holding those most responsible criminally accountable will also likely increase."<sup>147</sup>

Should this matter ever come before an international court, a wide range of issues will need to be considered. Most will relate directly to the evidence of atrocities perpetrated against the

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Rohingyas, those who ordered them, and those who carried them out, if that could ever be determined. However, a tribunal would also need to consider a range of broader issues to do with the Tatmadaw's organization and structure, its training and ethos, and, most important, issues relating to command and control. Given the dearth of reliable information about the Tatmadaw, and the inevitable refusal of serving Myanmar officers to give evidence before such a tribunal, the consideration of such matters will be difficult. However, as the Nuremberg war crimes tribunal found, faced with the standard defense that orders were orders (*befehl ist befehl*), they could prove critical to questions of culpability, and thus ultimate responsibility for the actions of the security forces in Rakhine State.<sup>148</sup>

## Tatmadaw Organization and Ethos

Despite the close attention paid to Myanmar's armed forces since 1988, little reliable information about them is available. Even now, after the political opening of 2011, reliable data about such basic matters as their size, budget, order of battle, and combat capabilities are still very difficult to obtain.<sup>149</sup> It is unlikely that even the civilians in Aung San Suu Kyi's government have access to all the relevant information. Particularly sensitive matters, such as the details of Myanmar's shadowy relationship with North Korea and its suspected missile production program, are probably known only to a small group of senior Tatmadaw officers.<sup>150</sup> Indeed, secrecy seems to be an obsession of those concerned with security matters, and harsh penalties are imposed on anyone believed to have betrayed state secrets, a term that has a very wide definition in Myanmar.<sup>151</sup> Even foreign agencies with access to privileged information consider the Tatmadaw an intelligence black hole. More information is available about the Myanmar Police Force, which has been relatively open to foreigners, but that too is incomplete.<sup>152</sup>

Ironically, the lack of hard data about the Tatmadaw, the police, and their intelligence agencies seems at times to be in inverse proportion to the number of observers who feel qualified to write about them, and to make bold pronouncements about aspects of their leadership, internal politics, and operations. Much of this product is based on anecdotal evidence, gossip, and speculation. Occasional glimpses behind the scenes have rarely, if ever, given observers the full picture. Also, Myanmar's security forces tend to arouse strong feelings on the part of some commentators, leading at times to biased or misleading reports. That said, over the years some very useful contributions have been made to the public record by well-informed and objective analysts. By drawing on their research, it is possible to make some broad observations about the Tatmadaw's structure and organization, command and control mechanisms, and relations with the police force. Albeit based on incomplete data and informed guesswork, they can throw some light on the way the armed forces operate, and may help in understanding their conduct in Rakhine State over the past few years.

The Tatmadaw is a *fully functioning military* as the term is popularly understood. It has a clearly defined organization, a logical division of specialist responsibilities, a hierarchical rank structure, and an identifiable chain of command. It has a tested system of internal communications and a recognizable disciplinary code. Orders are given and usually carried out. Also, not without some stumbles, it appears to have successfully managed a number of major organizational changes over the past few decades as it has expanded and modernized, revised its doctrine, and responded to the changing demands of modern warfare.<sup>153</sup> The Tatmadaw can also be described as effective in that it is able to convert its diverse resources into combat power. In the classic formulation of Millett, Murray, and Watman, these include all assets important to military organizations, such as human and natural resources, funds, technical prowess,



industrial base, governmental structure, sociological characteristics, political capital, leadership qualities, and morale.<sup>154</sup>

The Tatmadaw has an extensive, multilayered network of training institutions designed not only to teach and develop specific military and technical skills, but also to implement a sophisticated ideological program. This program emphasizes the important place of the Tatmadaw in Myanmar's historical and political development, notably its role in the struggle for independence from the British colonialists and the critical part it has played in saving the country from a wide range of external and internal threats. The latter has included not only ethnic, ideological, and economic insurgents but also the Tatmadaw's civilian critics. This worldview envisages a continuing role for the armed forces at the center of Myanmar's national life, including a place in government, at all levels. Also, as seen in the speeches given by successive commanders-in-chief at annual Armed Forces Day parades, policies and attitudes are still affected by perceptions of diverse threats facing the country. The need for vigilance, strength, and discipline are constant themes.<sup>155</sup>

When Senior General Min Aung Hlaing stated in his 2017 Armed Forces Day speech that “military discipline is the lifeblood of the Tatmadaw,” he was repeating a familiar line.<sup>156</sup> Discipline in the armed forces is very strict and exercised ruthlessly. It is drummed into recruits that, when orders are given, they must be obeyed without question.<sup>157</sup> This is seen as key not only to good order but also to survival. As former commander-in-chief Senior General Than Shwe told officers graduating from the Defence Services Academy in 2013, “Being militarily well-disciplined is essential to win a war.”<sup>158</sup> Anyone defying authority can expect to be dealt with harshly. Trust issues are also important. Recruits undergo rigorous training programs that put great emphasis on loyalty to their comrades, their unit, their service arm, the Tatmadaw, and the country. They are taught that they have a special responsibility to the armed forces that transcends their ethnic, religious, geographical, and socioeconomic backgrounds, and any personal feelings or ties. Deserters, defectors, and informers are considered traitors and not looked upon kindly.<sup>159</sup> These lessons have been tested and proven effective over decades.

Several reasons have been put forward to explain how the Tatmadaw was able to sustain the longest military dictatorship in modern history (1962–2011).<sup>160</sup> Some relate specifically to its political and military strengths, others to the disunity and weaknesses of its opponents.<sup>161</sup> However, a key factor was its ability to renew itself through successive generations of military officers who, despite tensions and occasional crises, remained loyal and obedient, guaranteeing the Tatmadaw's cohesion and continued dominance of Myanmar life. Supported by an elaborate system of rewards and punishments, it was able to keep its focus on fundamental goals such as national unity, stability, and sovereignty. Despite their appearance on billboards erected around the country, these “three national causes” are not just propaganda slogans. They reflect deeply held beliefs and shared commitments. It was on this basis that in 2003 the Tatmadaw's leadership was able to launch a plan for the managed transition of the country from a military dictatorship to a quasi-democratic system of government, to be implemented over a decade or more.<sup>162</sup> In doing so, the high command demonstrated an ability to think strategically, formulate and maintain pursuit of long-term goals, and adapt as circumstances changed.

The Tatmadaw is widely recognized as a large and formidable force, and it is becoming more powerful. As Senior General Min Aung Hlaing stated in his Armed Forces Day speech on March 27, 2018, the military leadership firmly believes that “only when the Tatmadaw is strong will the Nation be strong.”<sup>163</sup> The commander-in-chief has made it clear on numerous occasions that he is keen to acquire more modern arms and equipment, and for the Tatmadaw

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***Deserters, defectors, and informers are considered traitors and not looked upon kindly.***

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to become more professional—what he calls “a standard army” capable of fighting conventional, multidimensional wars in a complex strategic environment.<sup>164</sup> Judging by the new weapons systems on display at annual Armed Forces Day parades, and those that are reputed to be held in reserve, such as North Korean–designed missiles, he seems to be well on his way to achieving this aim. There are still problems, as Anthony Davis and others have noted, but concerted efforts are being made to counter a range of deficiencies in terms of organization, doctrine, arms, and manpower in order to create a “world-class Tatmadaw.”<sup>165</sup>

All that said, a number of caveats need to be noted.

The Tatmadaw is not the enormous, all-powerful, well-oiled military machine advertised by its leaders and sometimes depicted in books and articles. Nor, however, is it the bloated, weak, and internally fractured organization described by some of its critics. Like all such institutions, it has its strengths and weaknesses. With regard to the latter, it is true that, in the past, the Tatmadaw has been commanded by some highly idiosyncratic personalities, Generals Ne Win, Saw Maung, and Than Shwe among them.<sup>166</sup> It has been hard for outsiders to fathom the rationale for certain decisions, which have seemed to defy reason or just plain common sense. Some observers have tried to account for unexpected or unexplained policies and practices by pointing to the reputedly superstitious nature of Myanmar officers, but this is too simplistic an explanation. On closer examination they have usually had a certain logic—provided that they are seen from the point of view of the officers concerned.<sup>167</sup> Also, from time to time, individual officers have been guilty of poor leadership, bad judgment, and a lack of technical skills. This is to be expected.

Like all large organizations, the Tatmadaw has had its internal tensions. The details have not always been available, but astute Myanmar watchers, using the techniques favored by Kremlinologists during the Cold War, have drawn attention to factionalism, professional jealousies, personality clashes, differences over promotions and appointments, and disputes over policies.<sup>168</sup> Some observers have claimed to be able to identify “hardliners” and “softliners” as well as “conservatives” and “progressives” in the senior officer corps.<sup>169</sup> Without inside information, it has been difficult to see if, and how, such factors have affected specific decisions, policies, and appointments. However, these sorts of problems have sometimes proven disastrous in capability terms, as evidenced by the fall of General Khin Nyunt and the purge of the entire military intelligence apparatus in 2004.<sup>170</sup> Officers and men who have fallen out of favor have been dealt with harshly.<sup>171</sup> Rivalries have also been reported between the three services, and between the Tatmadaw and the police force. However, the army’s dominance is well established, and these tensions appear to be less of a problem than in the past.<sup>172</sup>

On paper, the Tatmadaw gives the appearance (like the military government before 2011) of being a highly centralized, strictly controlled organization that radiates power from the commander-in-chief down to subordinate commands, and from Naypyidaw out to units in the field. Combat operations seem to be closely monitored by Tatmadaw headquarters. To a large extent this is the case, but other forces are also at work. Like most institutions in Myanmar, and indeed in Myanmar society itself, the Tatmadaw embraces a complex and often hidden network of personal and patron-client relationships. In the latter, senior officers (the *saya*, or teacher) provide support to more junior officers (*ta-bye*, or followers). This can be given in many forms. At its crudest, it can be help with a promotion or a comfortable posting. It can also mean protection or assistance in personal matters. This support is reciprocated, according to the subordinate’s means. Sometimes these relationships extend to an entire unit or command, the most senior officer being accorded the status of its parent. The corollary of an entourage system like this is that, as the *saya*’s fortunes rise and fall, so do those of his *ta-bye*, as seen in 2004.<sup>173</sup>

In other ways, too, the system has room for flexibility and individual influence. For example, during the 1990s, regional military commanders were allowed to exercise considerable initiative and power within their jurisdictions.<sup>174</sup> This has since been curbed by both formal and informal mechanisms, but there is still ample scope for special arrangements to be forged between local military commanders and the communities under their control.<sup>175</sup> As Mary Calahan has argued, there can also be quite a gap between formal command systems and practices in the field.<sup>176</sup> To take one example, corruption is officially prohibited. However, in practice it seems to be tolerated, albeit at differing levels, within certain bounds, and only as long as it does not offend the military hierarchy or compromise the effectiveness of the armed forces. Officers often use their positions of power to benefit themselves and their families, and soldiers routinely supplement their wages by demanding *tea money*, for example, by exacting tolls from truck drivers passing through military checkpoints. The local communities affected by such practices are forced to adjust and adopt various mechanisms to survive.<sup>177</sup>

Before 1988, Myanmar's armed forces had a reputation for toughness and commitment. They were widely respected for their ability to conduct extended combat operations in rugged terrain with only the most basic arms and equipment, few other resources, and no logistical support. Their determination to achieve their operational goals, despite high casualty rates, made them feared among their opponents, both inside and outside Myanmar.<sup>178</sup> Generally speaking, they were well led and corruption levels were low.<sup>179</sup> The Tatmadaw no longer enjoys that reputation. It is now better armed, equipped, and supported, and operational doctrines have been updated. According to some veterans, however, the self-reliant, battle-hardened volunteers of the old Tatmadaw have largely been replaced by poorly educated and self-interested "riff-raff," many of whom were recruited when the armed forces were being expanded and standards were lowered.<sup>180</sup> Also, the cease-fires put in place during and after the 1990s meant that a generation of soldiers lacked the combat experience of their predecessors.<sup>181</sup> At the lower levels, it is still difficult to attract and keep high-quality recruits, particularly as new opportunities open in other parts of Myanmar society.<sup>182</sup> The numbers are hard to determine, but even now there are children and press-ganged soldiers in the ranks.<sup>183</sup>

The most difficult challenge Senior General Min Aung Hlaing faces in creating modern, "standard" armed forces, however, is a cultural one. In terms of its professional conduct, in particular, there is a yawning gap between the rhetoric and the reality.

The Tatmadaw's official ethos is one of high principle. Its guiding ideals emphasize patriotism, professionalism, and exemplary personal conduct. As former commander-in-chief Senior General Than Shwe told the Defence Services Academy graduating class in 2013, "Leaders supervise their subordinates to be well-disciplined whereas these leaders always control themselves to obey military discipline as well as ethics of worldly affairs and obligations, behaving like good examples."<sup>184</sup> Speaking in the same vein, Senior General Min Aung Hlaing told the graduating class in December 2017,

You must be good officers who are reliable for the higher officials, given respect by the lower ranks, be trustworthy of the populace and cut out to be the well-rounded and calibrated officers to preserve the noble dignity of the Tatmadaw...Military discipline is the backbone of Tatmadaw as well as the soul. Our Tatmadaw must be the shining example on the rules and laws of the Tatmadaw, field disciplines and civil laws.<sup>185</sup>

These expectations are outlined in a military code taught to all members of the armed forces.<sup>186</sup> For example, after a rare admission of abuse by soldiers in northern Shan State in 2016, when five civilians were tortured and killed, Senior General Min Aung Hlaing told assembled troops after an exercise,

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***In terms of its professional conduct, in particular, there is a yawning gap between the rhetoric and the reality.***

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Local people have become victims in conflicts. All of you are to perform your duties in accord with the military code of conduct, especially when we cannot identify whether someone is a friend or enemy. We cannot designate someone as an enemy just because they are in a military zone.<sup>187</sup>

Yet, the Tatmadaw's abiding conviction that it has a special role to play in Myanmar's national affairs and has a unique insight into the country's needs has encouraged the view that its members are free to do whatever it takes to achieve their self-appointed task of safeguarding the Union (and protecting the armed forces). Also, as Anthony Davis has observed, for more than seventy years the armed forces have been fighting bitter civil wars that have proven professionally and morally deeply corrosive. Combat units in particular have succumbed to "a culture of brutality and impunity."<sup>188</sup>

These attitudes appear to be deeply ingrained in the armed forces and, to a lesser extent, the police force. They influence the conduct of the security forces in many ways, from their public behavior and the execution of minor duties to their part in major operations. They also have wider implications. Writing about the Tatmadaw's role in the gradual transition from a military dictatorship to a more democratic society in Myanmar, the ICG observed in 2014, "Preventing indiscriminate attacks and wilful killings of civilians in Myanmar will require a paradigm shift within the military that overturns longstanding practices and deep-seated norms."<sup>189</sup> After Aung San Suu Kyi took power in 2016, the international community's hopes rose, thinking that such a shift might be possible. However, despite the commander-in-chief's ambitious aims and claims, this has clearly not occurred.<sup>190</sup> With regard to the current Rohingya crisis and the question of international accountability, among the questions a tribunal would need to ask is the extent to which these "deep-seated norms" affected operations in Rakhine State, whether they were officially condoned, and, if so, at what level.

## The Security Forces in Rakhine State

Central to any questions about the command, control, and conduct of the security forces in Rakhine State over the past eighteen months is the actual units involved and the way in which they are organized and managed. This is not always clear but a number of broad observations can be made.

The Tatmadaw is commanded by Senior General Min Aung Hlaing, from Defence Services headquarters in Naypyidaw (formerly known as the War Office and sometimes still referred to by that name). Immediately below him are the deputy commander-in-chief and the chiefs of the three service arms, the army, navy, and air force. The deputy commander-in-chief (who is concurrently the commander-in-chief of the army) is a vice senior general; the other two service chiefs are typically four-star generals. Each of the three services has its own hierarchical command structure, although the army's is by far the largest and most complex. There are also a number of independent departments that stand outside the core tri-service organization, such as the Judge Advocate General, the Inspector General, and the Directorate of Procurement.

Under the commander-in-chief of the army, and within the General Staff Office, security in Rakhine State is the responsibility of Bureau of Special Operations 3, the chief of which is an army lieutenant general. Below him is Western Command, one of the country's fourteen regional military commands, each overseen by an army major general. Western Command is responsible for Rakhine State, and has its headquarters at Ahn, 128 kilometers (eighty miles) south of Sittwe. A regional operations command is also based at Sittwe and there are military operations commands at Taungoke, Kyauktaw, and Buthidaung.<sup>191</sup> All four are commanded by brigadier generals. Reuters quotes military and intelligence sources to the effect that Western Command usually has three infantry divisions assigned, each consisting of ten battalions, with

a formal fighting strength of four hundred men per battalion.<sup>192</sup> Such “garrison” battalions are usually led by lieutenant colonels. Each consists of four rifle companies and an “artillery” section. They also have organic medical, logistics, transportation, communications, engineering, and construction components. Some reinforcements may have been provided over the past year or so, but it is unlikely that any of the garrison battalions in Rakhine State are at full strength.

Even before the ARSA attacks in late August 2017, and the rapid escalation of tensions in Rakhine State, Western Command was assigned additional forces, including elements from two mobile light infantry divisions (LIDs).<sup>193</sup> Six battalions from the Sagaing-based 33 LID and eight battalions from the Meiktila-based 99 LID were reportedly airlifted to Sittwe and sent to the north of Rakhine State.<sup>194</sup> Myanmar’s ten LIDs (not to be confused with other light infantry units, also organized into battalions and divisions) are considered elite combat formations. They are usually based close to the main conflict zones in Kachin State, Shan State, and Karen State to facilitate their rapid deployment in emergencies. Commanded by brigadier generals, LIDs are counted as strategic assets and their movements are directed by Tatmadaw headquarters in Naypyidaw. It is possible that other units have been sent to Rakhine State to assist with communications, logistics, and other support functions. One well-informed observer estimated in December 2017 that, in all, more than forty army battalions had been put into the field to counter the ARSA threat and conduct area clearance operations.<sup>195</sup>

Over the past eighteen months, the news media have made occasional references to the Myanmar Army using “heavy weapons” against the Rohingyas.<sup>196</sup> Also, in early 2018, the army was accused by Bangladeshi authorities of deploying such weapons along the Myanmar-Bangladesh border. It is not clear what is meant by the term *heavy weapons* in these contexts. In normal military parlance, it would embrace arms ranging from heavy machine guns and recoilless rifles to mortars and howitzers. The Myanmar Army has such weapons in its inventory. As far as can be assessed, however, the weapons being referred to are those usually carried by the heavy weapons platoon of an infantry battalion, such as machine guns, 60 mm and 120 mm mortars, recoilless rifles, shoulder-fired rocket launchers, and other portable crew-served weapons.<sup>197</sup> The Bangladesh government has spoken about “artillery” deployed along the border, but this appears to be a reference to mortars.<sup>198</sup> Despite claims by some journalists and activists, there is no evidence that Myanmar’s security forces have used armored cars, tanks, or field artillery against Rohingya villages, or deployed them on the Bangladesh border, in the past eighteen months.<sup>199</sup>

Myanmar Air Force and Myanmar Navy assets have also been deployed in recent operations against the Rohingyas.

Military aircraft appear to have been assigned by the air force commander-in-chief in Naypyidaw, and probably placed under the commander of the Western Sector Operations Center at Sittwe. Transports (including Shaanxi Y-8, ATR 42, and Fokker F-27 aircraft) have airlifted troops to Rakhine State from other parts of the country. Mi-17 utility helicopters have been used for transport and surveillance. They also appear to have been employed as machine gun platforms, called in when troops requested close air support.<sup>200</sup> There have been several reports of helicopters spraying petrol on villages and dropping grenades on fleeing Rohingyas.<sup>201</sup> Attack helicopters have reportedly been seen flying over northern Rakhine State, lending support to accusations that air force gunships have strafed Rohingya villages, but these sightings have yet to be confirmed.<sup>202</sup> There have been a few reports of “airstrikes,” and one journalist has even referred to “airborne ordnance.”<sup>203</sup> It is not known precisely what these terms mean in the current context, but after helicopters fired on so-called armed Islamic militants, official spokesmen referred to



the incidents as airstrikes.<sup>204</sup> Claims have also been made of the air force's "dropping bombs on Rohingya villages."<sup>205</sup> However, aerial bombing by fixed-wing aircraft seems very unlikely.

The Myanmar Navy does not appear to have played a major role in Rakhine State over the past eighteen months, but a number of unconfirmed reports have circulated of naval vessels firing on Rohingya refugees fleeing by boat, on rivers, and at sea.<sup>206</sup> The navy also appears to have been charged with patrolling the maritime border between Myanmar and Bangladesh, and preventing any ARSA militants from Bangladesh infiltrating back into the country. This has led to a number of incidents in which men claiming to be innocent fishermen have been attacked and, in a few cases, killed.<sup>207</sup> Some may have been smugglers or narcotics traffickers, who have been active in the area for many years. All navy coastal patrol vessels, river boats, landing craft, and rigid hull inflatable boats operating in the area are presumably assigned or attached to Danyawaddy Regional Naval Command at Kyaukpyu, which is commanded by a navy commodore. There are also naval bases in Sittwe and Thandwe.

The Myanmar Police Force's assets in Rakhine State have played a significant part in operations against the Rohingyas and also need to be taken into account.

The Myanmar Police Force is a national organization under the minister for home affairs, an army lieutenant general appointed by the Tatmadaw commander-in-chief. The chief of police holds the rank of police major general. Police headquarters is in Naypyidaw, where it manages specialist departments such as the Border Guard Police, which was hastily formed after the dissolution of the 1,200-strong Border and Immigration Control Command (known by its Burmese initials as the NaSaKa) in 2013.<sup>208</sup> In Rakhine State, the Border Guard Police is commanded by a police brigadier general, and has been deployed mainly along the Myanmar-Bangladesh border. Police headquarters also manages the country's thirty-five or so security battalions, popularly known as the Lon Htein, or riot police.<sup>209</sup> Usually, six of these units are permanently based in Rakhine State, under the command of police lieutenant colonels.<sup>210</sup> They are managed by three regional supervisory offices, at Sittwe, Maungdaw, and Kyaukpyu. Overall control is exercised by a police brigadier at MPF Security Command 4 (SC 4) in Sittwe. Other security battalions may have been temporarily deployed to Rakhine State from other commands, as has happened in the past.<sup>211</sup>

In addition to these national police units, there are fifteen regional and state police forces, which account for about 60 percent of the MPF's total strength.<sup>212</sup> Except for the Naypyidaw Region force, based in the national capital, all these subordinate forces are organized in a similar fashion. In Rakhine State, the police force is commanded at division level by a police colonel. Below him are district police management offices commanded by police lieutenant colonels, and township police management offices commanded by police captains. At the lowest rung of the organizational ladder are local police stations and small outposts in selected villages.<sup>213</sup> Personnel numbers vary widely depending on a range of factors, but after the 2012–13 intercommunal unrest the Rakhine State Police Force numbered about 2,500 men and women.<sup>214</sup> This number has grown to almost three thousand, but they are spread very thinly across the state, the official population of which is more than 3.1 million.<sup>215</sup> Since October 2016, there have been several reports of recruitment programs to boost the number of non-Muslim Rakhine police members.<sup>216</sup> Usually, officers are only lightly armed and, although called out in emergencies, they are focused on civil policing duties. Security operations are left to the Border Guard Police, which receives basic training in small arms and military tactics, and the MPF's dedicated security battalions.<sup>217</sup>

It is not known what intelligence resources the Tatmadaw and MPF have been able to call on in Rakhine State over the past eighteen months, but they appear to have started from a low base. After the arrest of General Khin Nyunt in 2004, Myanmar's extensive and experienced military intelligence apparatus collapsed. Since then, the Tatmadaw has been struggling to recover.<sup>218</sup> The outbreak of sectarian violence in 2012 encouraged efforts to follow developments in Rakhine State more closely, but the impact of the purge of the old Directorate of Defence Services Intelligence is still being felt. Many useful sources in the Rohingya and Rakhine communities have been lost. This problem was compounded by the dissolution of the NaSaKa. Although in some ways deeply flawed, it was a powerful body able to draw on intelligence derived from the Tatmadaw, the MPF, the Customs Department, and the Immigration Department. Controlled by military intelligence officers, the NaSaKa commanded vast resources, particularly along the Myanmar-Bangladesh border, and was able to monitor the Muslim population closely.<sup>219</sup>

Before October 2016, the MPF's Special Branch and the Tatmadaw's Office of Military Security Affairs tried to keep a close eye on both the Rakhine and Rohingya communities, but with limited success.<sup>220</sup> Also, the Border Guard Police maintained a string of informers in Rohingya villages, to monitor developments along the Myanmar-Bangladesh border, but this does not appear to have been very effective.<sup>221</sup> As Jacques Leider has observed, "The fast rise and the surprise attacks of ARSA since October 2016 reflect an extraordinary intelligence failure on the side of the security forces."<sup>222</sup> However, to be fair, pro-government villagers and suspected informers were identified at an early stage and targeted for assassination by ARSA.<sup>223</sup> Many of those who were not killed fled, leaving the authorities blind to developments. Since 2016, the security forces have doubtless put more resources into intelligence collection and analysis. This may help account for the deployment of elements of the 33 LID and 99 LID shortly before the ARSA attacks of August 25, 2017. However, a vehicle ambush in January 2018 and three bombings in Sittwe in February suggest that gaps still exist that can be exploited by ARSA militants based in northern Rakhine State and Bangladesh.<sup>224</sup>

Although the Tatmadaw and the national police force are separate organizations, with different leaderships (albeit both answerable to the commander-in-chief of defense services) and different chains of command, they often work together closely. When states of emergency are declared, and when situations arise like that now found in Rakhine State, the MPF either informally or formally cedes operational control to the armed forces. In those circumstances, the activities of the police and the army are closely coordinated. They observe the same rules of engagement and broadly speaking follow the same operational procedures. In this regard, it is relevant that a large proportion of the police security battalions are former soldiers.<sup>225</sup> Indeed, many of the battalions formed in recent years appear to be the result of mass transfers from the Tatmadaw. Also, police security battalions are combat trained and equipped. Given these institutional links, their military backgrounds, and often shared experiences, it is not surprising that the attitudes and behavior of the soldiers and policemen deployed are quite similar. This seems to have been borne out by the testimony of Rohingya refugees in Bangladesh.

## Command, Control, and Conduct

At this stage, the question needs to be asked, who is responsible for the behavior of Myanmar's security forces when they are in the field? The answer might appear simple, but the situation is not as straightforward as it seems.

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***It is not known what intelligence resources the Tatmadaw and police force have been able to call on in Rakhine State.***

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Thanks to the 2008 constitution, the Tatmadaw enjoys almost complete autonomy in security matters. Aung San Suu Kyi and her government have no control over the operational deployments of the armed forces. The police force is nominally separate, being under the Ministry of Home Affairs, not the Defense Ministry, but the commander-in-chief appoints both ministers, who are serving military officers. (He also appoints the minister for border affairs.) Also, the constitution stipulates that the commander-in-chief is responsible for “all the armed forces in the Union,” hence his formal title of commander-in-chief of defense services.<sup>226</sup> He is not just the head of the Tatmadaw. This effectively places the police, local militias, and other paramilitary forces in the country under his control. The two most powerful intelligence agencies are also his to command, as they are found in the Home Affairs and Defense Ministries.<sup>227</sup> It was precisely to keep all elements of Myanmar’s coercive apparatus under the authority of the commander-in-chief, and the Tatmadaw, that the constitution was written the way it was, before any power was shared with an elected civilian administration.<sup>228</sup>

Had the initial ARSA attacks occurred before the NLD took power, the matter would most likely have been referred to Myanmar’s National Defense and Security Council (NDSC). As spelled out in the 2008 constitution, it consists of the president, the two vice presidents, the speakers of the two houses of parliament, the commander-in-chief, the deputy commander-in-chief, and the ministers for defense, home affairs, border affairs, and foreign affairs.<sup>229</sup> However, since taking office, Aung San Suu Kyi has refused to call the NDSC, or to ask the president to declare a state of emergency in Rakhine State, as occurred during the 2012 intercommunal riots.<sup>230</sup> This is probably because the council is dominated by current and former military officers (six out of its eleven members owe their first allegiance to Senior General Min Aung Hlaing, not Aung San Suu Kyi).<sup>231</sup> An NDSC meeting would give the commander-in-chief the opportunity effectively to take over the entire management of the Rohingya crisis, to issue orders in the council’s name, and to claim the endorsement of Aung San Suu Kyi, who attends the NDSC as Myanmar’s foreign minister. A security-based state of emergency (as opposed to a strictly civil one) would also deliver considerable power to the commander-in-chief.

In any case, standard protocols and practice mean that the commander-in-chief of defense services always carries ultimate responsibility for security force deployments.<sup>232</sup> Senior General Min Aung Hlaing is the Tatmadaw’s most senior officer, and orders issued in his name are passed down through military (and, in certain circumstances, police) hierarchies to subordinate commands. In the case of the Rohingya crisis, he has reportedly monitored developments closely and played an important role in their management. For example, from September 19 through September 21, 2017, he visited Rakhine State to receive briefings and to give orders directly to commanders on the ground.<sup>233</sup> While he was there, the commander-in-chief’s Facebook page noted that he had issued instructions “on getting timely information” (presumably a reference to intelligence collection) and on the “systematic deployment of security forces.” Although he apparently made a passing reference to “the law and disciplines,” he also “honored” the security forces’ “brilliant efforts to restore regional peace.”<sup>234</sup> It was an unambiguous and public endorsement of the brutal clearance operations carried out since October 2016.

In normal circumstances, the extent to which orders from the highest levels of Myanmar’s security apparatus spell out specific strategies and actual tactics to be employed (including the treatment of noncombatants) is unknown. Anecdotal evidence suggests that orders from the Tatmadaw high command are usually couched in broad terms. This is not unusual in large military organizations. However, in Myanmar it appears that in some cases they are deliberately left vague or given in code to disguise sensitive or unpalatable messages.<sup>235</sup> Orders may

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***It was an unambiguous and public endorsement of the brutal clearance operations carried out since October 2016.***

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also be accompanied by informal messages that are not recorded. At times, directives are sent from headquarters in Naypyidaw to units in the field, but usually operational command is passed to regional military commanders, or directly to LID commanders, who are left to decide on appropriate strategies, drawing on their training, experience, the resources available, and local circumstances. Military operations commands can also be tasked, and regional operational commands can help coordinate troop movements and logistics. At the end of the command chain, operational control is delegated to more junior officers, who are responsible for tactics and the execution of orders in the field.<sup>236</sup>

In practice, however, the exercise of military power, and in the recent case of the Rohingyas its gross misuse, tends to be more complicated.

There is no question that, many times in the past in different parts of Myanmar, members of the Tatmadaw, and to a lesser extent the police force, have acted harshly against both insurgents and noncombatants, without any suggestion of censure or punishment. As the UN was advised in 1996,

In this connection, the Special Rapporteur expresses his concern at the large number of cases of torture and other ill-treatment attributable to the Myanmar armed forces through its military, intelligence and other security personnel. Torture and other cruel, inhuman or degrading treatment or punishment are regularly employed against civilians living in insurgency areas, against porters serving in the army and in working sites where forced labour is practised. Torture and ill-treatment appear to be common means of punishment and of obtaining information or confessions, in particular from persons suspected of anti-government activities.<sup>237</sup>

Ten years later, another UN special rapporteur drew the same conclusions:

As noted...in previous reports, the above-mentioned serious human rights violations have been widespread and systematic, suggesting that they are not simply isolated acts of individual misconduct by middle- or low-ranking officers, but rather the result of a system under which individuals and groups have been allowed to break the law and violate human rights without being called to account.<sup>238</sup>

The Tatmadaw is not unique in allowing such behavior to occur. Even Western armed forces that pride themselves on their high standards of ethical conduct have been accused of serious abuses from time to time.<sup>239</sup> However, they have occurred so often in Myanmar, in so many places, and for so many years that they convey the strong impression of widely accepted practice and, if not high-level endorsement, then at least high-level acceptance.

Activist and victims groups have long argued that human rights violations in Myanmar are official policy, ordered by the Tatmadaw's high command. They claim that troops on operations are told to commit atrocities as deliberate acts of psychological warfare, to undermine the morale of the opposing forces, to intimidate noncombatants, or to force them to leave contested areas. This has given rise to the argument, put forward by groups such as Refugees International and the Women's League of Burma, that rape is being used as "a weapon of war." In 2014, a spokesman for President Thein Sein strongly denied that this was the case, but such groups are convinced that "their widespread and systematic nature indicates a structural pattern."<sup>240</sup> Others have claimed that "rape incidents in ethnic areas are higher than anywhere else in Burma because they are part of the regime's strategy to punish the armed resistance groups or used as a tool to repress various peoples in the larger agenda of ethnic cleansing."<sup>241</sup> Some soldiers have reportedly told local villagers that they were ordered to rape women.<sup>242</sup> It has even been claimed that ethnic Burman soldiers have been encouraged forcibly to impregnate the women of minority races as part of a deliberate, long-term Burmanization program, to change the racial balance in Myanmar.<sup>243</sup>

It is not difficult to find evidence of atrocities being committed by soldiers and policemen in Myanmar, but it is very difficult to find hard evidence of their specifically being ordered to do so.<sup>244</sup> This is not surprising in the circumstances, but it does argue for caution in claiming that systematic state terror—what the British in the 1920s called a deliberate policy of “frightfulness”—has been and is still being used by the military high command to achieve strategic goals, whether these be to destroy the morale of ethnic insurgents, clear areas of potential combatants, or simply cow local communities into submission. Certainly, that appears to be the implicit thinking behind the harsh four-cuts strategy, as demonstrated in many parts of Myanmar over decades. Even if specific orders were not given, the tolerance of atrocities and the consistent failure of the military system to punish those guilty of such crimes seem to have been enough to let troops know that they are free to abuse civilians whenever they are sent on operations.

That is not to rule out the possibility that specific orders to commit abuses have been issued from lower down the military chain of command. Indeed, several researchers have established that soldiers in the field have often been ordered by their officers, directly or indirectly, to ignore humanitarian law and the Tatmadaw’s code of conduct.<sup>245</sup> In the recent case of the Rohingyas, one foreign observer reported,

My colleagues and I at Fortify Rights interviewed more than 180 eyewitnesses and survivors at the time, and survivor after survivor described atrocities. What struck us the most was the systematic nature of it all. Soldiers from different battalions committed similar violations in a similar fashion across disparate geographic locations. These were not spontaneous outbursts of violence or random crimes by rogue soldiers; it was a systematic attack on civilians.<sup>246</sup>

An Australian journalist who interviewed a number of refugees in Bangladesh in late 2017 reported that attacks against Rohingya villagers seemed to follow a pattern, each stage (including the separation of males and females, the murder of men, boys, and babies, the molestation and rape of women and young girls, and the destruction of buildings) appearing to be in response to orders given over the radio or mobile phone.<sup>247</sup>

The accusation that the recent abuses against the Rohingyas have been part of a coordinated plan has been given support by the special representative of the UN secretary-general for sexual violence in conflict, Pamela Patten. After conducting a series of interviews in late 2017 with Rohingya women in refugee camps in Bangladesh, she reported “a pattern of widespread atrocities.” She continued, “A clear picture is emerging of the alleged perpetrators of these atrocities and their modus operandi. Sexual violence is allegedly being commanded, orchestrated and perpetrated by the Armed Forces of Myanmar, known as the Tatmadaw.”<sup>248</sup> Members of the Border Guard Police and Rakhine militias were also implicated in these abuses. Patten was also reported as saying that “rape is an act and a weapon of genocide.”<sup>249</sup> A similar finding was made by the Kaladan Press Network, a pro-Rohingya news organization that conducted a series of interviews with female Rohingya refugees. It subsequently issued a report stating that “rape was part of an overall strategy to mete out savage punishment to women and girls—apparently for their very identity as Rohingya.”<sup>250</sup> The report also suggested that a directive had been issued for soldiers to destroy the women’s means of reproduction, but this has not been confirmed.

Amnesty International summed up the feelings of many international observers in a report dated October 18, 2017, when it referred to an “orchestrated campaign” of violence against the Rohingyas that was “systematic, organised and ruthless.”<sup>251</sup> In April 2018, the UN secretary-general included Myanmar in his annual list of parties that committed sexual violence in armed conflict. Significantly, his report stated that, with regard to the security forces in Rakhine State, “The widespread threat and use of sexual violence was integral to their strategy,

humiliating, terrorizing and collectively punishing the Rohingya community and serving as a calculated tool to force them to leave their homelands and prevent their return.<sup>252</sup> According to the report, Rohingya women and girls, characterized as “custodians and propagators of ethnic identity,” were targeted for their ethnicity and gender.<sup>253</sup> These accusations have been rejected by Senior General Min Aung Hlaing, who stated on his personal Facebook page that “no sexual violence happened in the history of Myanmar Tatmadaw.”<sup>254</sup>

More broadly, it appears that abuses are tolerated by many officers, both commissioned and noncommissioned, who are prepared to permit their troops considerable license when fighting people considered Others, and thus lesser human beings. Ethnic groups such as the Karen, Kachin, and Chin, for example, have long been characterized by predominantly ethnic Burman commentators as uncivilized jungle dwellers, illiterate savages guilty of all sorts of dreadful acts against wounded and captured Tatmadaw personnel.<sup>255</sup> Because many of these people were Christians, they were not considered true Myanmarers, who—in the minds of many soldiers—were always Buddhist.<sup>256</sup> Also, for decades, anyone opposed to the military government, whether they were ethnic insurgents, communist rebels, or student protesters, were portrayed by the military regime as “destructionists,” enemies of the Union that the Tatmadaw had a special responsibility to protect. In all these ways, the regime’s opponents were dehumanized. This relieved the troops sent against them of the burden of observing the “normal” rules of war, or even of civilized behavior.

In addition, Myanmar’s security forces appear to share the prejudice felt by many (possibly even most) people in the country against Indians and Muslims. Such feelings are rooted in Myanmar’s history, dating back to the British era, when hundreds of thousands of workers from the subcontinent were recruited by the colonial administration to help run the country.<sup>257</sup> They constituted the bulk of the army and police force, both of which were used to quell local economic, social, and political unrest. Antagonism to Indians became part of the nationalist narrative, which has been revived in recent years by extremist Buddhist monks (*pongyis*). Claiming the religious respectability and moral authority bestowed on them by their yellow robes, they have sought to arouse popular opposition to Muslims in Myanmar, who have been described as “crude and savage,” bullies and rapists, “wolves and jackals.”<sup>258</sup> The extremist Buddhist monk U Wirathu, dubbed “the Buddhist bin Laden,” has claimed that the Muslims have a “master plan” to turn Myanmar into an Islamic state.<sup>259</sup> The partial lifting of authoritarian controls in 2011 and the availability of modern communications have helped extremists and others spread their messages of hate.<sup>260</sup>

Particularly virulent feelings are reserved for the Rohingyas, who are considered illegal “Bengali” immigrants, not entitled to the same rights as “genuine” Myanmarers. It is not uncommon for them to be referred to in public as leeches, fleas, or dogs.<sup>261</sup> For example, just after the October 2016 ARSA attacks the *Global New Light of Myanmar* ran an op-ed about terrorism that read, in part,

Likewise, our country is also facing the danger of the human fleas. A flea cannot make a whirl of dust, but they are trying to combine with each other to amass their force. And they are trying to disintegrate our unity and strength in many ways, by waging armed attacks, spreading rumours and performing subversive activities. We should not underestimate this enemy. At such a time when the country is moving toward a federal democratic nation, with destructive elements in all surroundings, we need to constantly be wary of the dangers of detestable human fleas.<sup>262</sup>

Given this barely concealed attack against all Rohingyas in a state-run newspaper, it is not surprising that many officials, soldiers, and policemen view them as dangerous, even subhuman. One senior Myanmar diplomat is on the public record calling them “ugly as ogres” because of

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***It appears that abuses are tolerated by many officers, both commissioned and noncommissioned, who are prepared to permit their troops considerable license.***

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their “dark brown” complexions and other racial features.<sup>263</sup> A defense commonly put forward to counter charges of sexual assault against Rohingya women is that they are “too dirty” to rape.<sup>264</sup> U Wirathu has said that the rape of Rohingya women was out of the question because “their bodies are too disgusting.”<sup>265</sup>

In devoutly Buddhist Myanmar, the Tatmadaw leadership has always been alive to the power of religion, and religious leaders, to influence the thinking of their troops. For example, during the 2007 Saffron Revolution, some officers were concerned that soldiers might refuse to obey orders to shoot *pongyis* demonstrating on the streets.<sup>266</sup> This prompted a propaganda campaign to paint protesting members of the *sangha* (monkhood) as “bogus monks.” They were described as unemployed layabouts without a real religious vocation, supported by exiled pro-democracy activists. They were thus not entitled to the reverence usually accorded to monks in Myanmar.<sup>267</sup> In October 2017, during the second round of operations in Rakhine State, the Tatmadaw invited one of the country’s most revered monks, Sitagu Sayadaw, to address a gathering of military officers.<sup>268</sup> He told a parable that, to many, implied that non-Buddhists were not really human beings, so killing them was not a sin. Another interpretation of his remarks was that it was permitted to kill in defense of Buddhism.<sup>269</sup> Either way, the message to forces operating in Rakhine State was clear: the Rohingyas were fair game.

From time to time, other reasons have been put forward to help account for the Tatmadaw’s long record of human rights abuses. For example, based on a series of wide-ranging interviews with former soldiers, Christina Fink believes that, after 1988, brutality within the Tatmadaw increased. She has suggested that this was, in part at least, the result of economic problems. Officers under pressure to achieve unrealistic goals with inadequate resources took out their frustrations on the troops. These officers knew that they were unlikely to be punished for mistreating soldiers or civilians. They were punished “only for disloyalty to their higher-ups.”<sup>270</sup> Writing in 2009, Fink felt that this led to a cycle of violence, particularly in remote areas of the country, officers treating their men harshly and soldiers taking out their resentment and aggression on innocent civilians. The Tatmadaw has changed in a number of ways since then, and is now much better resourced, but pay and conditions for men in the field do not appear to have improved greatly. Officers still face pressures to achieve difficult goals. Orders from a superior cannot be questioned. It is easy to see how such patterns of behavior could survive.

The lowering of recruitment standards, particularly during the 1990s when the Tatmadaw almost doubled in size, has been put forward as a major factor in the perpetration of human rights violations. One old soldier who witnessed many abuses has stated that “the lower ranks, most of them are illiterate and uneducated...and they’re brainwashed into thinking that all dissidents are enemies of the army, of the state, of the people.”<sup>271</sup> These “crazy soldiers” have been blamed for many of the atrocities reported in recent years, but they have not been the only ones responsible.<sup>272</sup> The abuse of women inside military camps, for example, could not occur without the knowledge of at least some officers. Indeed, it is noteworthy the number of times that officers have been identified as being among the offenders. Another reason offered to account for the frequency of abuses has been the practice of deploying units such as the mobile LIDs to combat zones where their members have no ties and do not speak the local language, and are therefore unlikely to feel any sympathy toward the local population. This has reportedly contributed to the harsh treatment of Rohingyas in Rakhine State over the past eighteen months.<sup>273</sup>

All this is of course in addition to poor leadership, poor communications, lax discipline, and such human failings as cruelty, anger, fear, sadism, bigotry, lust, and greed.



In addition to civil laws, the legislation governing the performance and conduct of the Tatmadaw are the Defence Services Act (1959) as amended, and Defence Services Rules (1960). Both expressly forbid the conduct of serious crimes such as murder and the ill-treatment of civilians. In practice, however, such offenses are rarely investigated and punished. To the contrary, they are usually covered up. In any case, such issues are almost always dealt with by military tribunals rather than in a civil court, as permitted by the 2008 constitution.<sup>274</sup> This permits the Tatmadaw to control the outcome of proceedings. Occasionally, a few junior officers or other ranks are sacrificed on the altar of public opinion or for political purposes. In January 2018, for example, six soldiers were sentenced to ten years in prison for killing three civilians in Kachin State, and the Tatmadaw has admitted that a few of its men were involved in one massacre in Rakhine State.<sup>275</sup> However, such examples are rare. These cases seem to be more public relations exercises, or reluctant responses to irrefutable evidence of abuses, than signs of a more open approach to crimes by service personnel.

It is relevant too that for many years the police force in Rakhine State was “overwhelmingly made up of Rakhine Buddhists.”<sup>276</sup> This may still be the case. Although such a policy may have helped the MPP’s understanding and management of local issues, it also exacerbated them. Over and above any racial or religious prejudices they may have, many ethnic Rakhine see the Rohingyas as a threat to their society, their culture, and their livelihoods. For example, as the state has grown, so has the competition for land and other resources. The Rohingyas have been accused of having more children than members of the Buddhist population, thus posing a long-term threat to the integrity of Rakhine State itself.<sup>277</sup> Rakhines have also been jealous of the foreign aid provided to the Rohingyas, which they feel should be shared more equitably, particularly given the historical neglect of Rakhine State by Myanmar’s central government. Such feelings have contributed to the consistently high levels of discrimination, persecution, and civil unrest seen over the years. Also, the security forces have recruited local civilians into militias, and given vigilante groups wide license to vent their hatred of the Rohingyas.<sup>278</sup>

All these factors would help explain the atrocities perpetrated against the Rohingya population over the past eighteen months, regardless of any specific orders that may or may not have come from higher up the military or police command chains. The actions of the men on the ground must be judged on their own merits, bearing in mind Primo Levi’s cautionary words,

We must remember that these faithful followers, among them the diligent executors of inhuman orders, were not born torturers, were not (with a few exceptions) monsters: they were ordinary men. Monsters exist, but they are too few in number to be truly dangerous. More dangerous are the common men, the functionaries ready to believe and to act without asking questions.<sup>279</sup>

Even so, serious questions remain over what appears to have been a concerted effort to permanently change the ethnic balance in northern Rakhine State. The brutal methods employed by the security forces would be well known in Naypyidaw, even if they were not being publicized in the international news media. If the commander-in-chief, Tatmadaw headquarters, the Western Region commander, LID commanders, and MPP headquarters gave strict orders that atrocities were not to occur, then there would most likely be far fewer cases reported. From all the evidence emerging from the refugee camps, however, such orders have never been given. On the contrary, there seems to have been a deliberate strategy on the part of the Tatmadaw and police force, at all levels, to conduct operations in Rakhine State in a way that would strike terror into the local Rohingya population, with the express purpose of driving it out of the country.

## Everyone Loses

It is always difficult to know exactly what is happening in Myanmar, particularly when eyewitness accounts and reliable reports are dismissed by the Naypyidaw government as “misinformation” and “fake news,” when false images of atrocities are posted on the internet alongside genuine ones, and when passion and propaganda compete for attention in the international news media with informed and objective analysis.<sup>280</sup> Aung San Suu Kyi has been guilty either of naïve self-delusion or deliberate obfuscation, but she was not being entirely disingenuous in September 2017 when she referred to the “huge iceberg of misinformation” being broadcast about the situation in Rakhine State.<sup>281</sup> That said, it is clear that with respect to the latest Rohingya crisis, developments in Myanmar following the October 2016 ARSA attacks can only be described as a disaster for all parties concerned that will have far-reaching consequences.

The most obvious losers are the Rohingyas. Possibly thousands have been killed and up to three-quarters of a million—a good proportion of Myanmar’s resident Rohingya population—are now in squalid refugee camps in Bangladesh, where, as Greg Constantine writes, they are “unwanted and unwelcome.”<sup>282</sup> International aid agencies are finding it difficult to cope with the enormous demands being made upon them. The UN has already warned of the potentially devastating effects of the monsoon rains.<sup>283</sup> The Myanmar and Bangladesh governments have reportedly agreed on the broad terms of repatriation for those displaced, but there are major obstacles blocking their return.<sup>284</sup> Quite apart from the difficulty of meeting the Myanmar government’s stringent citizenship and residence requirements, the Rohingyas face an uncertain future. Despite government assurances that the refugees will be permitted to return to their villages, this is unlikely. They also face the prospect of continuing persecution from both national and state authorities, the security forces, and local Rakhine Buddhist communities. There are no signs that the Rohingyas will be granted the legal recognition and equal civil rights they crave.

The developments in Rakhine State over the past eighteen months have been a political and personal disaster for Aung San Suu Kyi. Since the security forces launched their “area clearance operations” in October 2016, she has been under intense pressure to speak out for the Muslim population and against human rights abuses. Despite her government’s failure to meet unrealistically high expectations, she remains well liked by most of the Myanmar population, which has little affection for the Rohingyas.<sup>285</sup> Also, a few foreign supporters have leapt to her defense, claiming that she has been “hung out to dry” by the international community, which should be focusing their criticisms on the Tatmadaw.<sup>286</sup> However, most foreign commentators have been scathing in their criticisms of Aung San Suu Kyi’s refusal to use her leadership position and enormous moral authority to act more decisively, her clumsy attempts to deny the atrocities, and her efforts to shift the blame for the humanitarian nightmare onto others.<sup>287</sup> Her much-anticipated public statement on the Rohingyas, given in Naypyidaw on September 19, 2017, was a major disappointment.<sup>288</sup> Calls have even been made for her to be stripped of the Nobel Peace Prize.<sup>289</sup>

Many outside Myanmar, either publicly or privately, appear to share the view of Bill Richardson, who stated bluntly on February 15, 2018,

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***Developments in Myanmar following the October 2016 ARSA attacks can only be described as a disaster for all parties concerned that will have far-reaching consequences.***

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And yet Aung San Suu Kyi, Myanmar's de facto head of state, has shown neither an understanding of the seriousness of the challenges her country faces, nor the political will to meaningfully address the Rakhine crisis. While Aung San Suu Kyi does not have control of the military—and in fact needs their support to pursue constitutional reform and progress in the ethnic peace process (which is viewed as largely distinct from the conflict in Rakhine)—she has failed to show moral leadership on Rakhine and appears unwilling to listen to frank advice. Moreover, Aung San Suu Kyi's government lacks both the will and the capacity to faithfully implement the recommendations of the Kofi Annan-led Rakhine Advisory Commission, which provide a blueprint for overcoming the host of challenges facing Rakhine State.<sup>290</sup>

Richardson doubtless had his reasons for distancing himself from his former position on Aung San Suu Kyi's Advisory Board for the Committee for Implementation of the Recommendations on Rakhine State.<sup>291</sup> However, he dared to say what many senior foreign officials had been thinking in private, namely, that although Aung San Suu Kyi is essential for a satisfactory resolution of the Rohingya crisis, she is also part of the problem.<sup>292</sup>

As Aung San Suu Kyi's international reputation has collapsed, so has that of her government. Although it claims to consult regularly with the generals, at least at the working level, it appears to have no control over the country's armed forces, which, as laid out in the 2008 constitution, act completely independently in security matters. The NLD also seems to be afraid of arousing Myanmar's deep-seated anti-Muslim prejudices and alienating the party's core constituency of ethnic Burman Buddhists.<sup>293</sup> This has left the government looking weak and ineffectual, if not actually complicit in human rights abuses. The August 2017 report prepared by former UN Secretary-General Kofi Annan, on which the government still seems to pin its hopes for an answer to the situation in Rakhine, faces enormous obstacles.<sup>294</sup> Efforts are being made to retrieve the initiative by looking again at its recommendations, by taking the lead in negotiations with the Bangladesh government over the repatriation of refugees, and by securing an agreement with the UN to help with this process. However, formidable problems remain.

The Tatmadaw seems to have the whip hand. However, for it too, developments over the past eighteen months can be seen as a major setback. Around 2011, the commander-in-chief embarked on a program to make the armed forces more modern, more professional, and more respected internationally. Since 2015, he has undertaken a number of overseas visits to speak to his foreign counterparts, inspect arms factories, and spread the message that Myanmar's armed forces were changing as the country democratized.<sup>295</sup> Yet the operations in Rakhine State have made that message much harder to sell. A recent joint exercise may have been intended "to showcase to an international as well as domestic audience the armed forces' growing capabilities and ambitions."<sup>296</sup> But it can also be interpreted as a sign of the Tatmadaw's sensitivity to criticism and possibly even its renewed fears of foreign intervention.<sup>297</sup> Myanmar's embattled ethnic communities were never persuaded that the high command's mindset had really changed, a view now confirmed by the brutal strategy adopted in Rakhine State. Repeated claims that its operations have been conducted in accordance with international humanitarian law and the rules of war are risible.<sup>298</sup>

The Tatmadaw's reputation inside Myanmar has not suffered greatly. Most of the population supports strong action against the Rohingyas and is skeptical about the accusations made in the foreign news media.<sup>299</sup> However, the standing of the armed forces in international circles has fallen dramatically. There is now little chance that Western countries will relax their restrictions on bilateral defense engagement. Indeed, many of the tentative links that had been forged since 2011 have been broken. In October 2017, for example, the United States canceled military-to-military contacts and announced restrictions on visits to the United States by Myanmar military personnel. The UK and EU have also suspended bilateral defense exchanges. The

loss of these military-military contacts is a significant blow to the Tatmadaw, which is keen to enhance its reputation and learn about foreign military policies and practices. Such contacts would have also given its officers exposure to different ways of thinking and opportunities to learn about international norms of behavior.<sup>300</sup> Any hopes that the Tatmadaw might have entertained to acquire advanced Western arms and equipment can now be forgotten.<sup>301</sup>

The events of the past year have also been a disaster for Myanmar's civil society. As the International Crisis Group has pointed out, the last intercommunal riots were in 2013, but religious tensions have remained high.<sup>302</sup> Occasional calls have been heard within Myanmar for a peaceful solution to the Rohingya problem, but recent developments in Rakhine State have strengthened the hand of Buddhist extremists, such as U Wirathu, who have been waiting for an opportunity to reassert themselves. Even if the Tatmadaw's predictions of attacks in Myanmar's population centers by so-called ARSA extremist Bengali terrorists proves incorrect, further communal violence is a distinct possibility.<sup>303</sup> The potential also exists for the international community's harsh criticism of Myanmar over the Rohingya issue, even to the point of considering the resumption of economic and other sanctions, to alienate the Myanmar population and drive a wedge between them and foreign investors. Already, the NLD government is giving consideration to tightening the laws and regulations relating to the presence and activities of foreigners in Myanmar.<sup>304</sup>

In other ways too, the Rohingya crisis is a disaster for Myanmar. Because the government's gaze and resources are focused on Rakhine State, less attention is being paid to other parts of the country and other pressing issues. Although a nationwide peace agreement with more than a dozen armed ethnic groups was trumpeted as Aung San Suu Kyi's highest domestic priority, it now seems even more out of reach than before.<sup>305</sup> Renewed fighting has broken out in the north of the country. To the formidable obstacles that always existed must be added an increased skepticism that Aung San Suu Kyi can deliver any meaningful outcomes, and that the Tatmadaw will ever contemplate a genuinely plural society. Also, given the demands made by the situation in Rakhine State, fewer funds will be available to fill gaping holes in the budget, in critical areas such as health and education. The Rohingya crisis and declining international confidence in Aung San Suu Kyi initially had a negative impact on foreign direct investment and Myanmar's economic growth. Both now seem to be recovering, but slowly.<sup>306</sup> Over the longer term, the crisis must count as a setback for Myanmar's planned transition from authoritarian rule to a more democratic system of government.

When it announced its intention to launch a violent campaign on behalf of the Rohingyas, ARSA played into the hands of conservative elements in the security forces. Despite the lack of hard evidence that it supports a transnational Islamist agenda, ARSA was immediately cast as a member of an international terrorist conspiracy.<sup>307</sup> This made it a clearly identifiable threat to Myanmar's sovereignty, unity, and stability, the three national causes enshrined in the 2008 constitution and for decades the armed forces' well-publicized *raison d'être*. As former US ambassador to Myanmar Derek Mitchell has pointed out, the Tatmadaw's roles as Myanmar's savior and protector of the country's majority Buddhist culture have been confirmed.<sup>308</sup> The Rohingya crisis has pushed the generals to the forefront of government decision making, where their hard line is likely to remain the default policy position. The armed forces' claim to a central place in national political life has been reaffirmed. By the same token, the standing and influence of Aung San Suu Kyi and her quasi-civilian government have been diminished.

The fall of Aung San Suu Kyi has international implications. As the *New York Times* stated in May 2016, "Her halo has been a central factor in Myanmar's reacceptance into the world

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***The fall of Aung San Suu Kyi has international implications.***

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community after decades of ostracism.”<sup>309</sup> Yet, as the ICG wrote in December 2017, “The huge reservoir of international goodwill for Myanmar and for Suu Kyi personally that existed prior to the crisis is rapidly drying up.”<sup>310</sup> Myanmar has lost considerable ground in foreign policy terms. Governments of all colors have expressed grave concern over the Rohingya crisis and its international implications.<sup>311</sup> A number have taken punitive actions and more are being considered. There are growing calls in the United States, the UK, the EU, and elsewhere for the reimposition of sanctions of various kinds. Most members of the Association of Southeast Asian Nations (ASEAN) have refrained from commenting publicly on Myanmar’s internal affairs, but privately senior officials have warned that the crisis has serious implications for regional stability, security, and economic development.<sup>312</sup> Indonesia sent its foreign minister to Naypyidaw to speak directly to Aung San Suu Kyi. She has reportedly discussed the issue with regional leaders at ASEAN meetings.<sup>313</sup>

The UN has been particularly critical of Naypyidaw’s handling of the crisis, including the government’s unfounded accusation in August 2017 that foreign nongovernmental organizations were assisting ARSA.<sup>314</sup> As the UN Human Rights Council has stated, apropos of Aung San Suu Kyi’s refusal to accept any responsibility for the plight of the Rohingyas, “This complete denial of reality is doing great damage to the international standing of a Government which, until recently, benefited from immense good will.”<sup>315</sup> Resolutions critical of Myanmar have been reintroduced into the UN General Assembly. For the UN secretary-general, the Rohingyas were “an undeniable factor in regional destabilization” that demanded a “holistic” solution.<sup>316</sup> Other observers worry that the strong criticisms being made by the UN and Western governments are providing opportunities for China and Russia to recover any influence they may have lost in 2015, when the reputedly pro-Western Aung San Suu Kyi took power, and to consolidate their positions as major players in Myanmar’s foreign relations.<sup>317</sup> Naypyidaw is already beholden to Beijing and Moscow for their protection in the Security Council. If Western investors pull back, others will take their place.

Given current attitudes and policies in Myanmar, the Rohingya tragedy could drag on for years. ARSA will not achieve any of its aims, but Muslim anger both within Myanmar and elsewhere will remain. Religious and social divisions in the country will harden. Hundreds of thousands of refugees will be left in camps in Bangladesh. Their repatriation will remain a formal goal, but will face enormous problems. The ethnic mosaic that was northern Rakhine State will change character, but is unlikely to be free from tensions. The Tatmadaw will consolidate its domestic political gains, and Aung San Suu Kyi and her government will find it even harder to implement much-needed reforms. An end to the country’s long-running civil wars seems like an impossible dream. The democratic transition process in Myanmar, such as it was, has been set back years, possibly decades. Myanmar’s reputation will continue to suffer as Naypyidaw hunkers down in the face of international criticism and powerful opportunists like China seek to take advantage of its plight. In these circumstances, no one in Myanmar wins. Everyone loses.

## Conclusion

Myanmar has always posed very difficult challenges for the international community. For decades, successive governments in Rangoon and Naypyidaw have strongly resisted external pressures. Between 1988 and 2011, for example, public criticism, economic sanctions, and other punitive measures failed to change the core beliefs and key policies of the country’s military rulers. Indeed, such measures seemed only to antagonize the generals, encourage a bunker

mentality, and make those in power even more resistant to change.<sup>318</sup> At times, policies of dialogue and engagement seemed to hold out greater promise, and some progress was made, but more often than not Naypyidaw took whatever inducements were on offer and continued to pursue its own agenda. The controlled democratization process that was launched in 2010, for example, faithfully follows a seven-step transition plan that was conceived by the Tatmadaw leadership fifteen years ago.<sup>319</sup>

Despite the advent of a quasi-democratic administration under Aung San Suu Kyi in 2016, there are no signs that this pattern will change in the foreseeable future. The pro-military constitution severely limits Aung San Suu Kyi's freedom of action in key areas, notably those relating to Myanmar's security. She also faces other constraints. However, she has demonstrated that, like the military officers who preceded her and still exercise influence over her government, she holds firmly to the nationalist position that Myanmar and Myanmar alone will decide what is best for the country and its people, according to its perceived interests and priorities at the time. She clearly does not feel an obligation to conform to her public image as a human rights icon, or to repay the debt that many in the international community seem to feel they are owed for her rehabilitation and subsequent elevation to the de facto leadership of the country.

With regard to the Rohingyas in particular, domestic factors will always be of paramount concern to Myanmar's civilian and military leaders, and at present there is no pressure from within the country to soften their uncompromising approach. Indeed, as the International Crisis Group has pointed out, there is currently a rare consensus between Aung San Suu Kyi, her government, the armed forces leadership, and the wider population that the Rohingya crisis continues to demand a very firm and consistent policy response. Given the Tatmadaw's strength, and the government's weakness, the popular mood can only harden Naypyidaw's determination to decide its own agenda and timetable for any changes, regardless of external pressures. This position may come at a high price but, as so often in the past, it will be paid if that is seen to be the cost of preserving Myanmar's stability, sovereignty, and independence.<sup>320</sup>

The international community can take a number of practical measures now to assist the refugees in Bangladesh and document the abuses perpetrated against them. It is possible that, at some stage, the Myanmar authorities may permit the delivery of adequate humanitarian assistance to those communities still suffering in Rakhine State. Several largely symbolic steps can also be taken to bring home to the Myanmar government, armed forces, and people the impact of recent developments on majority world opinion. However, unless there are significant shifts in attitude inside Myanmar, at all levels, a fair, durable, and long-term solution to the Rohingya crisis, let alone a formal, legal accounting for the events of the past eighteen months, will remain a distant prospect.

## Notes

1. An early version of this report was prepared for the Griffith Asia Institute in February 2018. It also draws on three short articles published in *The Interpreter*, the blog of the Sydney-based Lowy Institute for International Policy, identified in the notes. The revised and expanded version of the report follows discussions with a number of area and subject experts based in Australia, Myanmar, Switzerland, the UK, and the United States. For various reasons, these interlocutors did not wish to be named, but I owe them all my thanks. Any errors of commission or omission are mine alone.
2. Andrew Selth, "More name games in Burma/Myanmar," *The Interpreter*, August 10, 2016, [www.lowyinstitute.org/the-interpreter/more-name-games-burmayanmar](http://www.lowyinstitute.org/the-interpreter/more-name-games-burmayanmar).
3. The Carter Center, *Observing Myanmar's 2015 General Elections* (Atlanta, GA: Carter Center, 2016), [www.cartercenter.org/resources/pdfs/news/peace\\_publications/election\\_reports/myanmar-2015-final.pdf](http://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/myanmar-2015-final.pdf).
4. BBC News, "Myanmar's 2015 landmark elections explained," December 3, 2015, [www.bbc.com/news/world-asia-33547036](http://www.bbc.com/news/world-asia-33547036).
5. BBC News, "Myanmar election: Aung San Suu Kyi will be 'above president,'" November 5, 2015, [www.bbc.com/news/av/world-asia-34729691/myanmar-election-aung-san-suu-kyi-will-be-above-president](http://www.bbc.com/news/av/world-asia-34729691/myanmar-election-aung-san-suu-kyi-will-be-above-president).
6. United Nations Office of the High Commissioner for Human Rights (OHCHR), "End of mission statement by Special Rapporteur on the situation of human rights in Myanmar," February 1, 2018, [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22619&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22619&LangID=E).
7. A small number of Hindus in Rakhine State are usually counted as Rohingyas. A predominantly Muslim ethnic group known as the Kamans, also found in Rakhine State, is recognized by Naypyidaw as one of the country's national races.
8. See, for example, Laetitia van den Assum, "Myanmar—time for a legal reckoning," *Nikkei Asian Review*, April 19, 2018, <https://asia.nikkei.com/Opinion/Myanmar-time-for-a-legal-reckoning2>.
9. "Myanmar military exonerates itself in report on atrocities against Rohingya," *The Guardian*, November 14, 2017, [www.theguardian.com/world/2017/nov/14/myanmar-military-exonerates-itself-in-report-on-atrocities-against-rohingya](http://www.theguardian.com/world/2017/nov/14/myanmar-military-exonerates-itself-in-report-on-atrocities-against-rohingya).
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173. This is discussed in D. I. Steinberg, *Turmoil in Burma: Contested Legitimacies in Myanmar* (Norwalk: EastBridge, 2006).
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209. Lon Htein is short for Lon-chon-hmu Htein-thein Tat-yin, or security preservation battalion. They have also been known as the special police. See Andrew Selth, *Police Reform in Burma (Myanmar)*, Regional Outlook no. 44 (Brisbane: Griffith Asia Institute, Griffith University, 2013).
210. Before the first ARSA attacks, the six police force security battalions were based at Buthidaung, Maungdaw, Mrauk-U, Sittwe, Kyaukpyu, and Thandwe (personal communication, November 2014).
211. For example, during the anti-Muslim unrest in 2012–13, four security battalions from the MPF’s Naypyidaw Security Command (SC 1) were deployed to Rakhine State.
212. Interview at police force headquarters, Naypyidaw, February 2013.
213. See, for example, Soe Min Htike, “Police outposts will be opened again in Maungdaw Region,” *Eleven*, January 31, 2018, <http://elevenmyanmar.com/politics/13314>.
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217. Selth, “Police Reform,” 13–17.
218. For many years, military intelligence officers inspected letters from abroad arriving at Sittwe post office, and compiled lists of local Rohingyas who had contacts with foreign countries. Ye Htut, “A Background to the Security Crisis,” 4.
219. Jim Della-Giacoma, “Myanmar’s ‘Nasaka,’” ICG, July 16, 2013, [www.crisisgroup.org/asia/south-east-asia/myanmar/myanmars-nasaka-disbanding-abusive-agency](http://www.crisisgroup.org/asia/south-east-asia/myanmar/myanmars-nasaka-disbanding-abusive-agency).
220. The Office of Military Security Affairs was initially called Military Affairs Security, or the Office of Chief of Military Affairs Security. It replaced the Directorate of Defence Services Intelligence, commonly known as the Military Intelligence Service, in 2004.
221. ICG, “Myanmar Tips into New Crisis After Rakhine State Attacks,” August 27, 2017, [www.crisisgroup.org/asia/south-east-asia/myanmar/myanmar-tips-new-crisis-after-rakhine-state-attacks](http://www.crisisgroup.org/asia/south-east-asia/myanmar/myanmar-tips-new-crisis-after-rakhine-state-attacks).
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227. These are the police force’s Special Branch and the Tatmadaw’s Office of the Chief of Military Security Affairs.
228. Selth, “All Going According to Plan?”
229. Ministry of Information, “Constitution,” Article 201, 75–6.
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232. International Commission of Jurists, “Myanmar: Questions and Answers,” Briefing Note (Geneva: ICJ, November 2017), 3.
233. The commander-in-chief was accompanied by the ministers for Home and Border Affairs, both lieutenant generals, and by the commander-in-chief of the Myanmar Air Force. *The Irrawaddy*, “Myanmar Army Chief Visits Rakhine,” September 20, 2017, [www.irrawaddy.com/news/burma/myanmar-army-chief-visits-rakhine.html](http://www.irrawaddy.com/news/burma/myanmar-army-chief-visits-rakhine.html).



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235. For example, after defecting to the United States, a former Myanmar defense attaché said that sometimes orders to kill entire communities were given in code, such as “not to leave even a ‘quarter viss’ i.e. 4.4 ounces, referring to the unborn child in the womb.” See *New Mandala*, “Does Than Shwe have anything to fear from international law,” June 13, 2008, [www.newmandala.org/does-than-shwe-have-anything-to-fear-from-international-law](http://www.newmandala.org/does-than-shwe-have-anything-to-fear-from-international-law).
236. In standard military parlance (including NATO practice) operational command includes “those functions of command involving the composition of subordinate forces, the assignment of tasks, the designation of objectives, and the authoritative direction necessary to accomplish the mission.” Operational control is “the authority delegated to a commander to direct forces assigned so that the commander may accomplish specific missions or tasks which are usually limited by function, time or location; to deploy units concerned, and to retain or assign tactical control of those units.” See US Department of Defense, *Dictionary of Military Terms* (New York: Arco, 1988), 253–54.
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In 2016 and 2017, Myanmar launched what it called “area clearance operations” against the Muslim Rohingya minority in Rakhine State. More than seven hundred thousand refugees were driven into neighboring Bangladesh. Myanmar’s security forces claim they were responding to an Islamist threat to the country’s unity, stability, and sovereignty. These developments highlighted a long-standing concern about Myanmar’s armed forces, or Tatmadaw—that they should be held legally accountable for a wide range of offenses. Should the issue ever come before an international court, many factors would need to be considered. Beyond the atrocities against the Rohingyas, the tribunal would also need to consider the Tatmadaw’s organization and structure, its training and ethos, and command and control issues. This report—drawing on an in-depth review of the literature, extensive experience in the field, and interviews—delves into these factors to clarify the implications and challenges for both Myanmar and the international community as well as the prospects for a solution to the Rohingya crisis and an accounting for past events.

## Other USIP Publications

- *Understanding China’s Response to the Rakhine Crisis* by Adrienne Joy (Special Report, February 2018)
- *Reframing the Crisis in Myanmar’s Rakhine State* by Gabrielle Aron (Peace Brief, January 2018)
- *The China-Pakistan Economic Corridor: Barriers and Impact* by Arif Rafiq (Peaceworks, October 2017)
- *Ceasefire Violations in Jammu and Kashmir: A Line on Fire* by Happymon Jacob (Peaceworks, September 2017)
- *Rule of Law, Governance, and Human Rights in Afghanistan, 2002 to 2016* by Erin Houlihan and William Spencer (Peaceworks, August 2017)

