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THE QUIET AUDIENCE: U.S. RESPONSIBILITY TO CALL FOR AN INTERNATIONAL INVESTIGATION INTO CRIMES AGAINST MUSLIMS IN BURMA

Rachel Wagley*

INTRODUCTION

Anti-Muslim violence in Burma has been roundly condemned in statements from the UN, international governments, regional bodies, and human rights groups since June 2012. Undeterred by negative international attention, the Burmese government has not attempted to provide a system of transitional justice for Muslims who have been attacked. On the contrary, government officials have participated in new attacks, tightened restrictions on Muslims, blocked aid from displaced Muslim populations, and segregated the mostly stateless Rohingya and other Muslims from the rest of the population.¹ Government complicity in anti-Muslim discrimination and violence is grounded in an ethno-religious nationalism² that has informed Burma's law and policy for decades.³

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¹ The Rohingya, a predominantly Muslim ethnic group located in Arakan State, have faced severe government-condoned violence and an entirely avoidable humanitarian crisis since June 2012. *See generally* Matthew Smith, *Tour of Shame for Their Sein*, ASIA TIMES (July 16, 2013), http://www.atimes.com/atimes/Southeast_Asia/SEA-01-160713.html (detailing ongoing human rights abuses against Burma's Muslims). Burma's 1982 Citizenship Law rendered the Rohingya stateless, compounding the longstanding legal and social discrimination against them. *Id.* It is believed that due to this discrimination, which manifested most clearly in the large-scale attacks of 1978, 1992, 2001, 2009, and 2012–4, more Rohingya now live outside of Burma than inside; approximately 1.33 million are left inside Burma. *Id.*

² Ethno-religious nationalism in Burma certifies the Burmese-Buddhist identity as the core basis for belonging in the national community. People who are both Burman and Buddhist are understood to be the most legitimate citizens of Burma, while ethnic and religious minorities are inherently peripheral citizens. This ideology is founded in the historical animosity between the predominately Buddhist Burman ethnic group and other ethnic groups that now coexist in the nation of Burma. *See* Matthew J. Walton, *Myanmar Needs a New Nationalism*, ASIA TIMES (May 20, 2013), *available at* http://www.atimes.com/atimes/Southeast_Asia/SEA-02-200513.html (discussing the rise of Buddhist nationalism and how non-Buddhists in Burma “can at best enjoy conditional membership in the national community”); Matthew J. Walton, *The “Wages of Burman-ness:” Ethnicity and Burman Privilege in Contemporary Myanmar*, 43 J. CONTEMP. ASIA 1, 2 (2013) (discussing the history of Burman nationalism).

³ *Cf.* Benjamin Zawacki, *Defining Myanmar's “Rohingya Problem,”* 20 HUM. RTS. BRIEF 18 (2013), *available at* <http://www.wcl.american.edu/hrbrief/20/3zawacki.pdf> (explaining how violent events “can be

Despite the government's withholding of justice, the international community has failed to take necessary action to protect Muslim victims. Though the United Nations has acknowledged the role of Burmese authorities in "widespread" and "systematic" attacks against Muslims that "may constitute crimes against humanity,"⁴ the United States has built over the same time frame an optimistic engagement policy centered on developing strong strategic and financial ties with Burma's government. The United States has not used concessions or sanctions as leverage to compel the Burmese government to address anti-Muslim violence but has instead downplayed the extent to which the government perpetuates violence.

This Article establishes that the doctrine of the Responsibility to Protect is directly applicable to Burma's Muslim crisis, as institutionalized discrimination and violence against Muslims have created a unique breach of justice in Burma. Part I maintains that the most operational solution to that breach of justice—given the continuation of mass atrocity crimes against Muslims, and the Burmese government's deliberate withholding of justice and accountability for victims and perpetrators of violence—is to implement an international system of justice based on the duty articulated in the doctrine of the Responsibility to Protect.⁵ The first step in implementing this system of justice is to establish a UN-sponsored independent investigation into anti-Muslim violence.

Part II examines the U.S. government's unwillingness to call for an international investigation through the lens of U.S. engagement policy with Burma. In light of this policy, U.S. efforts to address anti-Muslim violence have been of secondary importance and accordingly ineffectual at encouraging the Burmese government to address the Muslim crisis. This undermines the

attributed to systematic discrimination" against the Rohingya that is manifest in Burma's law, policy, and practice).

⁴ Special Rapporteur on the Situation of Human Rights in Myanmar, *Report of the Special Rapporteur on the Situation of Human Rights in Myanmar*, 13, Human Rights Council, U.N. Doc. A/HRC/25/64 (Apr. 2, 2014) (by Tomás Ojea Quintana) [hereinafter Quintana].

⁵ A call for an international investigation into Burma's crimes against ethno-religious minorities is well precedented. Since 2009, UN officials, international jurists, Nobel Peace laureates, the Harvard Law School International Human Rights Clinic, and scholars have called for an independent investigation into mass atrocity crimes in Burma. See e.g., Special Rapporteur on the Situation of Human Rights in Myanmar, *Progress Report of the Special Rapporteur on the Situation of Human Rights in Myanmar*, 29, Human Rights Council, U.N. Doc. A/HRC/13/48 (Mar. 10, 2010) (by Tomás Ojea Quintana); INT'L HUMAN RIGHTS. CLINIC, HARVARD L. SCH., CRIMES IN BURMA, at iv (2009) [hereinafter HARVARD].

U.S.'s own policy goal to support a stable, democratic Burma that can sustain long-term, profitable diplomatic and financial engagement.⁶

The proper course of action is thus to promptly push the UN to establish an investigation into anti-Muslim violence in order to protect victims and establish an expectation of rights-respecting policy and ethno-religious equality in Burma. National reconciliation necessitates the deconstruction of institutionalized ethno-religious nationalism and violence, which destroy national confidence in Burma's reform process and defy attempts to strengthen discourse on justice and transitional issues in Burma. I conclude that it is ultimately in the strategic interests of the U.S. to promote the formation of a reconciled Burmese state that respects all people, regardless of their heritage.

I. APPLYING RESPONSIBILITY TO PROTECT TO ANTI-MUSLIM VIOLENCE

I first set out to examine the applicability of the doctrine of the Responsibility to Protect to Burma's Muslim crisis. The Responsibility to Protect ("R2P") is an international norm enshrined at the UN 2005 World Summit.⁷ R2P provides a normative framework for existing international law regulations pertaining to investigations into mass atrocity crimes, including the Rome Statute of the International Criminal Court ("ICC").

The doctrine stresses that the individual state is the sovereign protectorate of its people from genocide, war crimes, ethnic cleansing, and crimes against humanity.⁸ "Responsibility" to protect requires the "prevention of such crimes, including their incitement, through appropriate and necessary means."⁹ The international community has the responsibility to cooperatively "encourage and help" individual states fulfill their responsibility.¹⁰ Only when the individual state abdicates its responsibility to protect its people from mass atrocity crimes, and peaceful means to pressure the state to accept responsibility prove ineffective, may the international community take

⁶ See 30-Day Notice of Proposed Information Collection: Reporting Requirements on Responsible Investment in Burma, 78 Fed. Reg. 12132 (Feb. 21, 2013) [hereinafter State Department] (stating U.S. policy goal of supporting "the establishment of a peaceful, prosperous, and democratic state that respects human rights and the rule of law").

⁷ 2005 World Summit Outcome: Resolution, G.A. Res. 60/1, U.N. Doc. A/RES/60/1, para 138–39 (Sept. 16, 2005) [hereinafter Responsibility to Protect].

⁸ *Id.* para 138 ("Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity:").

⁹ *Id.*

¹⁰ *Id.*

collective action through the United Nations. R2P is committed to peaceful interventions including assistance, peaceful persuasion, and financial sanctions.¹¹ The nature of collective action must exhaust the possibilities of “appropriate diplomatic, humanitarian, and other peaceful means” before forceful means can be considered.¹²

The means of determining whether a state has abdicated its responsibility to protect is an independent investigation that can be commissioned by the UN Security Council, UN Human Rights Council, UN General Assembly, or the UN Secretary General. An investigation can recommend that the UN Security Council refer the situation to the ICC.¹³ Under Chapter VII of the UN Charter, the Security Council has the authority to determine measures, peaceful or, if necessary, forceful, “to maintain or restore international peace and security.”¹⁴ This “international” provision does not imply that conflicts must threaten to spill over borders; certainly, the UN Security Council has acted to address numerous crises without “spillover power” on the basis that these crises necessitated UN intervention to reestablish international order.¹⁵ Even so, the threat in Burma has definitively spilled over international borders, with thousands of refugees from the anti-Muslim conflict pouring into nations including Thailand, Malaysia, Bangladesh, Indonesia.¹⁶

This has caused significant regional conflict¹⁷ and has motivated regional ministers and groups to call for international action. The Organization of Islamic Cooperation (“OIC”) called on the European Union in June 2013 to increase pressure on the Burmese government to allow full humanitarian

¹¹ See Luke Glanville, *In Defense of the Responsibility to Protect*, 41 J. RELIG. ETHICS 169, 173 (2013) (emphasizing that international action should first utilize peaceful strategies).

¹² See Responsibility to Protect, *supra* note 7.

¹³ See HARVARD, *supra* note 5, at 22-3.

¹⁴ UN Charter arts. 39, 42, 51.

¹⁵ See DLA PIPER RUDNICK GRAY CARY, THREAT TO THE PEACE: A CALL FOR THE UN SECURITY COUNCIL TO ACT IN BURMA 43-44 (2005), available at <http://www.ibiblio.org/obl/docs3/threat.pdf> (explaining that the Security Council has intervened in countries such as Sierra Leone, Afghanistan, Haiti, Yemen, Rwanda, Liberia, and Cambodia “when it regarded the situations in those countries as a threat to peace requiring action by the Security Council to protect and preserve international stability”).

¹⁶ 2014 UNHCR country operations profile—Asia and the Pacific, U.N. REFUGEE AGENCY, <http://www.unhcr.org/pages/4a02d8ec6.html> (last visited May 20, 2014).

¹⁷ See, e.g., Joshua Kurlantzick, *Myanmar’s Religious and Ethnic Tensions Begin to Spread Across the Region*, COUNCIL FOR FOREIGN REL.: ASIA UNBOUND (June 14, 2013), <http://blogs.cfr.org/asia/2013/06/14/myanmars-religious-and-ethnic-tensions-begin-to-spread-across-the-region/> (explaining how Burma’s ethno-religious violence is causing a regional threat to security and how the violence threatens ASEAN’s international relevancy).

access to Rohingya in Arakan State.¹⁸ In response to the escalating influx of Rohingya refugees in August 2013, the Association of Southeast Asian Nations (“ASEAN”) Parliamentarians for Human Rights (“APHR”) urged the ASEAN Inter-governmental Commission on Human Rights to develop a regional solution to the Rohingya crisis. In APHR’s announcement, Eva Kusuma Sundari, APHR president and Indonesian Member of Parliament, stated: “Our heads of state must recognise the significance of ASEAN’s action or inaction on this major international issue and the serious implications it has, not only for the Rohingya people, but the future stability of the region as a whole.”¹⁹

At an ASEAN conference in January 2014, Indonesian Foreign Minister Marty Natalegawa said that Burma’s anti-Muslim violence has regional ramifications, even inspiring retaliatory terrorist plots in Jakarta.²⁰ Neighboring countries Thailand and Malaysia are facing international scrutiny for capacitating human trafficking rings of Rohingya asylees.²¹ Religious violence involving Burmese living in Malaysia and Indonesia is growing, likely provoked by Burma’s anti-Muslim violence and refusal to provide accountability.²² Yet Burma has dodged responsibility. When the Burmese government assumed the chairmanship of ASEAN in 2014, it unabashedly announced it would apply ASEAN’s “non-interference” policy to the Rohingya situation. It deemed the violence an “internal affair” that would not be discussed at ASEAN meetings, “even if other countries ask for it.”²³

UN officials, Nobel Peace laureates, and human rights organizations have thus recognized the applicability of R2P and the need for an independent investigation. UN High Commissioner for Human Rights Navi Pillay has called for a prompt, independent investigation into crimes in Arakan State

¹⁸ See *OIC Raises Rohingya Issue During EU Meeting*, KALADAN PRESS (July 1, 2013), <http://www.bnionline.net/index.php/news/kaladan/15658-oic-raises-rohingya-issue-during-eu-meeting-html>.

¹⁹ *APHR Calls on Thailand to Address Concerns Over Rohingya Asylum Seekers and Coordinate a Regional Response to Tensions in Myanmar’s Rakhine State*, ASEAN INTER-PARLIAMENTARY MYANMAR CAUCUS (Aug. 20, 2013), <http://www.aseanmp.org/?p=2907>.

²⁰ See Simon Roughneen, *Sectarian Violence in Burma Has Regional Impact, Says Indonesian Foreign Minister*, IRRAWADDY, Jan. 17, 2014, <http://www.irrawaddy.org/burma/sectarian-violence-burma-regional-impact-says-indonesian-foreign-minister.html>.

²¹ See, e.g., Jason Szep et al, *Special Report: Thailand Secretly Supplies Myanmar Refugees to Trafficking Rings*, REUTERS, Dec. 4, 2014, <http://www.reuters.com/article/2013/12/05/us-thailand-rohingya-special-report-idUSBRE9B400320131205>.

²² See Roughneen, *supra* note 19.

²³ *Id.* (“‘The Bengali issue is our internal affair and we will not discuss it in the Asean meetings, even if member countries ask for it,’ Ye Htut, who is spokesman for Burma’s President Thein Sein, was quoted as saying. Burma’s internal conflicts were not raised at the Asean foreign ministers meeting in Bagan, in accordance with the wishes of the host country.”).

since June 2012.²⁴ Twelve Nobel Peace laureates echoed and expanded Pillay's call in June 2013, after violence spread beyond Arakan State, calling for an "independent investigation of the anti-Muslim violence in Burma" on the grounds that "some within Burma are propagating a politics of division—and using violence as a tool to manipulate feelings of fear and insecurity."²⁵

In August 2013, after conducting an investigation inside Burma, Physicians for Human Rights ("PHR") also called for an independent investigation due to the Burmese government's failure "to properly protect its people and address human rights violations."²⁶ PHR argued that anti-Muslim violence, bolstered by hate speech, systems of impunity, and inaction by Burmese leaders, "could lead to mass atrocities on a scale heretofore unseen in Burma" unless the international community were to implement an investigation.

In order for an independent investigation to be warranted, two points must be established: (1) It must be likely or evident that minority Muslims are suffering from mass atrocity crimes, defined under the Rome Statute and Geneva Conventions as genocide, war crimes, crimes against humanity, or ethnic cleansing, and (2) it must be likely or evident that the state has withheld justice and accountability for victims of these mass atrocity crimes.²⁷

A. *Mass Atrocity Crimes*

Muslims in Burma are suffering from two types of mass atrocity crimes: crimes against humanity and ethnic cleansing.²⁸ Crimes against humanity, defined in the ICC's *Elements of Crimes*, consist of prohibited acts committed

²⁴ See Myanmar: UN Official Concerned Over Rights Violations in Rakhine State, UN NEWS CTR. (July 27, 2012), <http://www.un.org/apps/news/story.asp?NewsID=42575#.UiOADWTXi3M>.

²⁵ Nobel Peace Laureates: A True Democratic Future in Burma Will Require Reconciliation, NOBEL WOMEN'S INITIATIVE (June 20, 2013) <http://nobelwomensinitiative.org/2013/06/nobel-peace-laureates-call-for-end-to-violence-against-muslims-in-burma/>.

²⁶ See ANDREA GITTLEMAN ET. AL., PHYSICIANS FOR HUMAN RIGHTS, PATTERNS OF ANTI-MUSLIM VIOLENCE IN BURMA: A CALL FOR ACCOUNTABILITY AND PREVENTION, 17–23 (2013), available at https://s3.amazonaws.com/PHR_Reports/Burma-Violence-Report-August-2013.pdf [hereinafter PHR].

²⁷ See HARVARD, *supra* note 5, at 23–24 (establishing that a UN investigation is warranted if mass atrocity crimes exist and the government is not implementing justice).

²⁸ Some experts, former congressmen, and members of the OIC have also begun using the term genocide in relation to anti-Muslim violence. For the purposes of this article, I do not discuss the potential that crimes against Muslims amount to genocide. For further discussion of the term's applicability, see Zawacki, *supra* note 3, at 21; see also THOMAS H. ANDREWS & DAN SULLIVAN, UNITED TO END GENOCIDE, MARCHING TO GENOCIDE IN BURMA (2014), available at <http://endgenocide.org/wp-content/uploads/2014/03/marching-to-genocide-in-burma.pdf>.

as part of a “widespread or systematic attack against a civilian population.”²⁹ The most relevant prohibited acts committed against Muslims include the crimes of murder, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty, torture, rape, sexual slavery, sexual violence, apartheid, and persecution.³⁰

An “attack” is defined as a “course of conduct involving the multiple commission” of prohibited acts.³¹ “Widespread” attacks are commonly understood to be “large-scale” with many victims.³² “Systematic” refers to well-organized attacks or attacks of a patterned or methodical nature.³³ Attacks against non-Rohingya Muslims in Burma throughout 2013 were coordinated and widespread, indicating that prohibited acts against non-Rohingya Muslims may constitute crimes against humanity.³⁴

As for acts against Rohingya Muslims, the verdict is even clearer. UN Special Rapporteur on the human rights situation in Burma, Tomás Ojea Quintana, concluded in 2014 “that the pattern of widespread and systematic human rights violations in Rakhine State may constitute crimes against humanity as defined under the Rome Statute of the International Criminal Court.”³⁵ In April 2014, after the government banned Doctors Without Borders from Arakan State and failed to protect UN and NGO aid workers from attacks with the intention of blocking aid to Rohingya, Quintana issued a special statement condemning the “discrimination and persecution against the Rohingya community which could amount to crimes against humanity.”³⁶

In February 2014, Fortify Rights published official documents that show government policies restricting the rights of Rohingya in Arakan State,

²⁹ Int’l Criminal Court, *Elements of Crimes*, U.N. Doc. ICC-ASP/1/3(part II-B) (Sept. 9, 2002) (detailing crimes against humanity in Article 7(1)).

³⁰ Cf. Smith, *supra* note 1 (providing an overview of crimes against Muslims).

³¹ The Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9 (1998), 2187 U.N.T.S. 90.

³² See HARVARD, *supra* note 5, at 26.

³³ *Id.*

³⁴ See PHR, *supra* note 26, at 2 (substantiating the widespread, systematic nature of national attacks that makes anti-Muslim violence throughout the country “potential crimes against humanity and/or genocide.”).

³⁵ Quintana, *supra* note 4, at 13.

³⁶ Myanmar: UN Expert Raises Alarm on Rakhine State, U.N. OFF. OF THE HIGH COMM’R FOR HUMAN RIGHTS (Apr. 7, 2014), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14476&LangID=E>; Tim Hume, *Fears Rakhine Extremists Could Drive More Aid Agencies Out of Myanmar State*, CNN (Mar. 4, 2014, 4:23 AM), <http://www.cnn.com/2014/03/04/world/asia/myanmar-rohingya-msf-fears/>.

including marriage, childbirth, and movement.³⁷ Evaluated through the Rome Statute, these policies provide a “prima facie finding that Rohingya in [Arakan] State are victims of the crime against humanity of persecution, perpetrated by Myanmar government officials.”³⁸ The report establishes that government officials had knowledge that these policies deprived Rohingya of basic rights, having written, distributed, and enforced them.³⁹

Human rights violations against the Rohingya also amount to ethnic cleansing. Ethnic cleansing is identified as a mass atrocity crime in customary international law, but it has not received an official legal definition. A 1994 UN Commission of Experts defined ethnic cleansing as a “purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas.”⁴⁰ Using this definition, ethnic cleansing precisely defines the plight of the Rohingya, who have been systematically moved from their neighborhoods and land, even from areas that were not affected by violence, and exiled to makeshift government camps.⁴¹ The local Arakan population, Burmese government officials, and in many cases, the general Burmese public, are remarkably straightforward about their intent to achieve a Rohingya-free Burma.⁴²

Human Rights Watch concluded in March 2013, after extensive investigative research into the human rights violations in Arakan State, that the Rohingya were *prima facie* targets of ethnic cleansing.⁴³ The OIC Secretary

³⁷ FORTIFY RIGHTS, POLICIES OF PERSECUTION: ENDING ABUSIVE STATE POLICIES AGAINST ROHINGYA MUSLIMS IN MYANMAR 4 (2014), available at http://www.fortifyrights.org/downloads/Policies_of_Persecution_Feb_25_Fortify_Rights.pdf.

³⁸ *Id.* at 44.

³⁹ *Id.* at 44–45.

⁴⁰ U.N. Comm’n of Experts, Final Report of the U.N. Comm’n of Experts Established Pursuant to Security Council Resolution 780, U.N. Sec. Council, U.N. Doc. S/1994/674 (May 27, 1994).

⁴¹ See, e.g., Smith, *supra* note 1.

⁴² See, e.g., *Solution for Rohingyas*, AGENCE FRANCE PRESSE (July 13, 2012), <http://archive.thedailystar.net/newDesign/news-details.php?mid=241923> (quoting Burmese President Thein Sein, “We will send them [Rohingya] away if any third country would accept them.”); see also U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, BURMA: IMPLICATIONS OF RELIGIOUS AND ETHNIC VIOLENCE 2–3, (2013), available at [http://www.uscirf.gov/sites/default/files/resources/Burma%20Policy%20Brief%20final\(1\).pdf](http://www.uscirf.gov/sites/default/files/resources/Burma%20Policy%20Brief%20final(1).pdf) [hereinafter U.S.I.R.F.] (“Many ethnic Burmese look at Muslims with loathing, seeing sectarian violence and discrimination as necessary defenses against the illusion of high Muslim birthrates, concentrated economic power, and ‘extremism.’ . . . Most Burmese would like to see many Rohingya leave Burma—whether by deportation or by making life so difficult for them that they leave on their own.”).

⁴³ See HUMAN RIGHTS WATCH, ALL YOU CAN DO IS PRAY: CRIMES AGAINST HUMANITY AND ETHNIC CLEANSING OF ROHINGYA MUSLIMS IN BURMA’S ARAKAN STATE 11–12 (2013) [hereinafter HRW] (making the case that events in Arakan State against Rohingya constitute ethnic cleansing).

General has called the Rohingya situation in Arakan State ethnic cleansing as well.⁴⁴ Scholar Benjamin Zawacki of the International Commission of Jurists argued the same, maintaining that “what is being prosecuted in Rakhine State is an effort to remove the Rohingya from the area.”⁴⁵

Prohibited acts committed against Muslims in the context of widespread and systematic attacks are ongoing, with flare-ups in August 2013 in Sagaing Division where a 1000-strong Buddhist mob attacked the homes and shops of Burmese Muslims, displacing many,⁴⁶ and in October 2013 in Arakan State where Buddhist mobs killed five Kaman Muslims and again displaced hundreds.⁴⁷ In January 2014, security forces and Buddhist mobs slaughtered up to seventy Rohingya, including many women and children, in Du Chee Yar Tan, a western Arakan State village.⁴⁸ Government participation and complicity in anti-Muslim violence and systematic impunity have created a ripe legal and social context where mass atrocity crimes continue unabated.

B. Withholding Justice and Accountability

In order to establish an independent investigation into these crimes, it must be demonstrated that the Burmese government has failed to pursue justice for the victims and perpetrators of these crimes. Under the Rome Statute and R2P, the Burmese government shoulders the sovereign responsibility to protect its own people against mass atrocity crimes. The ICC cannot have jurisdiction over the case unless the individual state’s judicial system fails to act.⁴⁹

⁴⁴ *Stop Rohingya Genocide: OIC*, ONISLAM (Nov. 17, 2012, 1:32 PM), <http://www.onislam.net/english/news/asia-pacific/460041-stop-rohingya-genocide-oic.html> (detailing OIC Secretary General’s call to end “ethnic cleansing” of the Rohingya).

⁴⁵ See Zawacki, *supra* note 3, at 22 (arguing that “actions, developments, and facts on the ground . . . support the conclusion that ethnic cleansing is underway in Rakhine State”).

⁴⁶ See Zarni Mann & The Associated Press, *Buddhists in Burma Torch Muslim Homes and Shops*, IRRAWADDY (Aug. 26, 2013), http://www.irrawaddy.org/z_political-prisoners/buddhists-in-burma-torch-muslim-homes-and-shops.html.

⁴⁷ See Myo Zaw Linn, *Burma Minister Slams Govt Response to Sandoway Violence*, DEMOCRATIC VOICE OF BURMA (Oct. 15, 2013), <https://www.dvb.no/news/burma-minister-slams-govt-response-to-sandoway-violence/33515>.

⁴⁸ See Jared Ferrie, *Rights Group Says Muslims Massacred in Myanmar Amid Official Denials*, REUTERS, Jan. 23, 2014, available at <http://www.reuters.com/article/2014/01/23/us-myanmar-rohingya-idUSBREA0M0P320140123>; *U.N.: Dozens of Muslims Massacred by Buddhists in Burma*, ASSOCIATED PRESS Jan. 14, 2014, available at <http://www.cbsnews.com/news/un-dozens-of-rohingya-muslims-massacred-by-buddhists-in-rakhine-burma/>.

⁴⁹ ROBERT CRYER ET AL., AN INTRODUCTION TO INTERNATIONAL CRIMINAL LAW AND PROCEDURE 127 (1st ed. 2007).

Burma's national judicial system has failed to act. No system of legal recourse or redress for Muslim victims of violence has been implemented. Domestic attempts at justice have been discriminatory and violent, resulting in mass arrests of Muslims, convictions under trumped-up charges, and the continuing sexual violence and extrajudicial killings of unarmed Rohingya.⁵⁰ Two of the most horrific massacres—the slaughter of twenty-eight Muslim children in Mrauk-U, Arakan State on October 28, 2012 and the executions of at least thirty-two Muslim schoolchildren and four teachers in Meiktila on March 21, 2013, who were forcibly marched to their deaths by soldiers as cheering crowds and officials looked on—have been unaddressed by authorities. Those who assist Muslims, including humanitarian aid workers,⁵¹ Buddhists who sell products to Muslims in defiance of the apartheid-style 969 campaign promoted by outspoken monks,⁵² and those who have helped smuggle Muslims to safety,⁵³ are targets of threats and intimidation.

The Burmese government has not only abdicated its responsibility to protect its people, but also denies that the Rohingya are a legally legitimate people. In July 2012, the Home Affairs Minister announced that the government would actually tighten restrictions on the Rohingya's rights to travel, marry, bear children, migrate, construct buildings, and own land in the wake of the attacks against them.⁵⁴ After government forces shot dead three displaced Rohingya women in June 2013, UN Special Rapporteur Quintana wrote: “[T]here continues to be absolutely no accountability for what is occurring there. There is no way of glossing over this state of affairs.”⁵⁵

Investigative reports commissioned by the Burmese government under international pressure have failed to address abuses by government authorities and hold accountable those responsible for the attacks. An official July 2012 report denied all government involvement in the attacks and shamefully

⁵⁰ See *UN Myanmar Expert: Fatal Shooting of Rohingya Women the Latest Product of Impunity*, U.N. OFF. OF THE HIGH COMM’R FOR HUM. RIGHTS (June 11, 2013), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13440&LangID=E>.

⁵¹ See, e.g., Fiona MacGregor, *Rakhine Aid Workers Resigning Over Social Media Threats*, MYANMAR TIMES (Aug. 18, 2013), <http://www.mmtimes.com/index.php/national-news/7896-rakhine-aid-workers-resigning-over-social-media-threats.html>.

⁵² See, e.g., *969—Hate by Numbers in Myanmar*, TIMES LIVE (Apr. 28, 2013, 11:13 AM), <http://www.timeslive.co.za/world/2013/04/28/969—hate-by-numbers-in-myanmar> (explaining how the 969 campaign has urged supporters to not sell homes or land to Muslims).

⁵³ See, e.g., *Monk Arrested for Smuggling Rohingya in Buddhist Robes*, IRRAWADDY (Apr. 9, 2013), <http://www.irawaddy.org/latest-news/monk-arrested-for-smuggling-rohingya-in-buddhist-rob.html>.

⁵⁴ See HRW, *supra* note 43, at 78.

⁵⁵ *UN Myanmar Expert*, *supra* note 50.

declared that there were no outstanding humanitarian needs in Arakan State.⁵⁶ In April 2013, the government released a second report, which discriminatorily refers to the Rohingya as illegal “Bengali,” recommending a higher presence of security forces in Arakan State and genocidal birth control tactics to limit the Rohingya population, and suggesting that the international community update Burma’s weaponry so the army can better control people trying to cross the Bangladesh border.⁵⁷ The report’s language is severely incendiary, with the Burmese version more racist than the strategically translated English version.⁵⁸ The UN, international agencies, and the human rights community, who have called repeatedly on the Burmese government to pursue justice and accountability, met the report with great skepticism.⁵⁹

After the large-scale killings of Rohingya in Du Chee Yar Tan in January 2014, the government at first refused to commission any investigation whatsoever. It called a UN statement that condemned the attacks unacceptable, barred access to the village, and threatened the Associated Press and other media outlets for investigating the incident.⁶⁰ It vehemently refused the U.S. Ambassador unprecedented request that the government establish an independent investigation commission with international officials.⁶¹ The government did eventually commission investigations under the Office of the President and the Myanmar Human Rights Commission, but both investigations preposterously concluded that no killings had taken place.⁶²

⁵⁶ See Smith, *supra* note 1.

⁵⁷ See Simon Roughneen, *Arakan Report Angers Rohingya Leaders*, THE IRRAWADDY (Apr. 29, 2013), http://www.irrawaddy.org/z_arakan/arakan-report-angers-rohingya-leaders.html.

⁵⁸ See *Rohingya issues taken up by Ambassadors of OIC member states ahead of the UN Human Rights Council*, ROHINGYA BLOGGER NEWS (May 18, 2013), <http://www.rohingyablogger.com/2013/05/rohingya-issues-taken-up-by-ambassadors.html>.

⁵⁹ See, e.g., *Myanmar/Rakhine Commission: “Positive Starting Point But Government Must Address Impunity”*—UN expert, U.N. OFF. OF THE HIGH COMM’R FOR HUM. RTS. (May 1, 2013), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13280&LangID=E> (evaluating the Arakan report, UN Special Rapporteur Quintana stressed that truth commissions and military reinforcements are not alternatives to justice and accountability for the crimes against Rohingya, which Burma has an “obligation under international law to investigate,” and he emphasized that security forces must stop infringing on people’s rights if Burma hopes to achieve ethnic and religious reconciliation).

⁶⁰ See *MOI Says Reporters Reprimanded, Reporters Say Otherwise*, DEMOCRATIC VOICE BURMA (Jan. 22, 2014), <http://www.dvb.no/news/moi-says-reporters-reprimanded-reporters-say-otherwise/36264>; see also Lawi Weng, *Govt Rejects Call for Int’l Investigation Into Alleged Rohingya Killings*, IRRAWADDY (Jan. 28, 2014), <http://www.irrawaddy.org/burma/govt-rejects-call-intl-investigation-alleged-rohingya-killings.html>.

⁶¹ See Weng, *supra* note 60.

⁶² San Yamin Aung, *Govt Investigation Dismisses Allegations of Rohingya Killings*, IRRAWADDY (March 11, 2014), <http://www.irrawaddy.org/burma/govt-investigation-dismisses-allegations-rohingya-killings.html>.

To compound matters, the government refuses to honor its November 2012 commitment to allow the UN High Commissioner for Human Rights to open an office in Burma to monitor the human rights situation.⁶³ Moreover, the government has banned Rohingya persons from self-identifying as Rohingya in the national census.⁶⁴ It is also pursuing national legislation to criminalize marriage between Buddhist women and non-Buddhists⁶⁵ and to ban non-citizens (i.e. Rohingya) from forming political parties.⁶⁶

The government has also constructed or enabled significant obstacles to researchers and aid workers attempting to enter conflict zones. When UN Special Rapporteur Quintana visited Burma in August 2013, around 200 Buddhists, the identity of whom remains unclear, attacked his UN convoy in Meiktila.⁶⁷ Quintana stated afterward that government forces failed to protect him from the mob, just as they had failed to protect the victims of March 2013 violence in Meiktila.⁶⁸ President Thein Sein's office subsequently alleged that Quintana had fabricated the attack and that the mob had only meant to give Quintana a letter and a t-shirt.⁶⁹

This government defiance is the status quo. Far from pursuing justice, the government has persistently denied allegations of human rights violations against Muslims,⁷⁰ and has "strongly rejected" human rights reports from the

⁶³ *World Report 2014: Burma*, HUMAN RIGHTS WATCH (Jan. 2014), http://www.hrw.org/sites/default/files/related_material/burma_6.pdf.

⁶⁴ See Shwe Aung & Angus Watson, *Term 'Rohingya' Struck From Census*, DEMOCRATIC VOICE OF BURMA (Mar. 30, 2014), <http://www.dvb.no/census/term-rohingya-to-be-struck-from-census-gov-spokesman-burma-myanmar/39125>.

⁶⁵ See *Burma: Scrap Proposed Discriminatory Marriage Law*, HUMAN RIGHTS WATCH (Mar. 25, 2014), <http://www.hrw.org/news/2014/03/24/burma-scrap-proposed-discriminatory-marriage-law>.

⁶⁶ See Lawi Weng, *Upper House Approves Ban on Politics for Non-Citizens*, IRRAWADDY (Mar. 20, 2014), <http://www.irrawaddy.org/burma/upper-house-approves-ban-politics-non-citizens.html>.

⁶⁷ Tomás Ojea Quintana, *Statement of the Special Rapporteur on the Situation of Human Rights in Myanmar*, UN Information Center Myanmar, Aug. 21, 2013, available at <http://yangon.sites.unicnetwork.org/2013/08/21/statement-of-the-special-rapporteur-on-the-situation-of-human-rights-in-myanmar-2/>.

⁶⁸ See Tomás Ojea Quintana, *Statement of the Special Rapporteur on the Situation of Human Rights in Myanmar* (Aug. 21, 2013), available at <http://yangon.sites.unicnetwork.org/2013/08/21/statement-of-the-special-rapporteur-on-the-situation-of-human-rights-in-myanmar-2/> (detailing Quintana's response to the attack on his convoy).

⁶⁹ See *Myanmar Rejects UN rights Envoy's Claim of Attack by Buddhist Mob, Says He Was Never in Danger*, ASSOCIATED PRESS, Aug. 22, 2013, available at http://www.salon.com/2013/08/22/myanmar_rejects_un_rights_envoys_claim_of_attack/.

⁷⁰ See, e.g., HRW, *supra* note 43, at 22 (quoting the Burmese Foreign Minister denying the use of government force against the Rohingya and accusing the international community of "politicizing" the violence).

United Nations and other organizations.⁷¹ These public refutations of violence demonstrate how the Burmese government has not only intentionally failed to provide justice, it has also become emboldened by the lack of international pressure to stop the violence.⁷² Further international calls to stop violence would thus be redundant and ineffectual. The United States must acknowledge the existence of mass atrocity crimes, recognize that domestic attempts at justice have failed, and support an international investigation.

II. U.S. RESPONSIBILITY TO PROTECT

Having reviewed the applicability of the doctrine of Responsibility to Protect, I now examine U.S. responsibility to support an investigation into anti-Muslim violence consistent with U.S. goals to promote a stable, peaceful Burma. The Obama administration has expressed “deep concern” for the Muslim crisis.⁷³ But, overall, the United States has addressed anti-Muslim violence in a distant and even upbeat manner, and has failed to acknowledge the existence of mass atrocity crimes. After the violent events in June 2012 in Arakan State, the U.S. embassy’s charge d’affaires preposterously announced, “The [Burmese] government is trying to help everybody who needs it, whether that is Rakhine Buddhists or Muslims.”⁷⁴ U.S. officials, journalists, and other policymakers have repeatedly characterized the Muslim crisis as a mere “bump” along the road to democracy,⁷⁵ and when pressured, have made only vaguely illogical arguments defending the administration’s decision to not support an international investigation.⁷⁶

⁷¹ See, e.g., *Myanmar says govt not to blame for religious riots*, ASSOC. PRESS, Mar. 30, 2013, available at http://www.insidebayarea.com/news/ci_22906340/myanmar-says-govt-not-blame-religious-riots (quoting the Burmese presidential spokesman rejecting Quintana’s report on anti-Muslim violence, and saying that it was “saddening that Mr. Quintana made his comments based on hearsay without assessing the situation on the ground.”).

⁷² See, e.g., Zawacki, *supra* note 3, at 23 (explaining how the Burmese government defiantly responded to the 2012 UN General Assembly resolution against Burma by insisting that the UN refer to the Rohingya as “illegal Bengalis”).

⁷³ Paul Eckert, *Obama Urges Myanmar to Stop Violence Against Muslims*, REUTERS, May 20, 2013, available at <http://www.reuters.com/article/2013/05/20/us-usa-myanmar-idUSBRE94J0PH20130520>.

⁷⁴ See, e.g., *U.S. Applauds Myanmar’s Response to Rakhine Riots*, ELEVEN MYANMAR (June 24, 2012, 1:34 PM), http://www.elevenmyanmar.com/index.php?option=com_content&view=article&id=68:us-applauds-myanmar-response-to-rakhine-riots&catid=32&Itemid=354.

⁷⁵ See, e.g., Lex Rieffel & Yun Sun, *Obama in Burma*, BROOKINGS (Nov. 16, 2012), <http://www.brookings.edu/research/opinions/2012/11/16-obama-burma-rieffel-sun>.

⁷⁶ See, e.g., Glenn Kessler, *How Much Has the United States Been ‘Standing Up Against’ Atrocities in Burma?*, WASH. POST: FACT CHECKER (Dec. 31, 2013), <http://www.washingtonpost.com/blogs/fact-checker/wp/2013/12/31/how-much-has-the-united-states-been-standing-up-against-atrocities-in-burma/> (describing how when pressed to articulate why the U.S. would not support an international investigation, a State

But anti-Muslim violence is not a natural consequence of democratic transition; the Burmese government has proven itself more than capable of using force to crackdown on disorder and using the legal system to implement its will, and in the case of the Muslim crisis, the government has all the national and international resources to do so. Anti-Muslim violence is a *constructed* consequence of the government's institutionalized discrimination and deliberate failure to intervene and enact legal accountability. It is in fact widely believed internationally and in many parts of Burma that anti-Muslim violence is a state-driven movement "to generate chaos in an attempt to derail reforms, to maintain . . . political/economic power, and/or to provide an opportunity for the army to maintain its position in society."⁷⁷

Even so, U.S. calls to address violence have been carefully couched in new investment and trade initiatives, which have handily overshadowed diplomatic admonishments.⁷⁸ This praising of powerful Burmese leaders for econo-centric reforms as they simultaneously perpetuate mass atrocity crimes legitimizes the regime's ideology of ethno-religious nationalism. President Thein Sein and other Burmese officials have accordingly responded to U.S. encouragement by denying the severity of anti-Muslim violence, rather than by providing justice.

But investigating rights violations in Burma would be advantageous to U.S. interests in the long-term. The United States has politically and financially invested in the Burmese freedom and democracy movement for decades.⁷⁹ The

Department representative said that while the U.S. believed that "[t]he best prevention against future violence is accountability," the administration had determined that "[a]t this time, our assessment has been that supporting a call for such an international investigation would not advance this goal").

⁷⁷ U.S.I.R.F., *supra* note 42, at 5.

⁷⁸ Fewer than twelve hours after President Thein Sein's shocking announcement in July 2012 that all Rohingya should be deported, President Obama lifted the investment ban. Josh Rogin, *Obama Breaks with Aung San Suu Kyi, Lifts Burmese Investment Ban*, FOREIGN POL'Y: CABLE (July 11, 2012, 11:06 AM). Then just weeks after the October 2012 renewal of mass atrocities in Arakan State, Obama honored the government's reform efforts by visiting Burma and giving a speech at the University of Yangon, in which he announced a new U.S.-Burma partnership and extended "the hand of friendship" to the government. Pres. Barack Obama, Remarks by President Obama at the University of Yangon (Nov. 19, 2012), *available at* <http://www.whitehouse.gov/photos-and-video/video/2012/11/19/president-obama-speaks-university-yangon#transcript>. He only briefly mentioned the Rohingya. *Id.* In a May 2013 meeting in Washington, DC, Obama praised Thein Sein for "leading Myanmar in a new direction" and again glossed over the Muslim crisis. During the meeting, President Obama announced the establishment of a U.S.-Burma Trade and Investment Framework Agreement. *See* President Barack Obama, Remarks by President Obama and President Thein Sein of Myanmar After Bilateral Meeting (May 20, 2013), *available at* <http://www.whitehouse.gov/the-press-office/2013/05/20/remarks-president-obama-and-president-thein-sein-myanmar-after-bilateral>.

⁷⁹ The U.S. in 2003 officially recognized the National League for Democracy (NLD) as the legitimate ruler of Burma, and has supported the NLD since it won the 1990 elections and was forcibly removed from power by the regime. *See, e.g., United States Reaffirms Support for Burma's Opposition Party*, U.S.

State Department reiterated in February 2013 that the United States's "overarching policy goal" is "to support political reform in Burma towards the establishment of a peaceful, prosperous, and democratic state that respects human rights and the rule of law."⁸⁰ In May 2013, President Obama renewed Executive Order 13619, declaring that human rights violations and conflict in Burma still constitute an "extraordinary threat to the foreign policy and national security of the United States."⁸¹ The anti-Muslim crisis is precisely that—an extraordinary threat to U.S. policy endeavors and strategic interests to establish a peaceful, prosperous, and democratic Burma.⁸²

To date, the U.S. has avoided acknowledging the Burmese government's failure to protect Muslims out of concern that pressuring Burma could threaten the U.S. policy of "encouraging reformers."⁸³ Since April 2012, the United States has worked to rapidly restore ties with the Burmese government by building relationships with its leaders—the same leaders who were at the helm of the former military regime. In order to build mutual trust with these leaders, the United States has simultaneously cut ties with its historic partners—Burma's persecuted ethnic groups and democratic opposition.⁸⁴

The zeal with which the United States has alienated these historic partners, lifted sanctions, and promoted trade and investment without establishing conditions for concessions or the reinstatement of sanctions has ostensibly given the Burmese government such confidence in U.S. support that it has

Department of State, IIP Digital, Sept. 26, 2006, *available at* <http://iipdigital.usembassy.gov/st/english/article/2006/09/20060926171349asesuar7.438296e-02.html#axzz2dHBuUuBr6>. U.S. policy has also long hedged on the establishment of tripartite dialogue with ethnic groups, and the protection of ethnic groups, as established in the Burmese Freedom and Democracy Act. Burmese Freedom and Democracy Act of 2003, Pub. L. No. 108-61, 117 Stat. 864.

⁸⁰ State Department, *supra* note 6.

⁸¹ Letter from Pres. Obama to Speaker of the House—Continuation of the National Emergency with Respect to Burma (May 2, 2013), *available at* <http://www.whitehouse.gov/the-press-office/2013/05/02/letter-continuation-national-emergency-respect-burma>.

⁸² *Cf.* PHR, *supra* note 26, at 2 (explaining how the government's failure to protect Muslims seriously threatens any hope for the establishment of "a truly democratic country").

⁸³ *Cf.* Walter Lohman, *Burma Policy: Lift Sanctions, Ask Questions Later*, REAL CLEAR POLITICS (May 21, 2013), http://www.realclearpolitics.com/articles/2013/05/21/burma_policy_lift_sanctions_ask_questions_later_118477.html ("The Administration . . . has removed, suspended, or otherwise eased sanctions on Burma across the board. But instead of calibrating these rewards in response to actual reforms, in an effort to impact Burma's domestic political balance, it has taken to preemptively rewarding the reformers themselves.")

⁸⁴ *See, e.g.*, MICHAEL MARTIN, CONG. RESEARCH SERV., R43035, U.S. POLICY TOWARDS BURMA: ISSUES FOR THE 113TH CONGRESS 4 (2013) (explaining that "in the view of some experts," U.S. ties with the Burmese government have come "at the expense of relations with Burma's opposition parties and ethnic groups").

condoned violence with little fear that sanctions will be re-imposed.⁸⁵ Even Burmese leaders themselves have expressed surprise and even perhaps hesitancy at the astonishing speed and trust with which the United States has begun engaging with the Burmese government. In a May 2013 interview, President Thein Sein exclaimed, “I myself am amazed at the speed of the improvement of our bilateral relations. . . . But there are no permanent friends or permanent foes in international relations.”⁸⁶

Such headlong U.S. engagement is motivated by either one or a combination of five strategic factors: (1) taking advantage of potential trade and investment opportunities in what has been called the “last frontier of Asia;”⁸⁷ (2) mitigating Burma’s status as a Chinese satellite state;⁸⁸ (3) developing an ally on the Andaman Sea, a strategic nexus with international security and trade benefits;⁸⁹ (4) establishing an example of positive Western engagement to lure North Korea out of isolation;⁹⁰ and (5) providing the

⁸⁵ Cf. *Seminar Report: Political Reform in Burma/Myanmar and Consequences for Ethnic Conflict*, Transnational Institute and Burma Centrum Netherlands, Burma Project, Apr. 26, 2013, available at <http://www.tni.org/briefing/political-reform-burmayanmar-and-consequences-ethnic-conflict> [hereinafter Transnational Institute] (“[I]nternational donors and agencies. . . appear to have no common strategy or end-goal; it is often hard to understand their focus or ways of working; sanctions are being dropped and human rights issues, for long the Western priority, appear to have been downgraded; and they have not had influence in dealing with such crises as government offensives in the Kachin borderlands, Buddhist-Muslim violence, and the continuing trends of land-grabbing and economic marginalisation. Rather than prioritizing ethnic and political realities today, they seem more focused on economic engagement with Nay Pyi Taw and hoping to build up President Thein Sein and Aung San Suu Kyi as reformist leaders for the long-term.”).

⁸⁶ See Samuel Burke and Juliet Fuisz, *Myanmar: A Revolution in Progress*, CNN, May 20, 2013, available at <http://amanpour.blogs.cnn.com/2013/05/20/myanmar-a-revolution-in-progress/>.

⁸⁷ See, e.g., *US Seeking to Invest in Myanmar, Boost Trade*, WSJ, Apr. 27, 2013, available at <http://online.wsj.com/article/BT-CO-20130427-700079.html> (explaining U.S. efforts to boost trade, investment, and overall economic cooperation with Burma).

⁸⁸ See *U.S. Policy Toward Burma Before the Subcomm. of East Asian and Pacific Affairs of the S. Comm. on Foreign Relations*, 112th Cong. 2 (2012) (statement of Dr. Karl Jackson), available at <http://www.foreign.senate.gov/hearings/us-policy-on-burma> (discussing how a Burma that became a “full-fledged client state of China” would shift the “regional strategic balance,” necessitating that the U.S. mitigate the rise of Chinese influence by partnering with Burma).

⁸⁹ *Id.* (explaining Burma’s strategic location “between the emerging meganations of Asia—India and China” and the “vital Strait of Malacca”); Rahul Bedi, *Burma-Pak-China Nexus Feared*, BURMA LIBRARY (Nov. 16, 2000), <http://www.burmalibrary.org/reg.burma/archives/200011/msg00077.html> (explaining how China and Pakistan have strategically ignored international sanctions and sought to influence the Burmese government and military, efforts which complemented “their strategy of encircling India”).

⁹⁰ See Kang Tae-ho, *Obama Upholds Myanmar as an Example for North Korea*, HANKYOREH (May 9, 2013), http://www.hani.co.kr/arti/english_edition/e_northkorea/586672.html.

Obama administration with a foreign policy success in a difficult international scene.⁹¹

On the surface, calling for an investigation into anti-Muslim violence may not seemingly bolster any of these policy endeavors for the U.S. government, but ethno-religious violence has and is continuing to promote deep regional insecurity, threatening ASEAN's political and strategic legitimacy and ability to partner with the United States at a higher international level.⁹² Properly implementing R2P would ultimately lead to a more stable, democratic Burma; in the long-term, a democratic Burma would prove more profitable to the United States than a Burma systemically undermining national reconciliation.⁹³ A democratic Burma would not only prove a stronger strategic ally in China's sphere of influence and create fewer refugees, but would also better promote regional and international cooperation and be a more profitable trade and investment partner. A 2013 McKinsey report into Burma's investment landscape warned that due to the persisting systems of inequality and disenfranchisement among religious and ethnic minorities and the rural public, Burma's consumer market is extremely small, and may not grow quickly enough to justify significant U.S. investment in the consumer sector.⁹⁴ But the consumer sector is precisely where most U.S. investors are looking.⁹⁵ Forcing

⁹¹ Cf. Matthew Pennington, *Violence in Myanmar Takes Sheen Off Obama's Foreign Policy Success*, FOXNEWS.COM, Apr. 4, 2013, available at <http://www.foxnews.com/us/2013/04/04/myanmar-violence-takes-sheen-off-obama-foreign-policy-success-story-challenges/> ("The country's rapid changes were lauded by visiting Western leaders, and the nation's president was hailed as a hero. But spasms of spreading, communal violence show the reform path is bumpier than expected and have taken the sheen off a foreign policy success of the Obama administration's first term. While Washington says the country's overall direction is still positive, some experts worry Myanmar risks backsliding toward military rule that ended two years ago.").

⁹² See Kurlantzick, *supra* note 17; Eliane Coates, *Myanmar's Religious Violence Threatens Southeast Asia*, TODAY, July 2, 2013, available at <http://www.todayonline.com/commentary/myanmars-religious-violence-threatens-south-east-asia> (arguing that anti-Muslim violence in Burma may be sparking anti-Muslim violence across South and Southeast Asia, and could radicalize Muslims in Indonesia, Malaysia, and beyond).

⁹³ Cf. Sean M. Lynn-Jones, *Why the United States Should Spread Democracy* (Belfer Ctr. for Sci. & Int'l Affairs, Discussion Paper 98-07, 1998) available at http://belfercenter.ksg.harvard.edu/publication/2830/why_the_united_states_should_spread_democracy.html (explaining how supporting democracies is advantageous for U.S. interests).

⁹⁴ See generally Heang Chhor et al., *Myanmar's Moment: Unique Opportunities, Major Challenges*, MCKINSEY GLOBAL INST. (June 2013), available at http://www.mckinsey.com/insights/asia-pacific/myanmars_moment (outlining obstacles to engaging with Burma's underdeveloped economy).

⁹⁵ See Dhara Ranasinghe, *China's Strong Hand in Myanmar Under Threat?*, CNBC (Nov. 19, 2012), <http://www.cnbc.com/id/49880968> ("Foreign firms may have better luck making progress in the consumer sector. . . Western companies. . . will probably want to develop other sectors such as financial services, credit cards, consumer goods," said [William] Case at City University of Hong Kong. "There's an enormous and untapped consumer market there that will take years to develop. The potential is plainly there, that is what is probably attractive to foreign countries.").

Burma to repeal laws centered on ethno-religious nationalism and to end repression of minorities will be foundational to establishing a larger consumer market for U.S. investment.

Many Burma experts argue that continuing an “encouraging reformers” policy with the regime, while effectively ignoring mass atrocity crimes, threatens to unravel the past two decades of rights-based Burma policy.⁹⁶ These actors urge the Obama administration to “prioritize the protection of human rights when designing U.S. foreign policy toward Burma.”⁹⁷ National reconciliation—the groundwork for implementing long-term strategic and financial relations with Burma in an ethical manner—cannot be achieved without transitional justice for persecuted minorities. Modest economic and political reforms in Burma are feeble ones indeed if they only benefit non-rural non-minorities and continue to perpetuate ethno-religious nationalism.⁹⁸ Holding the Burmese government accountable through an independent investigation is imperative to address the government’s culture of impunity and end mass atrocity crimes, which defy national reconciliation. While difficulties will doubtlessly arise in maintaining strong relationships with top government leaders, these relationships have proven inadequate at ending abuses of power and fulfilling the overarching rights-based U.S. policy goal to support a peaceful, stable Burma.

The use of government force, discrimination, and detention as problem-solving tools is a systemic abuse of power by Burmese leaders. An investigation into violations of international human rights and humanitarian law with respect to Muslims is imperative because Burma routinely and injudiciously uses violence as a mechanism to control, terrorize, and suppress its people. Similar mass atrocity crimes in other nations have prompted the

⁹⁶ Cf. Martin, *supra* note 84, at 4 (explaining how critics of the “Obama Administration’s handling of Burma relations maintain that it has moved too fast and too far in relaxing sanctions and has become too close to President Thein Sein and the Union Government”).

⁹⁷ PHR, *supra* note 26, at 30.

⁹⁸ See, e.g., Transnational Institute, *supra* note 85 (“On the ground, reform is at an early stage, and livelihoods and security remain unstable in many communities. Ethnic conflicts and military practises from the past continue, while new upheavals are occurring during a time of uncertain political and economic change . . . As in previous political eras, the marginalisation of ethnic interests will only sustain grievance and conflict, further perpetuating the risk of state failure. In this reform vacuum, ethnic groups and local communities have become extremely concerned over the pace and style of economic change under the Thein Sein government . . . In summary, while there have been undeniably positive trends in Burma over the past year, these have not yet been translated into ethnic peace and justice.”).

United States to support international, independent investigations,⁹⁹ and providing an external forum of accountability for anti-Muslim violence is a natural articulation of U.S. policy. Assuming the legal Responsibility to Protect would help legitimize the work of genuine political and legal reformers inside Burma and establish an international expectation of a Burmese political landscape in line with international human rights standards.

CONCLUSION

The United States should officially recognize mass atrocity crimes against Muslims in Burma and unequivocally support an independent investigation. Downplaying human rights violations and impunity has not resulted in national reconciliation; it has perpetuated more conflict and a lack of accountability. In order to promote a democratic Burma in accordance with U.S. policy goals, the United States cannot support a government that fuels ethno-religious violence. The United States is responsible for protecting victims of anti-Muslim violence in Burma, even more so—not less so—as it builds a policy of pro-active engagement with the Burmese government. The appropriate action is to call on the United Nations to establish an independent investigation into anti-Muslim violence, supporting basic human rights for all Burma's people.

⁹⁹ Cf. HARVARD, *supra* note 5, at 77–90 (establishing that the crimes against humanity in Burma are of the same functional severity as those in the former Yugoslavia, Rwanda, and Darfur where the UN Security Council, with U.S. support, implemented international justice mechanisms; that “violations that have been reported in Burma are sufficiently long-lasting and severe to merit similar Security Council action”).