

## **International efforts to secure justice and accountability for the alleged genocide against the Rohingya are underway. Southeast Asian states have conspicuously neglected to engage with questions of justice and accountability in their approach to the crisis.**

In August 2017, Myanmar's military began a campaign of violence against the Rohingya population in the Rakhine State, which recent United Nations (UN) reports have characterised as serious international crimes, including genocide. Five years on, [reports](#) indicate that genocidal acts continue to be committed against the Rohingya who remain in the Rakhine State, and the crisis [remains high](#) on the list of global atrocity alerts.

Against the backdrop of international diplomatic inaction and inertia, including characteristic paralysis within the UN Security Council, legal developments concerning the alleged genocide against the Rohingya have been more encouraging. Crucially, global efforts to secure justice and accountability for the Rohingya have marked an important precedent for contemporary international criminal justice. In an unusually promising development, *three* separate legal proceedings, brought within days of each other, were instituted in November 2019 and are currently underway.

### **International justice efforts for the Rohingya**

The first of these proceedings was brought before the [International Criminal Court](#) (ICC). In November 2019, the ICC's Prosecutor was granted [authorisation](#) to commence an investigation into alleged international crimes committed against the Rohingya. As Myanmar is not a signatory of the [Rome Statute](#), the ICC's founding treaty, the Prosecutor is unable to investigate crimes committed in Myanmar. However, crimes committed within neighbouring Bangladesh's territory, who joined the ICC in 2010, do fall under the scope of the Prosecutor's investigation. For a court still in its infancy and in the process of cementing its global credibility, the ICC's investigation into atrocities involving a non-member state is noteworthy. In particular, it underscores how global efforts to secure justice and accountability for the victims of international crimes can proceed even without the cooperation of non-member states.

However, as previous investigations into Darfur, Libya, and the Philippines have demonstrated, the ICC faces considerable obstacles when prosecuting cases without active support or cooperation from the state where crimes have been committed. Moreover, international criminal trials are not an especially speedy form of justice. To date, there has been no significant update since the Office of the Prosecutor began collecting the necessary evidence ahead of formally opening a case against one or more suspects.

While the ICC's proceedings centre on the individual criminal responsibility of perpetrators, legal proceedings have also been brought against Myanmar before the [International Court of Justice](#) (ICJ), the principal forum for legal disputes between states. With the support of the [Organisation of Islamic States](#), [Gambia](#) instituted legal proceedings against Myanmar at the ICJ, alleging atrocities committed against the Rohingya amounted to a violation of the [Genocide Convention](#) – the international treaty that provides for the prevention and punishment of genocide, which Myanmar has been a party to since 1956.

In January 2020, ICJ judges unanimously ordered a set of [provisional measures](#) against Myanmar, directing it to prevent all genocidal acts against the Rohingya; ensure the military and other armed forces do not commit acts of genocide; take steps to preserve evidence

related to the case; and submit reports on its implementation of the above until a final decision is rendered by the court. More recently, the ICJ [dismissed](#) preliminary objections raised by Myanmar in July 2022, which will now allow the case to proceed on the merits. The ICJ also [ordered](#) Myanmar to submit its counter-memorial (written submission of defence) by 24 April 2023, whereupon public hearings will follow.

Further afield in Buenos Aires, the UK-based [Burmese Rohingya Organisation UK](#) (BROUK), two Argentinian non-governmental organisations, and the former UN Special Rapporteur on Myanmar filed a [petition](#) before Argentinian courts to open a criminal investigation against Myanmar's officials for crimes against humanity and genocide against the Rohingya. Brought under the principle of universal jurisdiction, which permits any state to prosecute international crimes regardless of where they have been committed, the case was accepted by Argentina's Federal Court in November 2021. These proceedings represent the first universal jurisdiction case related to the Rohingya. Since then, the Argentinian court has heard testimony from BROUK, and there are plans for genocide survivors to share their testimony in person. More recently, the court ordered Meta, Facebook's parent company, to provide information on how its algorithms might have facilitated the spread of hate speech against the Rohingya.

### **The response by Southeast Asian states**

The reaction of Southeast Asian states to these legal developments was resoundingly muted. On the one hand, this is unsurprising, since non-interference is a norm that prevails across the region and a core principle underpinning the [Association of Southeast Asian Nations](#) (ASEAN). However, Southeast Asian states are not especially strong supporters of international criminal justice. Indeed, most ASEAN states refuse to join the ICC, and the Philippines famously withdrew from the Rome Statute in 2019. Brunei, Indonesia, and Thailand all oppose the Genocide Convention, and although Malaysia, Laos, Singapore, the Philippines, and Vietnam are signatories, they have all issued political reservations that limit the treaty's application upon them. Notably, the *only* state in the region that is signatory to *both* the Rome Statute and the Genocide Convention is Cambodia.

While international criminal justice is one of many ways the international community is engaging with the situation in Myanmar, ASEAN states have principally focused on conflict resolution. Indeed, a substantive regional response came only after the February 2021 coup in Myanmar, which resulted in the issuing of a [Five-Point Consensus Plan](#) (5PC). While the plan called for typical conflict resolution strategies such as the cessation of violence, constructive dialogue among parties to the conflict, and the appointment of a special envoy to mediate the dialogue process, it made no mention of measures to secure justice and accountability for international crimes. Even the [ASEAN Leaders' Review and Decision on the Implementation of the 5PC](#) during the November 2022 ASEAN Summit, in which they conceded little progress had been achieved, made no references to genocide, crimes against humanity, or the various legal proceedings underway at the time. Compared to recent diplomatic reactions beyond Southeast Asia – for instance, the [US Secretary of State Antony Blinken](#) describing the atrocities as genocide and crimes against humanity in March 2022 and the [UK government's](#) confirmation in August 2022 of its intention to intervene, along with Canada and the Netherlands, in the ICJ case – ASEAN's approach is striking for omitting engagement with a crucial piece of the puzzle that is the Rohingya crisis.

To be sure, international criminal justice is not without contestation. According to critics, it prioritises retributive justice over other forms of justice, is complicit in neo-imperialism, and its alleged universality masks hegemonic Western, liberal values. While some non-Western states have devised alternative forms of accountability based on local, culturally specific notions of justice, Southeast Asian states have not yet done the same. This stands in contrast to their vociferous championing of “Asian Values,” widely seen as the region’s alternative to Western, liberal human rights. As meaningful justice for the Rohingya may not only lie with international criminal justice, it is incumbent upon ASEAN to consider how its 5PC can be meaningfully implemented. The Rohingya crisis requires a creative regional response to questions of justice and accountability.

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