



Australian Lawyers for Human Rights (ALHR)

Statement on the situation in Myanmar

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About Australian Lawyers for Human Rights (ALHR)

ALHR was established in 1993 and is a national network of over 800 Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees as well as specialist national thematic committees.

ALHR seeks to utilise its extensive experience and expertise in the principles and practice of international human rights law in Australia in order to advocate for greater Australian compliance with international human rights standards at a domestic and international level and promote and support lawyers' practice of human rights law in Australia.

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Preamble

The persecution of the Rohingya people as described below is tragic and deserves international condemnation and action. Whether these events also amount to war crimes and/or crimes against humanity can only be answered by reference to International Humanitarian Law (IHL), customary IHL, and International Criminal Law (ICL). Australian Lawyers for Human Rights (ALHR) has undertaken this analysis to help Australians understand what is happening in Myanmar.

1. Background to the conflict

The situation in Myanmar for the people of the Rohingya ethnic and religious minority (**the Rohingya**) has been perilous since the country gained independence from Great Britain in 1947. Following independence, elements of the Rohingya community engaged in fifteen years of civil war to secede from Myanmar followed by thirty years of a sporadic insurgency to improve the situation for Rohingya. In 1982, Myanmar's Government passed a law identifying 9 recognised ethnic groups in Myanmar that could claim citizenship. The Rohingya were not one of these groups, rendering them stateless.¹ Since then, successive governments in Myanmar have pursued a policy of persecution and demonisation, turning the majority Buddhist population against the Rohingya. These events culminated in widespread anti-Rohingya violence in 2012, during which the Myanmar Security Forces (**the Army**) were accused of either looking the other way or actively joining in the bloodshed.²

Out of the violence, a new Rohingya insurgency movement was born – the results of which are only just coming to light.

The previous effective Rohingya insurgent group, the Rohingya Solidarity Organisation, became militarily defunct in 1998 through a series of mergers and splinters. The insurgency effectively ceased until October 2016, when several hundred Rohingya men (armed with knives, slingshots and small firearms) attacked 3 police locations leaving nine police and eight insurgents dead.

The Arakan Rohingya Salvation Army (**ARSA**)³ claimed responsibility for the attacks. It was a dominant military win for the group, which tripled its arms cache to almost 100 firearms and made away with 10,000 rounds of ammunition. During the attack, the ARSA showed a high level of organisation and preparedness in deploying improvised explosive devices (**IEDs**) and using diversionary tactics to overrun a well-defended police headquarters.

¹ Burma Citizenship Law, 15 October 1982 available at <http://www.refworld.org/docid/3ae6b4f71b.html>.

² See for example, <https://www.hrw.org/news/2013/04/22/burma-end-ethnic-cleansing-rohingya-muslims>.

³ The group was previously known by its Arabic name Harakah al-Yaqeen (the Faith Movement).

According to the International Crisis Group (**ICG**), the origins of the 2016 attack go back to the anti-Rohingya violence in 2012, after which a small number of members of the Rohingya diaspora in Saudi Arabia, Bangladesh and Pakistan began organising and raising resources.⁴ In 2013, local Rohingya leaders in Bangladesh refugee camps were reportedly engaged to recruit and train young Rohingya men in basic guerrilla warfare and the use of explosives. Later, this training was able to continue and expand in the Mayanmar province of Maungdaw. The ICG's sources advised that the recruits were organised into village-level cells and were trained for two years by the Rohingya experienced in fighting during the Afghan conflict.⁵

The Army's response to the 2016 attacks was brutal and severe.⁶ They engaged in a calculated policy of terror – cordoning off territory for concentrated operations involving the destruction of villages and food stocks, rape, and the denial of humanitarian assistance.⁷ The United Nations High Commissioner for Refugees (**UNHCR**) has since accused Myanmar of ethnic cleansing of the Rohingya people.⁸

2. Recent developments

Over the past two months, almost all major international media outlets have reported significant instances of violence in western Myanmar. However, details are scarce, and sources are not independently verified as access to the area is restricted to all foreign media.

On 1 September 2017, the ABC reported that up to 130 civilians, including women and children, were killed by security forces and Buddhist vigilantes near Rathedaung Township, following on from attacks by ARSA on 25 August 2017 at thirty Army checkpoints along the Myanmar – Bangladesh border, in which 12 police officers were killed.⁹

The Army again employed lethal tactics in its response. On 1 September 2017, CNN reported that 2,300 homes were torched, forcing an estimated 58,000 people to flee to Bangladesh, in addition to the approximately half a million already seeking refuge across the border.¹⁰ On 3 September 2017, the Army released a statement to the international media confirming that its campaign "against the terrorists" had led to the death of almost 400 people over the weekend.¹¹ An Army spokesperson claimed that 370 of those killed were "terrorists" and only fourteen were civilian casualties. However,

⁴ See <https://www.crisisgroup.org/asia/south-east-asia/myanmar/283-myanmar-new-muslim-insurgency-rakhine-state>.

⁵ Ibid.

⁶ See for example, <https://www.amnesty.org/en/latest/news/2016/12/myanmar-security-forces-target-rohingya-viscious-scorched-earth-campaign/>; <https://www.reuters.com/article/us-myanmar-rohingya/hundreds-of-rohingya-flee-myanmar-army-crackdown-to-bangladesh-sources-idUSKBN13B11O>; <https://www.theguardian.com/world/2016/nov/14/myanmar-rohingya-violence-dozens-killed-army-clashes>.

⁷ Ibid.

⁸ See <http://www.bbc.com/news/world-asia-38091816>.

⁹ See <http://mobile.abc.net.au/news/2017-09-01/reports-of-women-and-children-among-dead-in-myanmar-massacre/8862164?pfmredir=sm>.

¹⁰ See <http://edition.cnn.com/2017/09/01/asia/rohingya-bangladesh-myanmar-crisis/index.html>.

¹¹ See <http://www.independent.co.uk/news/world/asia/urma-rohingya-muslims-killed-massacre-highlands-armed-forces-army-soldiers-terror-a7924411.html>.

refugees fleeing the violence have told reporters and humanitarian workers of torture, mass killings, and other atrocities.¹²

Since the initial flurry of violence in early September 2017, over half a million Rohingya have left the conflict area. Arriving in Bangladesh, these people have begun telling their horrific stories to humanitarian aid workers. Human Rights Watch has been informed that soldiers have been entering villages such as Maung Nu and Hpaung Taw Pyin and sexually assaulting and killing civilians.¹³ One of the compounding factors to the crisis is the lack of humanitarian access to the affected areas of Myanmar. This lack of access works in favour of the Myanmar Government, as it not only prevents aid from reaching a community the Government has made clear is not welcome in Myanmar, but also prevents stories of atrocities by the Army from being substantiated by evidence.

On 28 September 2017, the United Nations Security Council met to discuss the situation in Myanmar publicly for the first time in 8 years, yet took no substantial action.¹⁴ Meanwhile, the evidence of severe transgressions from international law is mounting. Satellite imagery shows evidence of burned villages left in the wake of the Army's scorched-earth response to the insurgency,¹⁵ and the ABC has published video footage showing charred bodies lying in smoldering houses.¹⁶

According to the United Nations Office for the Coordination of Humanitarian Affairs, at the date of publication of this statement, over 600,000 Rohingya refugees have arrived in Bangladesh since 25 August 2017. This takes the total number of Rohingya who have fled Myanmar to seek refuge in Bangladesh to 809,000.¹⁷

3. Are War Crimes being committed by Myanmar Security Forces?

IHL is the body of international law that regulates armed conflict. This law applies to state armies as well as organised non-state armed groups. A war crime is a serious breach of IHL. War crimes are within the jurisdiction of the International Criminal Court (ICC). The ICC's statute (**the Rome Statute**) defines war crimes to include: willful killing, torture, willfully causing great suffering (including rape), unlawful deportation or transfer of population and the extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly.¹⁸

For a war crime to be made out, there must be a situation of armed conflict to which IHL applies. In this case, because it does not involve two or more states, if a situation of armed conflict exists, the appropriate categorization is a Non-International Armed Conflict (**NIAC**). "Non-International Armed

¹² Ibid.

¹³ See <https://www.hrw.org/news/2017/10/03/burma-military-massacres-dozens-rohingya-village>.

¹⁴ See <http://edition.cnn.com/2017/09/28/asia/myanmar-un-security-council/index.html>.

¹⁵ See <https://www.hrw.org/news/2017/08/29/burma-satellite-data-indicate-burnings-rakhine-state>.

¹⁶ See <http://www.abc.net.au/news/2017-09-13/rohingya-myanmar-videos-purport-to-show-violence-death/8898636>.

¹⁷ See <https://unocha.exposure.co/the-rohingya-crisis-in-numbers>.

¹⁸ For a comprehensive list of war crimes see Article 8(2)(a) of the Statute of the International Criminal Court (ICC), 17 July 1998, 2187 UNTS 90 (hereinafter, 'Rome Statute').

Conflict” is not defined under IHL or the Rome Statute, but has been defined in case law as “a resort to armed force between States or protracted violence between governmental authorities and organized armed groups or between such groups within a State.”¹⁹ For a NIAC to exist, the violence must be sufficiently organised and sufficiently intense.²⁰ Thus, a NIAC can be contrasted with “situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.”²¹

In this respect, it is important to note that widespread violence is not a sufficient condition on its own to establish a NIAC to which IHL applies, particularly (although counter-intuitively) if it is largely one-sided – for example, being inflicted predominantly by security forces against a largely unarmed population. While this inequality of violence will be relevant to whether crimes against humanity are being committed, widespread violence perpetrated on the most part by one side not be sufficient to render the situation a NIAC. In such circumstances there is no armed conflict and therefore no ‘war crimes’.

3.1 Intensity

First, for NIAC to be made out, the existence of an armed conflict requires the violence to be of a sufficient level of intensity.²² A range of factual indicators determines this, including, for instance, the number of confrontations and actors involved, the types of weaponry used and the extent of injuries and destruction.²³ This is a threshold test (set out by the ICTY in *Tadić*²⁴), so it is not necessary to conclusively catalogue every act of violence, provided there are sufficient violent acts established to meet the threshold.²⁵ While the situation in Myanmar remains at the lower end of intensity, ALHR believes, on the basis of the factors disused in the proceeding paragraphs, the violence is sufficiently intense to meet the requirements of a NAIC.

The most critical factual indicators of intensity are the number of troops or fighters involved, and the number of casualties suffered by the belligerent groups and the civilian population.²⁶ During the 2016 violence, the numbers involved were not insignificant. In the attacks, there were “several hundred local Muslim men”²⁷ and in November 2016, it was reported that 60 insurgents clashed with the Army.²⁸ In 2017, if similar numbers were engaged in each of the attacks, and judging by the number

¹⁹ *Prosecutor v. Tadić* (1997) *Case No. IT-94-I-AR72*, Appeals Chamber, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995 (“*Tadić* Interlocutory Appeal Decision”).

²⁰ For “intensity” see *Prosecutor v. Ramush Haradinaj* Case No. ICTY-04-84-T, Judgment, 3 April 2008 [49], [60]; and *Prosecutor v. Lubanga* (2012) ICC-01/04-01/06-2842, [538]; for “organisation” see text of Article 1, Additional Protocol II to the Geneva Conventions, 8 June 1977 and Article 8(2)(f) of the Rome Statute; see also *Prosecutor v. Limaj et al.* Case No. IT-03-66-T, Judgment, 30 November 2005 [90].

²¹ Article 1, Additional Protocol II to the Geneva Conventions, 8 June 1977.

²² *Prosecutor v. Lubanga* (2012) ICC-01/04-01/06-2842, [538].

²³ *Ibid.*

²⁴ *Prosecutor v. Tadić* (1997) *Case No. IT-94-I-AR72*, Appeals Chamber, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995 (“*Tadić* Interlocutory Appeal Decision”).

²⁵ *Ibid.*

²⁶ *Prosecutor v. Lubanga* (2012) ICC-01/04-01/06-2842, [538].

²⁷ See <https://www.crisisgroup.org/asia/south-east-asia/myanmar/283-myanmar-new-muslim-insurgency-rakhine-state>.

²⁸ *Ibid.*

of attacks, the size of the insurgent force had grown.²⁹ It was reported that the ARSA had suffered 400 casualties in the Army's response to the initial attacks.³⁰ While it is questionable as to how many of these casualties were in fact ARSA fighters, these figures do suggest a sizeable insurgent force. Subsequently, the Army has stated that they were involved in up to 93 clashes with militants between 25 August 2017 and 17 September 2017.³¹

The numbers of casualties indicate the existence of NIAC. In 2017, 77 insurgents and 12 soldiers were killed in attacks in late August, and 400 were killed in the Army's response – noting that it is unclear whether these deaths are of civilians or insurgents.³² Since late August 2017 there have been numerous reports of Rohingya being killed.³³

As noted above, widespread attacks on civilians alone will not render the situation an armed conflict for the purposes of IHL, but such attacks are relevant when analysing whether crimes against humanity have been committed. Nonetheless, civilian casualties are relevant for assessing the intensity of the conflict and thus, provided the other factual elements are present, this will support a conclusion that there is a NIAC. In addition to the Army's initial response in late August 2017, there have been numerous reports both before and after the August events of the Army targeting Rohingya who were attempting to flee to neighboring Bangladesh.³⁴

The nature of the targets of attack and the extent of the damage are also relevant factors in the legal analysis. It appears that the ARSA attacks on 25 August 2017 were directed at 30 police posts and an army base.³⁵ Depending on the size of these targets, these events could indicate an armed conflict. In particular, a military base is a "quintessential military objective".³⁶ Depending on the size of the base, the attack on the base alone may be enough to classify events as a NIAC – as was the case in *Abella v Argentina*.³⁷ Ordinarily, police stations are not lawful military targets, however, this depends on whether the stations are integrated into the military's operations or not. If they are not integrated into the military, they may nonetheless be rendered military objectives by use, location or purpose.³⁸ If the police posts were military objectives because the police are effectively part of the military, then this further supports the conclusion that a NIAC has commenced. Similarly, the level of destruction of civilian assets by the Army also supports the existence of a NIAC. After the ARSA's 2016 attacks, it was reported that 1,500 buildings had been destroyed.³⁹ After the recent attacks, it

²⁹ See <http://www.smh.com.au/world/myanmar-attacks-rohingya-pay-steep-price-for-actions-of-a-new-force-called-arsa-20170921-gylupx.html>.

³⁰ See <http://www.bbc.com/news/world-asia-41082689>.

³¹ See <http://www.bbc.com/news/world-asia-41300247>.

³² See <https://www.reuters.com/article/us-myanmar-rohingya/rohingya-refugees-tell-of-new-violence-call-for-myanmar-sanctions-idUSKCN1BT08O>.

³³ See <http://mobile.abc.net.au/news/2017-09-01/reports-of-women-and-children-among-dead-in-myanmar-massacre/8862164?pfmredir=sm>.

³⁴ See for example <http://edition.cnn.com/2017/08/28/asia/myanmar-rohingya-unrest/index.html>

³⁵ <https://www.thestar.com/news/world/2017/08/25/71-dead-in-myanmar-after-militant-attacks-on-police-border-posts.html>.

³⁶ *Abella v Argentina* (1997) Case 11.137, Report No. 55/97, Inter-American Court of Human Rights

³⁷ Ibid.

³⁸ Additional Protocol I, Article 52(2).

³⁹ See <https://www.hrw.org/news/2016/12/13/burma-military-burned-villages-rakhine-state>.

has been reported that as early as 2 September 2017, upwards of 80 villages and over 2,600 individual houses have been destroyed.⁴⁰

The number of people displaced by the violence is also relevant to intensity. The BBC reported that 290,000 people had been displaced by 10 September 2017.⁴¹ As at 4 October, the United Nations had registered 800,000 Rohingya refugees in Bangladesh.⁴² Forced displacement - even at this level - is not in itself enough to render a situation one of armed conflict. However, it does support the conclusion that armed conflict exists, where other factors are also present.⁴³ Furthermore, ordered displacement of civilian populations is *prima facie* a war crime and may also constitute a crime against humanity.⁴⁴

The final factor relevant to the intensity of the conflict is the nature of the weapons used. This is because violence perpetrated by unsophisticated or improvised weaponry is qualitatively different to situations where military weapons are used. In October 2016, it was reported that “several hundred local Muslim men, armed mostly with knives and slingshots and about 30 firearms, launched simultaneous attacks on three [Army] posts.”⁴⁵ This weighs against the existence of a NIAC. However, soon after the October 2016 attacks, the insurgents conducted a number of IED attacks on Army positions. Evidence provided by ICG indicates that the insurgency lacks access to sophisticated weaponry with “hand-held explosive devices, machetes and a few small arms” being used.⁴⁶ Again, this factor weighs against the existence of an NIAC for the purposes of international law.

3.2 Organisation

The second element required for a NIAC to exist requires an analysis of whether the parties involved are “organised”.⁴⁷ Organisation is generally assumed to exist for Government forces.⁴⁸ Regarding insurgents, the ARSA is an identifiable group which needs to be sufficiently organised for there to be deemed to be a situation of armed conflict. As with the criteria for intensity, there are a number of indicators that are relevant to demonstrating the criteria for organisation, such as command structure, internal disciplinary system, unified strategy and voice, and ability to procure military equipment.⁴⁹

The ARSA has undertaken a number of coordinated operations (discussed above at 3.1) suggesting that it has an effective command structure and unified strategy. In August 2017, the ARSA carried out simultaneous attacks on 30 police posts, which is strongly indicative of a high level of organisation.⁵⁰

⁴⁰ See <https://www.reuters.com/article/us-myanmar-rohingya/rohingya-muslims-flee-as-more-than-2600-houses-burned-in-myanmars-rakhine-idUSKCN1BD083>; <https://www.amnesty.org/en/latest/news/2017/09/myanmar-scorched-earth-campaign-fuels-ethnic-cleansing-of-rohingya-from-rakhine-state/>.

⁴¹ See <http://www.bbc.com/news/world-asia-41189564>.

⁴² See <https://www.unocha.org/rohingya-refugee-crisis>.

⁴³ *Prosecutor v Lubanga* (2012) ICC-01/04-01/06-2842, [538].

⁴⁴ See https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter44_rule156.

⁴⁵ See <https://www.crisisgroup.org/asia/south-east-asia/myanmar/myanmar-tips-new-crisis-after-rakhine-state-attacks>

⁴⁶ *Ibid.*

⁴⁷ Article 8(2)(f) of the Rome Statute applies Article 8(2)(e) to “armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.”

⁴⁸ See text of Article 8, Additional Protocol II.

⁴⁹ *Prosecutor v Lubanga* (2012) ICC-01/04-01/06-2842, [537].

⁵⁰ See <https://www.thestar.com/news/world/2017/08/25/71-dead-in-myanmar-after-militant-attacks-on-police-border-posts.html>.

Another factual indicator is that ARSA is able to speak as a coherent group; it has demonstrated an ability to declare a (unilateral) ceasefire.⁵¹ However, the ARSA has also shown limited ability to procure and employ arms. Many of the attacks so far have used simple improvised weapons, and apart from IEDs (which can vary significantly in their sophistication), the group doesn't appear to have access to military vehicles or heavy weapons.⁵²

Organisation may be found where there is evidence of an internal discipline system within a group.⁵³ There is a dearth of information regarding the structure of the ARSA, however, this lack of evidence is not fatal to the question of organisation. From the information available, it appears that the ARSA is trying to tighten its internal hierarchy – a press release signed by the ARSA's Commander-in-Chief on 25 October 2017, announced that media could interview only its official spokesperson.⁵⁴

Perhaps the strongest indicator of organisation is the evident ability of the ARSA to employ complex military tactics. In a two-year period, the ARSA has been able to conduct a number of well-orchestrated attacks, including ambushing government forces and employing distraction tactics using explosives/IEDs. This level of coordination was further demonstrated in August 2017 when insurgents were able to attack 30 targets virtually simultaneously.⁵⁵

3.3 Evidence indicates a NIAC

On balance, it would appear that a NIAC existed in the Rakhine state of western Myanmar between 25 August 2017 and at least 17 September 2017.⁵⁶ This view is largely based on the coordinated nature of the attacks, the nature of the targets of those attacks, the widespread damage to civilian objects, and the significant numbers of people displaced by the fighting. The perceived lack of organisation can be attributed to a lack of information; however as discussed above at 3.2, this is not conclusive that the group lacks the requirement. Case law has favoured a “flexible” approach to applying the criteria when deciding whether a body is an organized armed group.⁵⁷

It is important to explain the implications of finding the existence of an armed conflict. Under IHL, it is lawful to use lethal force against enemy fighters. However, of fundamental importance is the fact that IHL seeks to protect those who are not involved in the fight – specifically civilians, the wounded (and those providing medical care), and prisoners of war. The corollary of this is that the war crimes regime comes into play – serious violations of IHL are war crimes, entailing (international) individual criminal responsibility for those involved.

4. Has there been a serious breach of IHL in Myanmar?

⁵¹ See <https://www.reuters.com/article/us-myanmar-rohingya/rohingya-insurgents-declare-temporary-ceasefire-amid-humanitarian-crisis-idUSKCN1BK07T>.

⁵² See <https://www.crisisgroup.org/asia/south-east-asia/myanmar/myanmar-tips-new-crisis-after-rakhine-state-attacks>.

⁵³ *Prosecutor v Lubanga* (2012) ICC-01/04-01/06-2842, [537].

⁵⁴ See https://twitter.com/ARSA_Official “Press Release (25.10.2017)”.

⁵⁵ See above at 3.1.

⁵⁶ <http://www.bbc.com/news/world-asia-41300247>

⁵⁷ *Prosecutor v Lubanga* (2012) ICC-01/04-01/06-2842, [537].

Assuming that a NIAC exists or existed in Myanmar at the relevant time, the inquiry then turns to whether there were serious violations of IHL. ALHR notes that both the Government forces and the ARSA have obligations to comply with the IHL. The following section of this statement details some of the violations that have been reported.

4.1 The Rule of Distinction – non targeting of individual civilians

One of the cardinal rules of IHL is the ‘rule of distinction’ – belligerents must distinguish between civilian and military targets.⁵⁸ The first permutation of this rule is the prohibition on targeting individual civilians. Individuals may only be lawful targets of attack if they are members of the ARSA (or some other organised armed group) or if they are directly participating in hostilities. If neither are directly participating, nor a member of the group, they must not be targeted. This rule applies equally to protect the Buddhist population who are not members of the military or who are not directly participating in hostilities.

As noted above at 3.1, the Army’s operations have resulted in significant numbers of casualties. The Government has claimed that these were all members of the ARSA, or in their words, “terrorists”.⁵⁹ However, this has been contradicted by numerous reports by NGOs and media organisations.⁶⁰ Membership of an organised armed group is notoriously difficult to determine, both on the ground and in a legal sense.⁶¹ However, this does not relieve the Army from its obligations to differentiate between civilians and fighters and to take precautions in attacks. The widespread and disruptive nature of the destruction strongly suggests that the civilian population has been the target of the attacks. This would remain the case even if there were ARSA insurgents among the population attacked, as the presence within the civilian population of fighters does not change the essential character of a civilian population as a whole.⁶² Relevantly, IHL also prohibits collective punishment.⁶³

ALHR views with particular concern reports that the Army is using land mines to target civilians attempting to cross the border between Myanmar and Bangladesh.⁶⁴ The use of these weapons violates the principle of distinction because land mines are unable to distinguish between military and civilian targets. Myanmar is not a party to the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (the Anti-Personnel Mine Ban Convention)*⁶⁵ which bans the use of anti-personnel mines. Because Myanmar is not a party to the Anti-personnel Mine Ban Convention, it is not absolutely prohibited from using antipersonnel

⁵⁸ Common Article 3 of the Geneva Conventions.

⁵⁹ See <https://www.voanews.com/a/myanmar-government-wont-negotiate-with-rohingya-insurgents/4043062.html>; <http://www.independent.co.uk/news/world/asia/urma-rohingya-muslims-killed-massacre-highlands-armed-forces-army-soldiers-terror-a7924411.html>.

⁶⁰ See for example http://www.nybooks.com/daily/2017/10/02/myanmar-the-invention-of-rohingya-extremists/?utm_medium=email&utm_campaign=NYR%20Mexican%20baroque%20Chinese%20world%20order%20Kate%20Millett&utm_content=NYR%20Mexican%20baroque%20Chinese%20world%20order%20Kate%20Millett+CID_740ac2f293f79d4468c96233a7ba716&utm_source=Newsletter&utm_term=Myanmar%20The%20Invention%20of%20Rohingya%20Extremists; and <https://www.hrw.org/news/2017/09/25/burma-military-commits-crimes-against-humanity>.

⁶¹ ICRC *Interpretive guidance on the notion of direct participation in hostilities* (2010).

⁶² Additional Protocol I, Article 50(3).

⁶³ Additional Protocol II, Article 4.

⁶⁴ See <https://www.amnesty.org/en/latest/news/2017/09/myanmar-new-landmine-blasts-point-to-deliberate-targeting-of-rohingya/>.

⁶⁵ United Nations, *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction*, 18 September 1997/

mines. However, if it chooses to use them, it is obliged to take precautions to ensure that civilians are not the targets of the attack and minimise incidental civilian casualties.⁶⁶

4.2 The Rule of Distinction – non targeting of civilian objects

The second aspect of the rule of distinction is the prohibition on attacks targeting civilian objects.⁶⁷ Only military objectives may be attacked, however, a *prima facie* civilian object may be rendered a military objective. This is a two-stage test – first if, by its purpose, location or use a civilian object makes an effective contribution to military action, and second, if the capture, neutralization or destruction of the civilian object offers a definite military advantage.⁶⁸

As discussed above, there have been reports of the destruction of large numbers of homes, however, it is not sufficient to simply point to the destruction of civilian houses to demonstrate a violation of IHL. It is conceivable that *some* of these houses were making some contribution to the insurgent operations, and that their destruction did offer some military advantage. This might be the case if they were being used as logistical facilities or staging points for the insurgents' operations. Nonetheless, the widespread and comprehensive nature of the destruction (demonstrating that individual houses evidently were not targeted), and the fact that the destruction has caused very significant dislocation of the civilian population, both severely undermine claims that the destroyed houses were military objectives.

4.3 Is the effect of the attacks disproportionate to the military advantage?

Even if the attacks are lawfully directed, they will still be unlawful under IHL if the attacks are expected to cause incidental harm to civilians or damage to civilian objects that is *disproportionate* to the military advantage, which is a rule of Customary IHL applicable in NIACs.⁶⁹ There is no precise formula for this proportionality calculus. The military advantage anticipated must be *direct and concrete*, and the analysis must take place on an attack-by-attack basis.⁷⁰

At its highest, the military advantage to be gained in Myanmar by the Army would be the disruption and possible military defeat of a small insurgency of at most 1,000 to 2,000 fighters⁷¹ with what is evidently a limited asymmetrical capability. Specifically, this military advantage would be achieved by the disruption of administrative logistical or communications support for the fighters. The military advantage must be weighed against the anticipated harm to civilians and civilian objects. In Myanmar, the harm has been severe and direct to civilians, housing, and associated civilian infrastructure. The harm is graphically and unambiguously demonstrated by the large numbers of people displaced by the attack and the stories they have carried with them.⁷²

⁶⁶ Common Article 3, Geneva Conventions.

⁶⁷ Additional Protocol I, Article 52(2).

⁶⁸ Ibid.

⁶⁹ Customary IHL, see ICTY Judgments in *Tadic* (1995) and *Kupreskic* (2000); see also https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter44_rule156#Fn_47_123.

⁷⁰ ICRC 1987 Commentary on Additional Protocol I, Article 52(2).

⁷¹ See <https://www.crisisgroup.org/asia/south-east-asia/myanmar/283-myanmar-new-muslim-insurgency-rakhine-state>.

⁷² See <http://www.independent.co.uk/news/world/asia/urma-rohingya-muslims-killed-massacre-highlands-armed-forces-army-soldiers-terror-a7924411.html>.

ALHR notes that the mere existence of significant harm occurring as a result of an attack is not enough to render it disproportionate. Rather, because what is being carried out is a prospective analysis, regard must be had to the anticipated harm (and anticipated military advantage). However, a reasonably well-informed commander would anticipate that razing large numbers of civilian homes would inflict this type of harm.⁷³ On balance, and noting the limited and conflicting information available, the attacks on the villages were likely to be regarded under IHL as disproportionate. In particular, assuming some of the houses were lawful targets, then the Army could have used alternative methods⁷⁴ to obtain the same military advantage while causing less incidental harm to civilians.

4.3 Displacement of the civil population

The parties to a NIAC must not order the displacement of the civilian population, in whole or in part, for reasons related to the conflict, unless the security of the civilians involved, or imperative military reasons, so demand:⁷⁵

*All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, to prevent and avoid conditions that might lead to displacement of persons.*⁷⁶

Displacement of this nature breaches both Article 17 of Additional Protocol II and customary IHL; it is also listed as a war crime under the Rome Statute.⁷⁷ The United Nations has reported a huge number of Rohingya being displaced from Rakhine state.⁷⁸ The stories of those fleeing, while unverified, paint a harrowing picture of forced displacement.⁷⁹ The ICRC notes that displacement of this kind is often linked with 'ethnic cleansing',⁸⁰ an accusation that has been leveled at Myanmar by the United Nations in 2016.⁸¹

5. Are Crimes Against Humanity being committed against the Rohingya?

Crimes against humanity are of serious concern to the international community. They arise where grave conduct impermissible under customary international law occurs (often termed *jus cogens*⁸²), and entail individual criminal responsibility under International Criminal Law (ICL).

⁷³ Prosecutor v *Galic* (2006) Judgment (Appeals Chamber) Case No. IT-98-29-A, [808].

⁷⁴ Additional Protocol I, Article 57.

⁷⁵ Additional Protocol II, Article 17.

⁷⁶ Guiding Principles on Internal Displacement, Principle 5.

⁷⁷ Article 8(2)(e)(viii) of the Rome Statute.

⁷⁸ See <https://www.unocha.org/rohingya-refugee-crisis>.

⁷⁹ See <http://edition.cnn.com/interactive/2017/09/world/myanmar-rohingya-refugee-stories/>.

⁸⁰ See https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter44_rule156#Fn_47_123.

⁸¹ See <http://www.abc.net.au/news/2017-09-11/un-decries-ethnic-cleansing-in-myanmar/8893450>.

⁸² *Jus cogens* refers to certain fundamental, overriding principles of international law, from which no derogation is ever permitted. See Ian Brownlie, *Principles of Public International Law* (5th ed., Oxford, 1998).

Crimes against humanity are defined in Article 7 of the Rome Statute as various underlying criminal acts⁸³ “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”, as part of a State or organisational policy.

Each of the elements of that definition is examined below concerning ongoing events in Myanmar. For the reasons described below, ALHR is of the opinion that crimes against humanity are being committed against the Rohingya.

In the context of crimes against humanity, it is unnecessary to establish a link to armed conflict. Crimes against humanity may be committed either inside or outside the context of an armed conflict.⁸⁴ However, we note that during a NIAC, the relevant unlawful acts or omissions constituting the crime against humanity of murder may include those committed in violation of IHL, as well as those violating national law. Therefore war crimes and crimes against humanity can be concurrently perpetrated by one instance of conduct.

5.1 Underlying Acts

The limited available information collected by Human Rights Watch, ICG and other organisations suggest that the following crimes have been and/or are being committed in Myanmar since 1 September 2017, and which amount to underlying acts for the purposes of crimes against humanity under Article 7 of the Rome Statute.⁸⁵

(1) Murder

To commit this crime, the perpetrator must have killed one or more persons. The ongoing deadly violence reportedly committed by the Army against Rohingya civilians almost certainly satisfies this criterion.⁸⁶

However, there may be evidentiary obstacles to prosecuting these (and other) crimes against humanity. For example, there is evidence suggesting that the Army is burning the bodies of victims.⁸⁷ The Government has also consistently refused entry to a UN fact-finding mission to investigate alleged abuses, and has restricted all foreign media from accessing the area

⁸³ Article 7 of the Rome Statute states:

“For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”

⁸⁴ *Prosecutor v Kayishema* (1999) Case No. ICTR -95-1-T Judgment

⁸⁵ See <https://www.hrw.org/news/2017/09/25/burma-military-commits-crimes-against-humanity>.

⁸⁶ See https://www.washingtonpost.com/news/democracy-post/wp/2017/09/27/the-burmese-military-is-committing-crimes-against-humanity/?tid=ss_fb&utm_term=.7a0ffce48d99.

⁸⁷ Ibid.

where violence is alleged to be occurring.⁸⁸ Under ICL, for this crime to be established, it is unnecessary to find or identify the corpse(s) of a victim(s); death can be evidenced through various factors, including the location of the alleged murder, its approximate date, the means by which that murder was committed, the circumstances and the perpetrator's link to the crime.⁸⁹ This may alleviate the evidentiary burden if and when national or international courts ultimately prosecute such crimes.

(2) Extermination

Extermination is distinguished from murder by the fact that it is generally directed against a large group of persons, so as to amount to a 'mass killing' with a substantial degree of preparation and organisation.⁹⁰ The Rome Statute defines extermination as the intentional infliction of conditions, such as deprivation of access to food and medicine "designed to bring about the destruction of part of a population".⁹¹

The Army's documented actions pursuant to an apparent policy of destroying villages and food stocks, and denying humanitarian assistance, almost certainly fulfill these criteria. This is particularly so, given that the act of extermination may be committed by either direct (killing the victim with a firearm) or indirect conduct (creating conditions provoking death, such as razing villages and destroying crops).⁹²

(3) Deportation/forcible transfer of population

These crimes are defined in the Rome Statute to include "forced displacement" by expulsion or other coercive prohibited acts from the area in which persons are lawfully present.⁹³

Forcible displacement may occur where persons are compelled to leave for various involuntary reasons, including by threat of violence, duress or detention. The essential element is that the displacement is involuntary, and the departing person has no real choice.⁹⁴

The extent of civilian population movements from Myanmar into neighbouring Bangladesh is both extensive and continuing. Since 25 August 2017, over 600,000 undocumented Myanmar nationals have crossed the border, fleeing ongoing violence, particularly the documented destruction of their villages.⁹⁵

⁸⁸ See <http://www.rfa.org/english/news/myanmar/un-visas-06292017165515.html>.

⁸⁹ *Prosecutor v Gombo* (2009) Case No. ICC-01/05-01/08.

⁹⁰ *Prosecutor v Krstic* (2001) Case No. IT-98-33-T.

⁹¹ Article 7(2)(b) of the Rome Statute.

⁹² "Elements of the Crime" Official Records of the Review Conference of the Rome Statute of the International Criminal Court, Kampala, 31 May -11 June 2010.

⁹³ Article 7(2)(d) of the Rome Statute.

⁹⁴ *Prosecutor v Simic* (2003) Case No. IT-95-9-T.

⁹⁵ See <https://www.theguardian.com/world/2017/sep/19/myanmar-satellite-imagery-confirms-rohingya-village-of-tula-toli-razed>; <https://www.hrw.org/news/2017/09/19/burma-satellite-imagery-shows-mass-destruction>.

(4) Rape and other sexual violence

Under the Rome Statute, this crime is defined in gender-neutral terms and involves both i) physical invasion of the body of the victim, and ii) coercion. These factors mean the crime encompasses a broader range of factual scenarios.

Reports suggest that Rohingya women, men, and children have all been subject to widespread rape and other sexual violence at the hands of the Army.⁹⁶ Furthermore, rape and any other form of sexual violence may constitute genocide, if committed with the specific intent to destroy a particular targeted group.⁹⁷

(5) Persecution

Persecution involves severely depriving a person(s) from an identifiable group or collectivity of fundamental rights, done on political, racial, ethnic, cultural, religious or other impermissible grounds.⁹⁸ This crime may be committed in connection with any act in the Rome Statute or otherwise falling within the ICC's jurisdiction, such as the crimes referred to above.

There is evidence of longstanding inaction or outright hostility by the Myanmar Government towards the Rohingya minority, most notably including the exclusion from citizenship, combined with the recent violence allegedly committed by security forces.⁹⁹

5.2 Widespread or systematic

Pursuant to Article 7(1) of the Rome Statute, the above acts must be shown to be either "widespread" or "systematic" to amount to crimes against humanity. This requirement is the most widely accepted international element for distinguishing crimes against humanity from common crimes which do not rise to the level of international crimes.¹⁰⁰

"Widespread" refers to the scale of the attack or a large number of victims. This term has been interpreted broadly by previous international tribunals and is not strictly limited to a quantitative or geographical assessment.¹⁰¹ Importantly, it can include large numbers in a small area, such as appears to be the case in western Myanmar.

"Systematic" has been explained by the International Legal Commission to mean "pursuant to a preconceived plan or policy". It is thus directed towards repeated or otherwise continuous commission of inhumane acts and is designed to exclude a random act not committed as part of such a broader plan or policy.

⁹⁶ See <http://www.aljazeera.com/news/2017/09/rohingya-refugees-accuse-myanmar-army-rape-170927105812065.html>.

⁹⁷ *Prosecutor v Akayesu* (1998) Case No. ICTR-96-4-T.

⁹⁸ Article 7(1)(h) of the Rome Statute.

⁹⁹ See https://www.hrw.org/sites/default/files/supporting_resources/burma_crimes_against_humanity_memo.pdf.

¹⁰⁰ *Prosecutor v Tadic* (1997) Judgment Case No. IT-94-1-T.

¹⁰¹ *Prosecutor v Ntaganda* (2014) Judgment Case No. ICC-01/04-02/06.

As a guide, the International Criminal Tribunal for the former Yugoslavia (**ICTY**) has previously held in *Tadic*,¹⁰² that inhumane acts against the population of one municipality, which included three detention camps and mass expulsions from the area, were sufficiently "widespread and systematic" to amount to a crime against humanity. A number of factors point to the crimes against Rohingya being both widespread and systematic, including banning the use of the term "Rohingya" by Government officials, preventing humanitarian access to Rakhine state, eye witness reports detailing the number of deaths, and over 600,000 people fleeing the violence across the border to Bangladesh. Accordingly, the scale of reported crimes committed against the Rohingya appears to satisfy this threshold.¹⁰³

5.3 Attacks against the civilian population

In accordance with Article 7(1) of the Rome Statute, the above acts must also be shown to be part of an attack "directed against any civilian population" to amount to crimes against humanity.

This requirement is understood to denote a course of conduct involving the *multiple* commission of acts referred to in Article 7(1) of the Rome Statute against any civilian population, pursuant to, or in furtherance of, a State or organisational policy to commit such attack.¹⁰⁴ This does not mean that the entire population of a State, entity or territory must be subjected to the relevant attack; rather, "population" refers to a multiplicity of persons sharing common attributes.¹⁰⁵

"Policy to commit such attack" requires the State or organisation to actively promote or encourage such an attack against a civilian population¹⁰⁶ and "directed against" means that the civilian population must be the primary object of the attack.¹⁰⁷

Given the war crimes analysis above at 3 and 4, regarding the Government's longstanding inaction or outright hostility towards the Rohingya minority, this test is likely satisfied. However, it remains to be seen what documentary evidence exists which would be crucial to any successful ICC prosecution of crimes against humanity.

5.4 Knowledge

Article 7(1) of the Rome Statute states that the above acts must also be shown to be part of an attack made "with knowledge of the attack" to amount to crimes against humanity.¹⁰⁸ The personal motives of the perpetrator in taking part in an attack on a civilian population are irrelevant in determining whether a crime against humanity occurred, providing that it can be shown the person acted with the required knowledge of the attack (and, in the case of persecution, harboured a discriminatory intent).

¹⁰² *Prosecutor v Tadic* (1997) Judgment Case No. IT-94-1-T.

¹⁰³ See above analysis of war crimes at 3.1.

¹⁰⁴ "Elements of the Crime" Official Records of the Review Conference of the Rome Statute of the International Criminal Court, Kampala, 31 May -11 June 2010.

¹⁰⁵ *Prosecutor v Kunarac* (2002) Judgment Case No. IT-96-23/IT-96-23/1-A.

¹⁰⁶ "Elements of the Crime" Official Records of the Review Conference of the Rome Statute of the International Criminal Court, Kampala, 31 May -11 June 2010.

¹⁰⁷ *Prosecutor v Kunarac* (2002) Judgment Case No. IT-96-23/IT-96-23/1-A.

¹⁰⁸ Article 7 of the Rome Statute.

The element of knowledge is not to be interpreted as requiring proof that the perpetrator knew all the characteristics of the attack or the precise details of the plan and/or policy of the relevant State or organisation. In the case of an *emerging* widespread or systematic attack against a civilian population, the “intent” clause of the knowledge element indicates that this mental element is satisfied if the perpetrator intended to *further* such an attack.¹⁰⁹

The evidenced so far collected against the Army, indicates an intent to attack the Rohingya population and is thus likely sufficient to make out this element.¹¹⁰ Again, it remains to be seen what documentary evidence exists which would be crucial to any successful ICC prosecution of crimes against humanity.

7. Judicial enforcement

Violations of IHL and ICL are the primarily the responsibility of the State. However, individuals commit crimes, and so international law provides the basis for attributing individual criminal responsibility for those responsible for the most serious violations. For IHL, it is important to note that those who order the crimes being committed or who fail to prevent or punish crimes committed by troops under their command can be held criminally liable.

As Myanmar has neither signed nor acceded to the Rome Statute, it has not accepted the ICC’s jurisdiction. Accordingly, the ICC may only exercise its jurisdiction where the case is referred to it by the United Nations Security Council (**UNSC**).

However, the ICC’s jurisdiction is subsidiary to that of national courts, and may only be exercised where those national courts are unwilling or unable to assume their primary responsibility to investigate or prosecute. Given the evidence cited above regarding the Myanmar Government’s longstanding inaction or outright hostility towards the Rohingya minority, this test is likely satisfied.

In regards to prosecuting war crimes, while Myanmar is a High Contracting Party to the Geneva Conventions, it has not signed any of the Additional Protocols, including Additional Protocol II, which regulates the conduct of parties to a NIAC. However this does not mean Myanmar has not committed war crimes, the Rome Statute clearly defines war crimes as “serious violations of the laws and customs applicable in an armed conflict not of an international character” (emphasis added).¹¹¹ Therefore Myanmar will be responsible for any breaches of treaties it is *party to* as well as breaches of IHL norms that have reached the status of *customary law*.

¹⁰⁹ Elements of the Crime” Official Records of the Review Conference of the Rome Statute of the International Criminal Court, Kampala, 31 May -11 June 2010.

¹¹⁰ See https://www.hrw.org/sites/default/files/supporting_resources/burma_crimes_against_humanity_memo.pdf

¹¹¹ Article 8, The Rome Statute.

Common Article 3 of the Geneva Conventions (which Myanmar is party to) has crystallised into customary IHL and will apply to a NIAC.¹¹² It prohibits (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; and (b) committing outrages upon personal dignity, in particular humiliating and degrading treatment, directed at civilians.¹¹³

Furthermore, most of the breaches of the Additional Protocols discussed above at 4 have the status of Customary IHL. In particular, the following are crimes enshrined in customary IHL:¹¹⁴

- making the civilian population or individual civilians, not taking a direct part in hostilities, the object of attack;
- committing sexual violence, in particular, rape, sexual slavery, enforced prostitution, enforced sterilization and enforced pregnancy.
- ordering the displacement of the civilian population for reasons related to the conflict and not required for the security of the civilians involved or imperative military necessity; and
- making religious or cultural objects the object of attack, provided that they are not military objectives.

Violations of customary IHL have been used as a basis for war criminality. For example, the resolution adopted by consensus in the United Nations Commission on Human Rights declaring that Israel's "continuous grave breaches" of the Fourth Geneva Convention and Additional Protocol I were war crimes. Israel had not ratified Additional Protocol I at the time and the commission's statement was based on the understanding that these breaches constituted war crimes under customary international law.¹¹⁵

From a practical point of view, evidence remains a key factor in successfully prosecuting crimes at the ICC. Thus any prospective prosecution will need to gather a large amount of evidence against groups and, in particular, individuals before proceeding. In other conflicts where there has been suspected instances of war crimes and/or crimes against humanity, international organisations have established 'fact finding inquiries' to gather this evidence. For example, in relation to the Syrian conflict there are two such bodies:

1. the *Independent International Commission of Inquiry on the Syrian Arab Republic*, (the Inquiry) which has a mandate to conduct an international, transparent, independent and prompt investigation into abuses and violations of international law since March 2011 in the Syrian Arab Republic, with a view to hold to account those responsible for violations and abuses, including those that may amount to crimes against humanity and war crimes; and
2. the *International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011* (The Mechanism). The Mechanism's mandate is complementary to but distinct from the Inquiry's. The Mechanism

¹¹² *Prosecutor v Jelisić* (1999) Judgment Case No. IT-95-10-T.

¹¹³ Common Article 3, Geneva Conventions.

¹¹⁴ See https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter44_rule156#Fn_47_123.

¹¹⁵ United Nations Commission on Human Rights, Resolution No. 1982/1.

will primarily build on the information collected by others – notably the Inquiry – and it is not expected to publicly report on its substantive work. Its role will be to consolidate and analyse evidence, preserve it, and establish files to assist courts.

ALHR supports the establishment of a similar type of independent inquiry into the recent events in Myanmar.

8. Conclusion

Based on the analysis above, there are strong indications that war crimes and crimes against humanity are once again being committed by the armed forces of a nation state in full view of the international community. Credible sources, such as Peter Bouckaert of Human Rights Watch, are on the ground reporting these atrocities,¹¹⁶ resulting in the United Nations and its agencies mobilising their efforts¹¹⁷ – but we are yet to see a coordinated and concrete effort from any nation states. Australia, as a regional leader, has a moral responsibility to speak out against such crimes.

ALHR is concerned that Australia's representatives to the UN Human Rights Council have demanded a watering-down of the international response to the Rohingya crisis, pressing for the wording of a United Nations resolution on atrocities against Rohingya Muslims to remove references to 'abuses'.¹¹⁸ While the Minister for Foreign Affairs, Ms Julia Bishop, has expressed "serious concern" in relation to the position of the Rohingya people,¹¹⁹ at the same time this stated position is seriously undermined in practice by Australia's actions in the United Nations and its harsh policy toward Rohingya refugees seeking in asylum in Australia – one which includes offering money to any Rohingya agreeing to return to Myanmar.¹²⁰

Australia needs to articulate a clear and firm position on the events in Myanmar in light of the clear existence of both war crimes and crimes against humanity.

ALHR believes legal recognition of the situation in Myanmar may chide the international community and encourage it to remember its promise of "never again".

We can and must do better.

¹¹⁶ See <https://www.hrw.org/news/2017/09/29/rohingya-children-witness-crimes-against-humanity>.

¹¹⁷ See <http://www.un.org/apps/news/story.asp?NewsId=57764#.WdDWrUyPDaZ>.

¹¹⁸ See <http://www.smh.com.au/world/australia-insists-on-rewording-rohingya-un-resolution-to-accusations-of-whitewashing-20170928-gyqbis.html>.

¹¹⁹ See http://foreignminister.gov.au/releases/Pages/2017/jb_mr_170909.aspx.

¹²⁰ See <https://www.theguardian.com/world/2017/sep/19/australia-offers-pay-rohingya-refugees-return-myanmar>.



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