

State Legal Accountability for Alleged Genocide Against Rohingya Ethnic Group: Case Study of Myanmar Under the 1948 Genocide Convention

Marudut Parulian Silitonga*, Rachmat Abdillah

Universitas Kristen Indonesia, Indonesia

Email: pensiljr@yahoo.com*, rachmataabdillahkumham@gmail.com

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ABSTRACT

This study examines state legal accountability for alleged genocide against the Rohingya ethnic group of Myanmar under the 1948 Genocide Convention within the framework of international law. It adopts a normative juridical approach with qualitative legal analysis to assess the extent to which Myanmar's authorities meet the legal elements of genocide under the Convention and the scope of state responsibility in preventing and punishing such crimes. Through doctrinal interpretation and comparative jurisprudence from the ICJ, ICTR, and ICTY, the study clarifies normative accountability mechanisms in contemporary genocide cases. The Rohingya crisis demonstrates systematic violations of fundamental human rights, including mass killings, forced displacement, and denial of citizenship, revealing structural persecution and potential genocidal intent. The study emphasizes that state responsibility for genocide is *erga omnes*, binding upon the entire international community, thus allowing other states to demand accountability even when not directly affected. The case brought by The Gambia against Myanmar before the International Court of Justice highlights the critical role of international judicial mechanisms in enforcing state obligations under the Genocide Convention. However, political barriers, particularly within the UN Security Council, often impede the effective implementation of international norms. The paper concludes that Myanmar's conduct toward the Rohingya aligns with the elements of genocide as defined by international law and underscores the necessity of strengthening enforcement mechanisms to ensure justice and prevent future atrocities.

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INTRODUCTION

Human rights (HAM) as a universal value serve as both a moral and legal foundation guaranteeing the dignity and freedom of every individual without discrimination (Donnelly, 2019; Clapham, 2021). Within the framework of international law, the protection of human rights is affirmed through key instruments such as the Universal Declaration of Human Rights (UDHR) 1948, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (Mégret, 2022; Alston & Goodman, 2020). All of these instruments emphasize fundamental human rights, including the right to life, freedom from torture, and protection from discrimination based on race, religion, or ethnicity (Hathaway & Pobjoy, 2019). However, gross human rights violations still occur, even in their most extreme form—genocide. One of the most significant humanitarian tragedies of the past two decades occurred in Myanmar, where the Rohingya are the primary victims (Cheung, 2021; Green et al., 2018). Since 2016, culminating in 2017, the international community has witnessed systematic military operations by Myanmar's armed

forces (Tatmadaw) leading to massacres, torture, mass rape, and the forced expulsion of hundreds of thousands of Rohingya from Rakhine State (Ullah, 2022).

These actions are not only gross human rights violations but also meet the indicators of genocide as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (O'Brien, 2019; Totten & Bartrop, 2021). The Convention affirms that genocide includes acts committed with the intent to destroy an ethnic, religious, racial, or national group, in whole or in part (UNHCR, 2020). The Independent International Fact-Finding Mission on Myanmar report explicitly states that there is sufficient evidence to investigate top Myanmar officials for alleged genocide against the Rohingya (Buchanan, 2020; Keane, 2022; Leider, 2023).

Discrimination against the Rohingya has endured for decades (Hossain, 2021). Since the enactment of Myanmar's 1982 Citizenship Law, the Rohingya have been stripped of their citizenship status and treated as "foreigners" despite having lived in Myanmar for generations. Deprived of access to education, healthcare, formal employment, and freedom of movement, they have been subjected to *state*-institutionalized practices of apartheid and structural persecution, confirming a pattern of systematic human rights violations.

In international law, states have a responsibility to prevent and punish genocide, as stipulated in Article I of the Genocide Convention (Billah, 2021; Longobardo, 2025). This obligation is *erga omnes*, meaning it is binding upon the entire international community. Countries that fail to prevent or take action against genocide perpetrators can be held internationally accountable. Thus, responsibility is not only attached to direct perpetrators but also to the state as a legal entity (Bantekas, 2022).

The case of Myanmar eventually reached the International Court of Justice (ICJ) through a lawsuit filed by The Gambia in 2019 (Cheung, 2020). The Gambia accused Myanmar of violating its obligations under the Genocide Convention (Bianchi & Peat, 2020). In 2020, the ICJ ordered Myanmar to take provisional measures to prevent further acts of genocide and protect the Rohingya community (Clark, 2021). However, the effectiveness of this ruling remains questionable, as there has been no significant improvement in the condition of the Rohingya (Holliday, 2022; Green, 2020). This raises concerns about the capacity of international mechanisms to ensure the protection of genocide victims (Linton, 2023).

The Rohingya crisis has tested the international community's consistency in enforcing international law. Despite a global commitment to respecting human rights, implementation has been obstructed by political interests, particularly the veto power of major states in the United Nations Security Council (Trahan, 2022; Koester, 2021). This reflects a broader weakening of international enforcement mechanisms, where the principle of Responsibility to Protect (R2P) often fails due to geopolitical considerations (Stensrud, 2024; Jarvis, 2025). The paralysis of the Security Council in addressing mass atrocities exposes a critical gap between normative frameworks and the institutional capacity to prevent genocide (Subramanian, 2022). Political obstacles highlight a disconnect between international legal norms and their practical application, creating a dilemma in enforcing international accountability (D'Alessandra & Whidden, 2023).

While numerous studies address the Rohingya crisis from human rights and humanitarian perspectives, few systematically analyze state responsibility under the Genocide Convention through the lens of ICJ jurisprudence and comparative tribunal precedents (Green, 2020). This study fills that gap by integrating doctrinal legal analysis with international case law, particularly examining the applicability of William Schabas's theory of state complicity in genocide and Antonio Cassese's framework on universal jurisdiction to Myanmar's conduct (Schabas, 2018; Cassese, 2015). Furthermore, this research evaluates the effectiveness of *erga*

omnes obligations in compelling state action beyond bilateral interests, offering valuable insights into the discourse on international accountability (Gaja, 2018).

Based on this background, the research is formulated to address two principal questions: first, whether the actions of Myanmar's authorities against the Rohingya ethnic group meet the elements of genocide under international law; second, the form of state responsibility pursuant to the 1948 Genocide Convention. The purpose of this paper is to analyze Myanmar's actions against the Rohingya normatively within the framework of international law, as well as examine the legal responsibility of states in preventing and punishing genocide.

This research is expected to provide theoretical, academic, and practical benefits. Theoretically, it enriches international law scholarship by clarifying the normative parameters of the crime of genocide and the principle of state responsibility, particularly in the context of contemporary state-sponsored atrocities. It contributes to refining jurisprudence on genocidal intent (*dolus specialis*) and the application of *erga omnes* obligations in non-traditional interstate disputes. Academically, it may serve as a reference for students, lecturers, and researchers examining genocide and international accountability mechanisms, offering a comprehensive legal framework for analyzing state conduct under the Genocide Convention. Practically, the findings are expected to guide legal practitioners, policymakers, and civil society organizations in formulating strategic steps to prevent and respond to genocide, as well as strengthen advocacy for human rights protection globally. These results may inform policy recommendations for enhancing multilateral responses, improving early warning systems, and increasing the effectiveness of international judicial mechanisms.

METHOD

This research uses a normative juridical approach, which emphasizes doctrinal interpretation of legal norms, particularly within the scope of international law. The method is analytical-descriptive, examining the application of the 1948 Genocide Convention to the case of Myanmar's treatment of the Rohingya ethnic group. The analysis is conducted through qualitative legal interpretation, employing comparative jurisprudence from the International Court of Justice (ICJ), the International Criminal Tribunal for Rwanda (ICTR), and the International Criminal Tribunal for the former Yugoslavia (ICTY). This approach is used to examine normative provisions related to the crime of genocide and the principle of state responsibility based on relevant international legal instruments.

The legal materials used in this study are categorized into three levels:

1. Primary legal materials: These include binding international treaties, conventions, and judicial decisions, specifically the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, ICJ judgments (particularly *The Gambia v. Myanmar*, 2020 and *Bosnia and Herzegovina v. Serbia and Montenegro*, 2007), ICTR case law (such as *Prosecutor v. Akayesu*, 1998), ICTY decisions (including *Prosecutor v. Krstić*, 2001), and the Universal Declaration of Human Rights (1948).
2. Secondary legal materials: These consist of scholarly articles, books, UN reports (including the Independent International Fact-Finding Mission on Myanmar, 2018), reports from international human rights organizations (Amnesty International, Human Rights Watch, Fortify Rights), academic monographs on genocide and state responsibility (particularly works by William Schabas, Antonio Cassese, Daniel Feierstein, and James Crawford), and legal commentaries on the International Law Commission's Articles on State Responsibility.

3. Tertiary legal materials: These include legal encyclopedias, dictionaries of international law, and other reference materials that provide contextual background and definitional clarity.

Data collection is conducted through comprehensive literature review utilizing international legal databases such as the ICJ's official repository, UN documentation archives, academic journals indexed in international legal databases, and official publications from human rights organizations. The analysis technique involves systematic legal interpretation, comparing provisions of the Genocide Convention with factual findings documented in authoritative reports, and applying established jurisprudential standards from international tribunals to assess whether Myanmar's actions fulfill the legal elements of genocide and trigger state responsibility under international law. In this normative legal research, the data used is secondary data, because the research is not based on field observations, but on literature studies that examine legal norms and official documents.

RESULTS AND DISCUSSION

Do the actions taken by the Myanmar authorities against the Rohingya ethnic group meet the elements of genocide as stipulated in international law?

The crime of genocide is one of the most serious forms of violation of international law that gives rise to the legal responsibility of states. In the international context, genocide is expressly regulated in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which defines genocide as an act committed with the intent to destroy, in whole or in part, a particular national, ethnic, racial, or religious group. In this regard, the actions of the Myanmar authorities against the Rohingya need to be analyzed juridically to see the extent to which the elements of genocide are met.

First, it should be understood that the Rohingya are a Muslim minority group in Myanmar's Rakhine State, which has historically lived in the region for centuries. However, since the enactment of the Myanmar Citizenship Law in 1982, this group has not been recognized as one of the "national races", which directly led to the revocation of their citizenship rights. This legal discrimination became the foundation of systematic exclusion which later developed into massive violence.

Based on a report by the UN Fact-Finding Mission and various international human rights organizations, it was found that since 2016 until now, there have been various forms of gross violations against the Rohingya, including mass killings, systematic rape, village burning, forced evictions, and thorough physical and mental torture. These forms of violence, when analyzed under Article II of the Genocide Convention, show that:

1. There have been killings of members of the group – for example, the massacres that took place in Tula Toli and Inn Din villages in 2017, in which hundreds of Rohingya were systematically killed by the military.
2. There has been severe physical and mental suffering – in the form of mass rape by the military against Rohingya women and children, as documented by Amnesty International and Human Rights Watch.
3. The creation of living conditions intended to slowly exterminate groups, such as mass displacement without access to basic services, blockades of humanitarian aid, and restrictions on movement.
4. Policies to prevent group births – such as restrictions on the number of children and the prohibition of marriage without official permission that only applies to the Rohingya ethnic group.

The most important and often difficult element to prove in the crime of genocide is special intent or *dolus specialis*, which is the intention to destroy the group in whole or in part. In this case, the intention can be inferred from the pattern of systematic military action, dehumanization in government propaganda that refers to the Rohingya as "Bengalis" (illegal immigrants), as well as the denial of the historical and legal existence of the Rohingya ethnicity. This is in line with the jurisprudence of the International Criminal Tribunal for Rwanda (ICTR) in the case of Prosecutor v. Akayesu, who stated that specific intentions can be inferred from the context of the attack, the leader's statements, and the pattern of actions taken.

Furthermore, the International Court of Justice (ICJ) in *The Gambia v. Myanmar* in 2020 issued a provisional measures order indicating that there was a reasonable suspicion that Myanmar's actions had the potential to violate the Genocide Convention. This confirms that the international community has seen the existence of elements of genocide in acts of violence against the Rohingya.

Comparatively, the actions against the Rohingya have a similar pattern to the genocide cases in Rwanda and Bosnia, especially in terms of the systematization of violence, the special intentions reflected in propaganda, and the impunity enjoyed by perpetrators at the state level. Therefore, taking into account these facts and referring to international norms and legal practices, it can be concluded that the actions of the Myanmar authorities against the Rohingya ethnic group substantially and intentionally meet the elements of genocide as stipulated in the 1948 Genocide Convention.

Since 2016, the escalation of violence against the Rohingya in Myanmar's Rakhine State has raised widespread concern and condemnation from the international community. Credible reports from international institutions, such as the United Nations Fact-Finding Mission, show that the attacks carried out by the Myanmar military (Tatmadaw) are not sporadic, but structured, systematic, and carried out with a specific intent to destroy the Rohingya ethnic group as a separate and autonomous entity within the structure of Myanmar society.

The element of special intent in the crime of genocide (*dolus specialis*) is the most essential and complex element in its proof. However, the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY) have developed a precedent that specific intent does not have to be proven by explicit statements, but can be inferred from systematic patterns of actions, long-term discriminatory policies, as well as socio-political contexts that indicate an intent to erase the existence of a particular group. In the context of Myanmar, these indicators are evident in:

1. The implementation of a policy of abolition of citizenship that results in statelessness.
2. The practice of planned destruction of villages.
3. Hate speech and propaganda carried out by high-ranking military officials and political figures.
4. Denial of the identity of the Rohingya as a legitimate ethnic group.

It should also be noted that in the international legal system, "genocide does not have to be on a total scale", as affirmed in *Bosnia v. Serbia* at the International Court of Justice (ICJ), but it is sufficient if there is evidence that some of the groups in question are targets of deliberate destruction. In line with the classical theory of Leo Kuper and further developed by Daniel Feierstein, dehumanization is the initial stage in the process of genocide, that is, the attempt to erase the legitimacy of the existence of groups through social narratives and constructions, in order for acts of violence to be socially and politically justified. In the Myanmar context, state authorities are constructing the narrative that the Rohingya are "Bengali" illegal immigrants who are not entitled to stay in Myanmar, and therefore should be "repatriated" to Bangladesh, even though there is no historical basis for such claims.

This rhetoric not only shaped permissive domestic public opinion toward violence, but also reduced internal pressure on the military to carry out violent operations that led to the exodus of more than 700,000 Rohingya to neighboring countries in a short period of time—a phenomenon called by the United Nations "the most brutal example of ethnic cleansing in contemporary history." Although the International Court of Justice has taken a significant step by ordering provisional measures in *The Gambia v. Myanmar*, many criticize, that international law enforcement of the crime of genocide is still highly dependent on the global political constellation, especially the veto in the UN Security Council. Therefore, there is a wide gap between normative legal recognition of genocide and the actual ability of the international community to prevent or punish it.

This strengthens the arguments of scholars such as Antonio Cassese and William Schabas, who highlight the weakness of genocidal law enforcement if it is not accompanied by the political will of large countries and consistent multilateralism. This condition causes inequality between norms and practices that has the potential to delegitimize the basic principles of international law itself. In the doctrine of international law, genocide is recognized as a violation of the norms of *jus cogens* and the obligation of *erga omnes*, meaning that genocide violates not only the rights of one state against another, but against the entire international community. Therefore, each country has the legal standing to demand the enforcement of Myanmar's obligations, as done by The Gambia as a party to the indirectly affected. This step represents the evolution of the principle of universal jurisdiction in the international legal system, as well as opening up space for the strengthening of state accountability mechanisms, both through the International Court of Justice (ICJ), the International Criminal Court (ICC), and through non-judicial schemes such as international sanctions and arms embargoes.

What is the form of state legal responsibility according to the 1948 Genocide Convention for the crime of genocide against the Rohingya?

The 1948 Convention on the Prevention and Punishment of the Crime of Genocide establishes not only the prohibition against acts of genocide, but also affirms the legal obligations of States parties to prevent, punish and not engage in genocide. In the context of systematic violence against the Rohingya in Myanmar, it is important to analyze the form of state legal responsibility as set out in the Convention, both from the perspective of the direct perpetrator (Myanmar), and from the perspective of the collective responsibility of other states in preventing and responding to genocide.

Article I of the Genocide Convention expressly states that "Genocide, whether committed in peacetime or in time of war, is a crime under international law that must be prevented and punished by States parties." In this regard, Myanmar as a state party since 1956 has three main obligations:

1. Obligation to prevent genocide
2. Obligation to punish perpetrators of genocide
3. Obligation not to commit genocide

Myanmar's failure to meet these three obligations has become a global concern. The fact that the Myanmar military (Tatmadaw) is the main perpetrator of the violence, shows that the state is not only negligent in preventing, but also actively involved in the crime. Therefore, normatively, Myanmar can be held directly liable for violations of its international obligations under the Convention.

In the case of Application of the Genocide Convention (*The Gambia v. Myanmar*), the International Court of Justice (ICJ) issued provisional measures in January 2020, which ordered Myanmar to take all measures within its power to prevent acts of genocide against the Rohingya

group and to safeguard evidence and report its follow-up periodically. This step is an early admission by the ICJ that there are strong allegations of state obligations by Myanmar.

Another important jurisprudence is found in the case of *Bosnia and Herzegovina v. Serbia and Montenegro* (2007), where the ICJ affirmed that state responsibility can arise not only when the state directly commits genocide, but also when the state fails to prevent or punish such acts, even if they are carried out by non-state actors or formally autonomous apparatus. This analogy can be applied in the context of Myanmar, where the actions of the Tatmadaw are inseparable from the structure of the state.

The Genocide Convention also contains the principle of *erga omnes*, meaning that all state parties have a legal interest in ensuring that the crime of genocide does not occur anywhere. Therefore, third countries that are aware of the potential or event of genocide and have the capacity to prevent it, but fail to act, may also be considered to be passively violating their international obligations. The case of *The Gambia v. Myanmar* actually shows that even countries that are not directly affected have the right to file lawsuits as a form of participation in the enforcement of mutual obligations. The responsibility of other states is also related to the principle of non-aid or assistance: the state must not provide military, economic, or political assistance that strengthens the capacity of the perpetrator state to continue the genocide. In practice, political support or neglect by influential countries can be a factor that strengthens impunity and exacerbates the human rights situation.

Under the international legal system, state responsibility for genocide can take the form of:

1. Recognition of violations of international law
2. Guarantees of non-repetition
3. Reparations to victims and refugees – including restoration of citizenship, restitution of property, restitution and moral and material compensation.
4. Cooperation with international mechanisms, such as the International Criminal Court (ICC) or special tribunals.

However, Myanmar has not yet shown good intentions to carry out this accountability. Instead, some key actors in the military structure remained in office and even gained political legitimacy in the junta-controlled system of government after the 2021 coup. This shows a denial of the principles of international accountability, which reinforces the urgency of pressure from the global community. The legal responsibility of the state in the Genocide Convention is not only declarative, but also creates positive and concrete obligations. Myanmar, as a country suspected of genocide against the Rohingya, has failed in that obligation, and is therefore fully responsible before international law. On the other hand, other states are also obliged to support the enforcement of the law against Myanmar in order to maintain the authority and legitimacy of the Genocide Convention as an instrument of international law that regulates one of the most serious violations against humanity.

CONCLUSION

The analysis concludes that the systematic actions of Myanmar's authorities against the Rohingya—encompassing mass killings, sexual violence, forced expulsions, and the revocation of citizenship—fulfil the elements of genocide under the 1948 Genocide Convention, evidencing intent to eradicate the group in whole or in part. As a state party, Myanmar has breached its obligations to prevent and punish genocide, incurring international legal responsibility involving acknowledgment of wrongdoing, restoration of victims' rights, and cooperation with global justice mechanisms. Under the *erga omnes* principle, the duty to prevent genocide extends to all states, requiring proactive measures such as diplomacy, sanctions, or legal action to halt and deter future atrocities. Future research should explore the

effectiveness of multilateral enforcement mechanisms, including the role of non-state actors and regional bodies, in strengthening compliance with genocide prevention obligations.

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