

Short Analysis of the “Report of the International Independent International Fact-Finding Mission on Myanmar”, Advanced Unedited Version, dated August 24, 2018
(https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_64.pdf).²

Disclaimer: This assessment does not claim to be “independent”. According to the author’s assessment the Rohingya crisis shows that there does not exist any independent person or institution that can be regarded as unbiased. This factor constitutes one of the main problems to deal with the crisis. As a consequence, the following text just tries to provide some examples for the lack of self-reflection of the Mission’s investigation. - Due to the wish to quickly reply to the report, this is an “unedited version” as well. For the sake of brevity, many errors and inaccuracies in the report are not mentioned.

1 History of the Mission

The Mission was established on March 22, 2017 according to resolution 34/22, paragraph 11 of the Human Rights Council’s 34th session³, five months before the mass exodus of Muslims to Bangladesh started on August 25, 2017. Three members were appointed⁴, all of them specialists on human rights, two of them being lawyers, but none with any previous expertise on Myanmar.⁵ The Mission invited “interested individuals, groups and organisations to submit information and/or documentation relevant to its mandate [...] in particular on allegations of human rights violations and abuses committed in Myanmar since January 2011”.⁶ The mandate thus covered the whole of Myanmar for a period of seven years, that is since the beginning of the government under Thein Sein who took over as head of a nominally civilian government in April 2011. The report thus includes the situation in Kachin and Shan States. The members of the mission were not allowed to

1 Hans-Bernd Zöllner, born 1942, studied theology and sociology and worked as a Lutheran minister for 30 years, seven of them in South-east Asia. His first visit to Burma happened in 1984. After his return to Germany in 1990 he started to investigate Myanmar’s history and politics and got a Ph.D. in South-east Asian Studies from the University of Hamburg with a thesis on the international outlook of the Burmese independence movements between 1920 and 1948. He has written a number of articles and books among them *The Beast and the Beauty. The History of the Conflict between the Military and Aung San Suu Kyi in Myanmar, 1988-2011, Set in a Global Context*, Berlin 2012 and – together with Rodion Ebbighausen *The Daughter. Aung San Suu Kyi – A Political Biography*, Chiang Mai 2018. On the Rohingya issue, he contributed an article entitled “Caught between the Crocodile and the Snake. Contexts of the ‘Rohingya issue’ to a project of the Berghof Foundation that was published in 2017 (see https://www.berghof-foundation.org/fileadmin/redaktion/Publications/Other_Resources/Insider_Mediators/IDRC_Zoellner__Contexts_of_the__Rohingya_Issue_.pdf).

2 Quoted as “Report”.

3 <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G17/073/88/PDF/G1707388.pdf?OpenElement>.

4 First appointments of the three members were made on May 30, 2017. One member of the mission was exchanged later. On July 27 it was announced that July 27, 2017 Mr. Marzuki Darusman (Indonesia), a lawyer and human rights campaigner, replaced Ms. Indira Gaising from India. He became the chairman of the group. The other two members are Ms. Radhika Coomaraswamy (Sri Lanka), a lawyer by training and formerly the Chairperson of the Sri Lanka Human Rights Commission and Mr. Christopher Dominic Sidoti (Australia) is an international human rights consultant.

5 This is shown by a lecture given by Ms. Coomaraswamy on May 14, 2018 on ‘Myanmar: The Rohingya Refugee Crisis, Roots of Conflict and possibilities for the Future’. She informed her audience that Aung San, the founder of independent Burma and father of Aung San Suu Kyi “called the Panglong Conference and negotiated with the ethnic minorities, including the Rohingyas”. (<https://www.lki.lk/publication/dr-radhika-coomaraswamy-on-myanmar-the-rohingya-refugee-crisis-roots-of-conflict-and-possibilities-for-the-future/>: p. 5) This is a gross distortion of history. The name “Rohingya” was not yet known 1947 in Burma and no Muslim leader took part in the Panglong meeting.

6 <https://www.ohchr.org/en/hrbodies/hrc/myanmarffm/pages/index.aspx>.

enter Myanmar. They travelled to Bangladesh (twice), Indonesia, Malaysia, Thailand and the United Kingdom (Report: 3) and from time to time issued interim statements.

2 Summary

2.1 The report is neither “independent” nor based on “facts”. It uncritically retells the stories of victims of the troubled history happening in the border region of today’s Myanmar and Bangladesh.

2.2 The report is an example of the UN bureaucracy that almost completely disregards the historical causes of the problems under investigation. Like many of previous UN reports it is based on a deep mistrust toward the Myanmar government.

2.3 The report is completely naive in blaming “the Myanmar state” for the misuse of social media and nurtures conspiracy theories.

3 Commentaries

3.1 “Independence” and “Facts”

a) The interim statements of members of the Mission display a bias that existed from the beginning of the investigation. It was caused by the understandable sympathy towards the people who had fled Northern Rakhine. After the first visit to refugee camps in Bangladesh end of October 2017, the chairperson said “We are deeply disturbed at the end of this visit”. The female member of the Mission expressed to be “shaken and angry” because of the “horrendous” accounts of sexual violence she had heard.⁷ In December 2017 the chairperson gave an interim statement to the Council⁸. He said: “The allegations [we heard] are numerous and many of extreme severity. Some have concluded that genocide or crimes against humanity have taken place. We have not yet come to any conclusion on these issues but we are taking such allegations very seriously and are examining them in depth.” In March 2018, the Human Rights Council issued a statement entitled “Fact-finding Mission on Myanmar: concrete and overwhelming information points to international crimes”.⁹

In view of the mass misery of the refugees in the camps, such statements of shock and sympathy are natural. A mission that at least tries to be as independent as possible however could be expected to reflect their own sentiments. This however does not happen. The whole report highlights the emotional accounts of the persons who followed the call to provide information thus directly conveying the emotional reactions of the refugees and the interviewees to the reader of the report. At the same time, such statements contain accusations against the Myanmar government that use legal terms. These accusations are thus wrapped up in emotions.¹⁰

b) The methodology of the report is based on the legal principal of “reasonable grounds” (Report: 3) borrowed from American law. The term denotes the “probable cause” allowing a law enforcement officer to make an arrest that is controversially discussed in the literature.¹¹ Furthermore, common law principle making use of “common sense” is employed here to investigate an issue of international law. This approach, based on a common sense understanding of human behavior, elevates the Mission to a law-enforcing body. The evidence to do so however is solely based on evidence provided by persons who firmly believe that they have suffered from a brutal enemy. Thus,

7 “The accounts of sexual violence that I heard from victims are some of the most horrendous I have heard in my long experience in dealing with this issue in many crisis situations,” she said. “One could see the trauma in the eyes of the women I interviewed. When proven, this kind of abuse must never be allowed to go unpunished.” (<https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=22320&LangID=E>).

8 <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=22495&LangID=E>; for a you tube video of his report see <https://www.youtube.com/watch?v=GspIOO28Jgs>.

9 <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=22794&LangID=E>.

10 “In Rakhine state, the Muslims are like in a cage. They cannot travel outside. There are no human rights for the Muslims of Rakhine. I don’t know why God sent us there.” (Report: 6) - “The Tatmadaw soldiers don’t treat us like humans, they treat us like animals. They look at us as like we shouldn’t even exist.” (Report: 11)

11 https://definedterm.com/reasonable_grounds; https://commonlaw.uottawa.ca/ottawa-law-review/sites/commonlaw.uottawa.ca.ottawa-law-review/files/olr_47-1_05_suspicious_final.pdf.

the Mission from the beginning excludes the principle of the “benefit of the doubt” leading to a prejudgement of “Myanmar as a whole” (Report: 19) Technically speaking, the findings of the Mission are based on unconfirmed rumours that have become “facts” because they are believed to be true by the victims AND the ”fact-finders” who fully trust the stories of the victims and retell them uncritically. The Mission mutates into a world-police-unit prepared to virtually arrest a whole country on the grounds of the group members’ belief.

3.2 “Unhistorical” and “Mistrusting”

a) The report is based on a one-sided perception of Myanmar history that is presented as the “true context” of what happened in Rakhine (Report: 4-5). Myanmar history here starts in 1962 when the military removed the elected government and took over power. In line with this simplistic perception, all problems of Myanmar are attributed to the Tatmadaw, the Myanmar military. The report takes a complete unhistorical approach.¹² It is disturbing to see that members of a UN body obviously did not consult any of the many studies about the history of the conflict that goes back to the end of the 18th century. (Leider 2018; Ware/Laoutides 2018)

b) As a result, the report just touches the surface of the severe problems in a continuation of the unsuccessful efforts of previous UN envoys to mediate Myanmar’s many conflicts. The UN agencies as well as the many envoys and rapporteurs have been and are “helpless helpers” who did not understand the self perception of their Myanmar counterparts – including the (former) democracy icon Aung San Suu Kyi - and mistrusted the military (Zöllner 2012: 377-420). The UN bureaucracy produced paper after paper that deepened such mistrust between the various stakeholders inside and outside the country. Mistrust as one of the main “root causes” of Myanmar’s problems that have to be addressed (Report: 19) is thus increased, not reduced. It is not taken into considerations that the UN interventions might be a part of Myanmar’s problems and not of the solution. The report correctly states that the “United Nations as a whole failed to adequately address human rights concerns” (Report: 17) but draws a problematic conclusion in recommending actions as “referring the situation to the International Criminal Court or alternatively creating an *ad hoc* international criminal tribunal” (Report: 19). It is not mentioned how such a step should better the situation of the refugees that is so deeply deplored.

3.3 “Naivité” and “Conspiracy Theory”

a) The report points to the impact of the social media on the general negative attitude of the Buddhist population of Myanmar towards Muslims. It does however naively assume that Facebook could effectively control the misuse of the social medium. This naivité is linked to a ritualistic way of using the term “democracy” without considering the cultural and historical roots of such form of government in a Theravada Buddhist country.

b) The inability to explain the alleged reversion of a reform process after 2015 is compensated by resorting to conspiracy theories. It is alluded that “the Tatmadaw” intentionally planned a genocide and used the ARSA attacks of August 2017 just as a pretext to carry out such a plan. Such theories are in line with ideas entertained by a number of pro-Rohingya activists and match the conspiracy theory entertained by many Buddhists of a Muslim plot to destroy the Burmese-Buddhist race.

Bibliography:

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12 It is interesting to note, that the simplicity of this historical narrative matches the perception of Myanmar’s history formulated in the preamble of the 2008 constitution.